



**2018/0329(COD)**

11.2.2019

# **AMENDMENTS**

## **121 - 377**

**Draft report**

**Judith Sargentini**

(PE632.950v01-00)

on the 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 (recast)

Proposal for a directive

(COM(2018)634 – C8-0407/2018 – 2018/0329(COD))



**Amendment 121**  
**Barbara Spinelli**

**Proposal for a directive**

—

*Proposal for a rejection*

***The European Parliament rejects the Commission proposal.***

Or. en

**Amendment 122**  
**Barbara Spinelli**

**Proposal for a directive**  
**Title 1**

*Text proposed by the Commission*

*Amendment*

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 (recast)  
A contribution from the European  
Commission to the Leaders' meeting in  
Salzburg on 19-20 September 2018

Proposal for a  
DIRECTIVE OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
on common standards and procedures in  
Member States for returning ***irregularly***  
staying third-country nationals (recast)  
A contribution from the European  
Commission to the Leaders' meeting in  
Salzburg on 19-20 September 2018

Or. en

*Justification*

*This is a horizontal amendment, linked to amendments to recitals 6, 9, 10, 22, 25, 32, 40 and 47 and Articles 1, 2, 3, 4, 8, 10, 13, 14, 15 and 22.*

**Amendment 123**  
**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Monika Beňová, Cécile Kashetu Kyenge, Birgit**

**Sippel, Dietmar Köster**

**Proposal for a directive**

**Title 1**

*Text proposed by the Commission*

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 (recast)

A contribution from the European  
Commission to the Leaders' meeting in  
Salzburg on 19-20 September 2018

*Amendment*

Proposal for a  
DIRECTIVE OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

on common standards and procedures in  
Member States for returning ***irregularly***  
staying third-country nationals (recast)

A contribution from the European  
Commission to the Leaders' meeting in  
Salzburg on 19-20 September 2018

Or. en

*Justification*

*The word "illegal" is not considered as relevant in the context of migration. It will be replaced in the whole text by "irregular". International bodies including the United Nations General Assembly and International Organization for Migration have all recommended to use instead the terms "irregular" or "undocumented".*

**Amendment 124**

**Barbara Spinelli**

**Proposal for a directive**

**Recital 2**

*Text proposed by the Commission*

(2) ***An effective and fair return policy is an essential part*** of the Union's approach to better manage migration in all aspects, ***as reflected in the European Agenda on Migration of May 2015<sup>11</sup>*** .

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<sup>11</sup> COM(2015) 285 final.

*Amendment*

(2) ***A dignified, humane, rights-based, policy should be the basis*** of the Union's approach to better manage migration in all aspects.

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<sup>11</sup> COM(2015) 285 final.

Or. en

## Amendment 125

Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton

### Proposal for a directive

#### Recital 2

*Text proposed by the Commission*

(2) An effective and fair return policy is an essential part of the Union's approach to better manage **migration** in all aspects, as reflected in the European Agenda on Migration of May 2015<sup>11</sup> .

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<sup>11</sup> COM(2015) 285 final.

*Amendment*

(2) An effective and fair return policy is an essential part of the Union's approach to better manage **immigration** in all aspects, as reflected in the European Agenda on Migration of May 2015<sup>11</sup> .

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<sup>11</sup> COM(2015) 285 final.

Or. en

## Amendment 126

Barbara Spinelli

### Proposal for a directive

#### Recital 3

*Text proposed by the Commission*

(3) ***On 28 June 2018, in its conclusions, the European Council 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.***

*Amendment*

*deleted*

Or. en

## Amendment 127

Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton, Auke Zijlstra

### Proposal for a directive

#### Recital 3

*Text proposed by the Commission*

(3) On 28 June 2018, in its conclusions, the European Council 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.***

*Amendment*

(3) On 28 June 2018, in its conclusions, the European Council underlined the necessity to significantly step up the effective return of ***illegal immigrants.***

Or. en

**Amendment 128**  
**Barbara Spinelli**

**Proposal for a directive**  
**Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) On 19 December 2018, the United Nations General Assembly endorsed the UN Global Compact on Migration. States committed in this text to ensure that any detention in the context of international migration follows due process, is non-arbitrary, based on law, necessity, proportionality and individual assessments, is carried out by authorized officials, and for the shortest possible period of time, irrespective of whether detention occurs at the moment of entry, in transit, or proceedings of return, and regardless of the type of place where the detention occurs. They also committed to prioritize non-custodial alternatives to detention that are in line with international law, and to take a human rights-based approach to any detention of migrants, using detention as a measure of last resort only.***

Or. en

*Justification*

*This amendment is needed as it is inextricably linked to the amendment tabled to recital 4.*

**Amendment 129**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive**

**Recital 4**

*Text proposed by the Commission*

(4) That European return policy should be based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity, as well as international law, including refugee protection and human rights obligations. Clear, transparent and fair rules need to be established to provide for an effective return policy *which serves as a deterrent to irregular migration and ensures coherence with and contributes to the integrity of the Common European Asylum System and the legal migration system.*

*Amendment*

(4) That European return policy should be based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity, as well as international law, including refugee protection and human rights obligations. Clear, transparent and fair rules need to be established to provide for an effective **European** return policy.

Or. en

*Justification*

*The Shadow Rapporteur wants to keep the wording of the previous Directive.*

**Amendment 130**

**Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton**

**Proposal for a directive**

**Recital 4**

*Text proposed by the Commission*

(4) That European return policy should

*Amendment*

(4) That European return policy should

be based on common standards, for persons to be returned in a humane manner and with full respect for their ***fundamental*** rights and dignity, as well as international law, including refugee protection and human rights obligations. Clear, transparent and fair rules need to be established to provide for an effective return policy which serves as a deterrent to ***irregular migration and ensures coherence with and contributes to the integrity of the Common European Asylum System and the legal migration system.***

be based on common standards, for persons to be returned in a humane manner and with full respect for their ***human*** rights and dignity, as well as international law, including refugee protection and human rights obligations. Clear, transparent and fair rules need to be established to provide for an effective return policy which serves as a deterrent to ***illegal immigration.***

Or. en

### Amendment 131

**Anna Maria Corazza Bildt, Carlos Coelho, Tokia Saïfi, Caterina Chinnici, Nathalie Griesbeck, Vilija Blinkevičiūtė, Julie Ward, Roberta Metsola**

#### Proposal for a directive Recital 4

##### *Text proposed by the Commission*

(4) That European return policy should be based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity, as well as international law, including refugee protection and human rights obligations. Clear, transparent and fair rules need to be established to provide for an effective return policy which serves as a deterrent to irregular migration and ensures coherence with and contributes to the integrity of the Common European Asylum System and the legal migration system.

##### *Amendment*

(4) That European return policy should be based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity, as well as international law, including ***the UN Convention of the rights of the Child,*** refugee protection and ***other*** human rights obligations. Clear, transparent and fair rules need to be established to provide for an effective return policy which serves as a deterrent to irregular migration and ensures coherence with and contributes to the integrity of the Common European Asylum System and the legal migration system.

Or. en



## Amendment 132

Barbara Spinelli

### Proposal for a directive

#### Recital 4

*Text proposed by the Commission*

(4) ***That European*** return policy should be based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity, as well as international law, including refugee protection ***and*** human rights obligations. Clear, transparent and fair rules need to be established ***to provide for an effective return policy which serves as a deterrent to irregular migration and ensures coherence with and contributes to the integrity of the Common European Asylum System and the legal migration system.***

*Amendment*

(4) ***Member states should not be obliged to adopt and implement a return policy. If a Member State chooses to do so, its*** return policy should be ***only voluntary and*** based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity, as well as international law, including refugee protection, ***protection of the rights of the child, protection of persons in a vulnerable situation, protection of stateless persons and other*** human rights obligations. Clear, transparent, ***rights-based*** and fair rules need to be established.

Or. en

## Amendment 133

Maria Grapini

### Proposal for a directive

#### Recital 4

*Text proposed by the Commission*

(4) That European return policy should be based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity, as well as international law, including refugee protection and human rights obligations. Clear, transparent and fair rules need to be established to provide for an effective return policy which serves as a deterrent to irregular migration and ensures coherence with and contributes to the integrity of the Common European Asylum System and

*Amendment*

(4) That European return policy should be based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity, as well as international law, including refugee protection and human rights obligations. Clear, transparent and fair rules need to be established to provide for an effective return policy which serves as a deterrent to irregular migration ***and human trafficking*** and ensures coherence with and contributes to the integrity of the Common European

the legal migration system .

Asylum System and the legal migration system .

Or. ro

#### **Amendment 134**

**Monika Beňová**

#### **Proposal for a directive**

##### **Recital 4**

###### *Text proposed by the Commission*

(4) That European return policy should be based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity, as well as international law, including refugee protection and human rights obligations. Clear, transparent and fair rules need to be established to provide for an effective return policy which serves as ***a deterrent to irregular migration*** and ensures coherence with and contributes to the integrity of the Common European Asylum System and the legal migration system.

###### *Amendment*

(4) That European return policy should be based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity, as well as international law, including refugee protection and human rights obligations. Clear, transparent and fair rules need to be established to provide for an effective return policy which serves as ***an effective and efficient return policy*** and ensures coherence with and contributes to the integrity of the Common European Asylum System and the legal migration system.

Or. en

###### *Justification*

*The proposal is not supposed to serve as a deterrent to irregular migration but it should serve as a tool to effectively respond to irregular migration.*

#### **Amendment 135**

**Barbara Spinelli**

#### **Proposal for a directive**

##### **Recital 6**

###### *Text proposed by the Commission*

(6) Member States should ensure that

###### *Amendment*

(6) 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, implying that consideration should go beyond the mere fact of an illegal stay. ***When using standard forms for decisions related to return, namely return decisions and, if issued, entry-ban decisions and decisions on removal, Member States should respect that principle and fully comply with all applicable provisions of this Directive.***

*when a third country national is found to be staying irregularly, a procedure should be established to check whether his or her stay could be regularised based on his or her existing ties to the Member State* through a ***rights-based***, 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, implying that consideration should go beyond the mere fact of an illegal stay.

Or. en

#### *Justification*

*These changes are in line with changes proposed in recital 4.*

#### **Amendment 136**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Monika Beňová, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

#### **Proposal for a directive**

#### **Recital 6**

##### *Text proposed by the Commission*

(6) 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, implying that consideration should go beyond the mere fact of an ***illegal*** stay. When using standard forms for decisions related to return, namely return decisions and, if issued, entry-ban decisions and decisions on removal, Member States should respect

##### *Amendment*

(6) Member States should ensure that the ending of ***irregular*** 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, implying that consideration should go beyond the mere fact of an ***irregular*** stay. When using standard forms for decisions related to return, namely return decisions and, if issued, entry-ban decisions and decisions on removal, Member States should respect

that principle and fully comply with all applicable provisions of this Directive.

that principle and fully comply with all applicable provisions of this Directive.

Or. en

*Justification*

*Horizontal amendment inextricably linked to other admissible amendments. The word "illegal" is not considered as relevant in the context of migration. It will be replaced in the whole text by the notion "irregular". International bodies including the United Nations General Assembly and International Organization for Migration have all recommended to use instead the terms "irregular" or "undocumented".*

**Amendment 137**

**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**

**Recital 7**

*Text proposed by the Commission*

*Amendment*

**(7) *The link between the decision on ending of the legal stay of a third-country national and the issuing of a return decision should be reinforced in order to reduce the risk of absconding and the likelihood of unauthorised secondary movements. It is necessary to ensure that a return decision is issued immediately after the decision rejecting or terminating the legal stay, or ideally in the same act or decision. That requirement should in particular apply to cases where an application for international protection is rejected, provided that the return procedure is suspended until that rejection becomes final and pending the outcome of an appeal against that rejection.***

***deleted***

Or. en

*Justification*

*The asylum and return procedures should be properly distinguished. Also, such immediate*

*issuing of a return decision would frustrate possible efforts to lodge an appeal, or invoke other grounds to stay, and the right to remain on the territory during such appeals.*

**Amendment 138**  
**Barbara Spinelli**

**Proposal for a directive**  
**Recital 7**

*Text proposed by the Commission*

*Amendment*

**(7) *The link between the decision on ending of the legal stay of a third-country national and the issuing of a return decision should be reinforced in order to reduce the risk of absconding and the likelihood of unauthorised secondary movements. It is necessary to ensure that a return decision is issued immediately after the decision rejecting or terminating the legal stay, or ideally in the same act or decision. That requirement should in particular apply to cases where an application for international protection is rejected, provided that the return procedure is suspended until that rejection becomes final and pending the outcome of an appeal against that rejection.*** **deleted**

Or. en

*Justification*

*This recital is deleted in line with amendments tabled to Article 8(6).*

**Amendment 139**  
**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive**  
**Recital 7**

*Text proposed by the Commission*

*Amendment*

**(7) The link between the decision on ending of the legal stay of a third-country national and the issuing of a return decision should be reinforced in order to reduce the risk of absconding and the likelihood of unauthorised secondary movements. It is necessary to ensure that a return decision is issued immediately after the decision rejecting or terminating the legal stay, or ideally in the same act or decision. That requirement should in particular apply to cases where an application for international protection is rejected, provided that the return procedure is suspended until that rejection becomes final and pending the outcome of an appeal against that rejection.**

**deleted**

Or. en

*Justification*

*In different Member States, decisions on asylum are not issued by the same authorities. The separation between the two authorities is a guarantee of independence. This recital is linked to the amendment on Article 8.*

## **Amendment 140**

**Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton, Auke Zijlstra**

### **Proposal for a directive**

#### **Recital 7**

*Text proposed by the Commission*

*Amendment*

(7) The link between the decision on ending of the legal stay of a third-country national and the issuing of a return decision should be reinforced in order to reduce the risk of absconding and the likelihood of unauthorised secondary movements. It is necessary to ensure that a return decision is issued immediately after the decision

(7) The link between the decision on ending of the legal stay of a third-country national and the issuing of a return decision should be reinforced in order to reduce the risk of absconding and the likelihood of unauthorised secondary movements, ***in particular when the third-country national poses a risk to public policy,***

rejecting or terminating the legal stay, or ideally in the same act or decision. That requirement should in particular apply to cases where an application for international protection is rejected, provided that the return procedure is suspended until that rejection becomes final and pending the outcome of an appeal against that rejection.

***public security or national security, and when he/she has been convicted for a criminal offence, even with a non-definitive sentence.*** It is necessary to ensure that a return decision is issued immediately after the decision rejecting or terminating the legal stay, or ideally in the same act or decision. That requirement should in particular apply to cases where an application for international protection is rejected, provided that the return procedure is suspended until that rejection becomes final and pending the outcome of an appeal against that rejection.

Or. en

## **Amendment 141** **Jussi Halla-aho**

### **Proposal for a directive** **Recital 7**

#### *Text proposed by the Commission*

(7) The link between the decision on ending of the legal stay of a third-country national and the issuing of a return decision should be reinforced in order to reduce the risk of absconding and the likelihood of unauthorised secondary movements. It is necessary to ensure that a return decision is issued immediately after the decision rejecting or terminating the legal stay, or ideally in the same act or decision. ***That requirement should in particular apply to cases where an application for international protection is rejected, provided that the return procedure is suspended until that rejection becomes final and pending the outcome of an appeal against that rejection.***

#### *Amendment*

(7) The link between the decision on ending of the legal stay of a third-country national and the issuing of a return decision should be reinforced in order to reduce the risk of absconding and the likelihood of unauthorised secondary movements. It is necessary to ensure that a return decision is issued immediately after the decision rejecting or terminating the legal stay, or ideally in the same act or decision, ***including in the border*** procedure.

Or. en

**Amendment 142**  
**Nadine Morano**

**Proposal for a directive**  
**Recital 7**

*Text proposed by the Commission*

(7) The link between the decision on ending of the legal stay of a third-country national and the issuing of a return decision should be reinforced in order to reduce the risk of absconding and the likelihood of unauthorised secondary movements. It is necessary to ensure that a return decision is issued immediately after the decision rejecting or terminating the legal stay, or ideally in the same act or decision. That requirement should in particular apply to cases where an application for international protection is rejected, ***provided that the return procedure is suspended until that rejection becomes final and pending the outcome of an appeal against that rejection.***

*Amendment*

(7) The link between the decision on ending of the legal stay of a third-country national and the issuing of a return decision should be reinforced in order to reduce the risk of absconding and the likelihood of unauthorised secondary movements. It is necessary to ensure that a return decision is issued immediately after the decision rejecting or terminating the legal stay, or ideally in the same act or decision. That requirement should in particular apply to cases where an application for international protection is rejected.

Or. fr

*Justification*

*Determining whether or not the appeal has a suspensive effect must, as a matter of national sovereignty, be left to the discretion of the Member States.*

**Amendment 143**  
**Monika Beňová**

**Proposal for a directive**  
**Recital 8**

*Text proposed by the Commission*

(8) The need for Union and bilateral readmission agreements with third countries to facilitate the return process is underlined. International cooperation with countries of origin at all stages of the

*Amendment*

(8) The need for Union and bilateral readmission agreements with third countries to facilitate the return process is underlined. International cooperation with countries of origin at all stages of the



return process is a prerequisite to achieving sustainable return.

return process is a prerequisite to achieving sustainable return. ***Continued efforts to improve already existing bilateral readmission agreements should be maintained. Efforts should be made to align the existing readmission agreements to this Directive.***

Or. en

#### *Justification*

*The existing bilateral readmission agreements should follow the standards enshrined in this Directive and therefore should be revisited with the goal of harmonizing.*

### **Amendment 144**

**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

#### **Proposal for a directive**

##### **Recital 8**

###### *Text proposed by the Commission*

(8) The ***need for*** Union ***and*** bilateral readmission agreements with third countries ***to facilitate the return process is underlined***. International cooperation with countries of origin at all stages of the return process is a prerequisite to achieving sustainable return.

###### *Amendment*

(8) ***Member States and*** the Union ***should conclude further*** bilateral readmission agreements with third countries. ***A lack of these agreements is the main reason why numbers for the return of third-country nationals staying illegally in the Union are low.*** International cooperation with countries of origin at all stages of the return process is a prerequisite to achieving sustainable return.

Or. it

#### *Justification*

*This amendment is necessary to stress that the recast of the Return Directive alone would not improve the returns' rate if it is not followed by readmission agreements with third countries. This is needed to ensure consistency with the Commission's action plans on return of both 2015 and 2017 that mentioned the need to increase the number of readmission agreements with third countries to boost returns.*

## Amendment 145

Anna Maria Corazza Bildt, Carlos Coelho, Roberta Metsola

### Proposal for a directive

#### Recital 8

*Text proposed by the Commission*

(8) The need for Union and bilateral readmission agreements with third countries to facilitate the return process is underlined. International cooperation with countries of origin at all stages of the return process is a prerequisite to achieving sustainable return.

*Amendment*

(8) The need for Union and bilateral readmission agreements with third countries to facilitate the return process is underlined. International cooperation with countries of origin at all stages of the return process is a prerequisite to achieving sustainable **and effective** return.

Or. en

#### *Justification*

*The amendment stresses that readmission agreements with third countries are to be encouraged in order to ensure a more effective return and sustainable and durable solutions for returnees. This amendment is needed for reasons of internal consistency of the text.*

## Amendment 146

Barbara Spinelli

### Proposal for a directive

#### Recital 9

*Text proposed by the Commission*

(9) It is recognised that it is **legitimate for** Member States **to return illegally staying third-country nationals, provided that fair and efficient** asylum systems **are** in place which fully respect the principle of non-refoulement.

*Amendment*

(9) It is recognised that it is **imperative that** Member States **have** asylum systems in place which fully respect **international human rights law and international refugee law**, the principle of non-refoulement **as well as migration policies that abide by applicable international standards on migration and the protection of migrant workers**.

Or. en

*Justification*

*This amendment is needed as it is inextricably linked to the amendment tabled to recital 4.*

**Amendment 147**

**Anna Maria Corazza Bildt, Carlos Coelho, Tokia Saïfi, Caterina Chinnici, Nathalie Griesbeck, Vilija Blinkevičiūtė, Julie Ward, Roberta Metsola**

**Proposal for a directive  
Recital 9**

*Text proposed by the Commission*

(9) It is recognised that it is legitimate for Member States to return illegally staying third-country nationals, provided that fair and efficient asylum systems are in place which fully respect the principle of non-refoulement.

*Amendment*

(9) It is recognised that it is legitimate for Member States to return illegally staying third-country nationals, provided that fair and efficient asylum systems are in place which fully respect the principle of non-refoulement, ***international law and Union law***.

Or. en

*Justification*

*The amendment clarifies that, in order to ensure an effective return policy of third-country nationals who are not in need of international protection, Member States should ensure that their asylum systems respect not only the principle of non-refoulement, but also Union law on asylum and international law, such as the UN Convention of the Rights of the Child as mentioned in the amendment on Recital 4.*

**Amendment 148**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Monika Beňová, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive  
Recital 9**

*Text proposed by the Commission*

(9) It is recognised that it is legitimate for Member States to return ***illegally*** staying third-country nationals, provided that fair and efficient asylum systems are in

*Amendment*

(9) It is recognised that it is legitimate for Member States to return ***irregularly*** staying third-country nationals, provided that fair and efficient asylum systems are in

place which fully respect the principle of non-refoulement.

place which fully respect the principle of non-refoulement.

Or. en

### *Justification*

*Horizontal amendment inextricably linked to other admissible amendments. The word "illegal" is not considered as relevant in the context of migration. It will be replaced in the whole text by the term "irregular". International bodies including the United Nations General Assembly and International Organization for Migration have all recommended to use instead the terms "irregular" or "undocumented".*

## **Amendment 149** **Barbara Spinelli**

### **Proposal for a directive** **Recital 10**

#### *Text proposed by the Commission*

(10) In accordance with Council Directive 2005/85/EC<sup>12</sup>, a third-country national who has applied for asylum in a Member State should not be regarded as staying ***illegally*** on the territory of that Member State until a negative decision on the application, or a decision ending his or her right of stay as asylum seeker has entered into force.

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<sup>12</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p. 13).

#### *Amendment*

(10) In accordance with Council Directive 2005/85/EC<sup>12</sup>, a third-country national who has applied for asylum in a Member State should not be regarded as staying ***irregularly*** on the territory of that Member State until a negative decision on the application, or a decision ending his or her right of stay as asylum seeker has entered into force. ***Victims of trafficking in human beings who are in the process of being granted a residence permit pursuant to Council Directive 2004/81/EC should not be regarded as staying irregularly on the territory of that Member State until a final decision on the issuance of the residence permit is taken by the competent authority.***

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<sup>12</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p. 13).

*Justification*

*This amendment is needed as it is inextricably linked to the amendment tabled to recital 4 which provides that the European return policy should be based on international law, including refugee protection, protection of the rights of the child, protection of stateless persons and human rights obligations, which includes protection of victims of trafficking in human beings.*

**Amendment 150**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Monika Beňová, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive****Recital 10***Text proposed by the Commission*

(10) In accordance with Council Directive 2005/85/EC<sup>12</sup>, a third-country national who has applied for asylum in a Member State should not be regarded as staying *illegally* on the territory of that Member State until a negative decision on the application, or a decision ending his or her right of stay as asylum seeker has entered into force.

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<sup>12</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p. 13).

*Amendment*

(10) In accordance with Council Directive 2005/85/EC<sup>12</sup>, a third-country national who has applied for asylum in a Member State should not be regarded as staying *irregularly* on the territory of that Member State until a negative decision on the application, or a decision ending his or her right of stay as asylum seeker has entered into force.

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<sup>12</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p. 13).

*Justification*

*Horizontal amendment inextricably linked to other admissible amendments. The word "illegal" is not considered as relevant in the context of migration. It will be replaced in the whole text by the term "irregular". International bodies including the United Nations General Assembly and International Organization for Migration have all recommended to use instead the terms "irregular" or "undocumented".*

## Amendment 151

Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo

### Proposal for a directive

#### Recital 11

*Text proposed by the Commission*

**(11) To ensure clearer and more effective rules for granting a period for voluntary departure and detaining a third-country national, determining whether there is or there is not a risk of absconding should be based on Union-wide objective criteria. Moreover this Directive should set out specific criteria which establish a ground for a rebuttable presumption that a risk of absconding exists.**

*Amendment*

**deleted**

Or. it

## Amendment 152

Barbara Spinelli

### Proposal for a directive

#### Recital 11

*Text proposed by the Commission*

**(11) To ensure clearer and more effective rules for *granting a period* for voluntary departure and *detaining a third-country national, determining whether there is or there is not a risk of absconding* should be *based on Union-wide objective criteria*. Moreover this Directive should set out specific criteria *which establish a ground for a rebuttable presumption that a risk of absconding exists*.**

*Amendment*

**(11) To ensure clearer and more effective rules for *voluntary departure, Union-wide provisions aimed at providing for the opportunity* for voluntary departure and *avoiding recourse to detention* should be *established*. Moreover this Directive should *oblige Member States to set out an exhaustive list of specific and objective criteria in their national law, in line with guidelines to be set up by the European Union Agency for Fundamental Rights, that would guarantee that the return has been carried out voluntarily, including absence of any physical, psychological, or material pressure following an***

*examination of the individual  
circumstances of the third-country  
national concerned.*

Or. en

*Justification*

*These changes are in line with changes proposed in recital 4.*

**Amendment 153**

**Nadine Morano**

**Proposal for a directive**

**Recital 11**

*Text proposed by the Commission*

(11) To ensure clearer and more effective rules for granting a period for voluntary departure and detaining a third-country national, determining whether there is or there is not a risk of absconding should be ***based on Union-wide objective criteria. Moreover this Directive should set out specific criteria which establish a ground for a rebuttable presumption that a risk of absconding exists.***

*Amendment*

(11) To ensure clearer and more effective rules for granting a period for voluntary departure and detaining a third-country national, determining whether there is or there is not a risk of absconding should be ***a matter for the Member States.***

Or. fr

*Justification*

*The risks of absconding vary from one Member State to the next, depending, for example, on the procedures and resources used by the Member States concerned. In this context, as the risk of absconding is not harmonised, there is no benefit in harmonising efforts to assess whether or not that risk exists.*

**Amendment 154**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Monika Beňová, Cécile Kashetu Kyenge**

**Proposal for a directive**

**Recital 11**

*Text proposed by the Commission*

*Amendment*

(11) To ensure clearer and more effective rules for ***granting a period for voluntary departure and*** detaining a third-country national, determining whether there is or there is not a risk of absconding should be based on Union-wide objective criteria. ***Moreover this Directive should set out specific criteria which establish a ground for a rebuttable presumption that a risk of absconding exists.***

(11) To ensure clearer and more effective rules for detaining a third-country national, determining whether there is or there is not a risk of absconding should be based on Union-wide objective ***and limited*** criteria.

Or. en

*Justification*

*The Shadow Rapporteur considers that a limited and precise list of criteria shared by all Member States would harmonize the notion of the risk of absconding. This recital is linked to the amendment on Article 6.*

**Amendment 155**

**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**

**Recital 11**

*Text proposed by the Commission*

*Amendment*

(11) To ensure clearer and more effective rules for granting a period for voluntary departure and detaining a third-country national, determining whether there is or there is not a risk of absconding should be based on Union-wide objective criteria. ***Moreover this Directive should set out specific criteria which establish a ground for a rebuttable presumption that a risk of absconding exists.***

(11) To ensure clearer and more effective rules for granting a period for voluntary departure and detaining a third-country national, determining whether there is or there is not a risk of absconding should be based on Union-wide objective criteria.

Or. en

*Justification*

*There should always be, in coherence with the amendments made to Art. 6, an individual*



*assessment. A presumption of a risk of absconding weakens the consideration of all relevant criteria to be looked at in an individual assessment.*

**Amendment 156**  
**Maria Grapini**

**Proposal for a directive**  
**Recital 11**

*Text proposed by the Commission*

(11) To ensure clearer and more effective rules for granting a period for voluntary departure and detaining a third-country national, determining whether there is or there is not a risk of absconding should be based on Union-wide objective criteria. Moreover this Directive should set out specific criteria which establish a ground for a rebuttable presumption that a risk of absconding exists.

*Amendment*

(11) To ensure clearer and more effective rules for granting a period for voluntary departure and detaining a third-country national, determining whether there is or there is not a risk of absconding should be based on Union-wide objective criteria. Moreover this Directive should set out specific criteria which establish a ***well-founded*** ground for a rebuttable presumption that a risk of absconding exists.

Or. ro

**Amendment 157**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive**  
**Recital 12**

*Text proposed by the Commission*

***(12) To reinforce the effectiveness of the return procedure, clear responsibilities for third-country nationals should be established, and in particular the obligation to cooperate with the authorities at all stages of the return procedure, including by providing the information and elements that are necessary in order to assess their individual situation. At the same time, it is***

*Amendment*

***deleted***

*necessary to ensure that third-country nationals are informed of the consequences of not complying with those obligations, in relation to the determination of the risk of absconding, the granting of a period for voluntary departure and the possibility to impose detention, and to the access to programmes providing logistical, financial and other material or in-kind assistance.*

Or. en

#### *Justification*

*The Shadow Rapporteur has modified Article 7 on the obligation to cooperate. This recital is directly linked to these modifications.*

#### **Amendment 158**

**Sophia in 't Veld, Angelika Mlinar**

#### **Proposal for a directive**

#### **Recital 12**

##### *Text proposed by the Commission*

(12) To reinforce the effectiveness of the return procedure, clear responsibilities for third-country nationals *should be established, and in particular the obligation to cooperate with the authorities at all stages of the return procedure, including by providing the information and elements that are necessary in order to assess their individual situation. At the same time, it is necessary to ensure that third-country nationals are informed of the consequences of not complying with those obligations, in relation to the determination of the risk of absconding, the granting of a period for voluntary departure and the possibility to impose detention, and to the access to programmes providing logistical,*

##### *Amendment*

(12) To reinforce the effectiveness of the return procedure, clear responsibilities *of cooperation and information provision should be established for both Member States and* for third-country nationals.

*financial and other material or in-kind assistance.*

Or. en

*Justification*

*In line with the amendments made to Art. 7 there should be mutual cooperation and information provision to ensure trust building in the return process, thereby making returns more effective and sustainable.*

**Amendment 159**

**Anna Maria Corazza Bildt, Carlos Coelho, Tokia Saïfi, Caterina Chinnici, Nathalie Griesbeck, Vilija Blinkevičiūtė, Julie Ward, Roberta Metsola**

**Proposal for a directive**

**Recital 12**

*Text proposed by the Commission*

(12) To reinforce the effectiveness of the return procedure, clear responsibilities for third-country nationals should be established, and in particular the obligation to cooperate with the authorities at all stages of the return procedure, including by providing the information and elements that are necessary in order to assess their individual situation. At the same time, it is necessary to ensure that third-country nationals are informed of the consequences of not complying with those obligations, in relation to the determination of the risk of absconding, the granting of a period for voluntary departure and the possibility to impose detention, and to the access to programmes providing logistical, financial and other material or in-kind assistance.

*Amendment*

(12) To reinforce the effectiveness of the return procedure, clear responsibilities for third-country nationals should be established, and in particular the obligation to cooperate with the authorities at all stages of the return procedure, including by providing the information and elements that are necessary in order to assess their individual situation ***or remaining present and available at all stages of the return procedure.*** At the same time, it is necessary to ensure that third-country nationals are informed of the consequences of not complying with those obligations, in relation to the determination of the risk of absconding, the granting of a period for voluntary departure and the possibility to impose detention, and ***in relation*** to the access to programmes providing logistical, financial and other material or in-kind assistance. ***Member States should ensure that the consequences of non-complying are not excessive or disproportionate. The obligation to cooperate should not affect children.***

**Amendment 160****Jussi Halla-aho****Proposal for a directive****Recital 12***Text proposed by the Commission*

(12) To reinforce the effectiveness of the return procedure, clear responsibilities for third-country nationals should be established, and in particular the obligation to cooperate with the authorities at all stages of the return procedure, including by providing the information and elements that are necessary in order to assess their individual situation. At the same time, it is necessary to ensure that third-country nationals are informed of the consequences of not complying with those obligations, in relation to the determination of the risk of absconding, the granting of a period for voluntary departure and the possibility to impose detention, and to the access to programmes providing logistical, financial and other material or in-kind assistance.

*Amendment*

(12) To reinforce the effectiveness of the return procedure, clear responsibilities for third-country nationals should be established, and in particular the obligation to cooperate with the authorities at all stages of the return procedure, including by providing the information and elements that are necessary in order to assess their individual situation. At the same time, it is necessary to ensure that third-country nationals are informed of the consequences of not complying with those obligations, in relation to the determination of the risk of absconding, the granting of a period for voluntary departure and the possibility to impose detention **and an entry ban**, and to the access to programmes providing logistical, financial and other material or in-kind assistance. ***The length of the entry ban should normally be no less than five years.***

Or. en

**Amendment 161****Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo****Proposal for a directive****Recital 12***Text proposed by the Commission*

(12) To reinforce the effectiveness of the return procedure, clear responsibilities for third-country nationals should be

*Amendment*

(12) To reinforce the effectiveness of the return procedure, clear responsibilities for third-country nationals should be

established, and *in particular the obligation to cooperate with the authorities at all stages of the return procedure, including by providing the information and elements that are necessary in order to assess their individual situation. At the same time, it is necessary to ensure that* third-country nationals *are informed of the consequences of not complying with those obligations, in relation to the determination of the risk of absconding, the granting of a period for voluntary departure and the possibility to impose detention, and to the access to programmes providing logistical, financial and other material or in-kind assistance.*

established and third-country nationals *should be provided with the necessary information on the voluntary return process, the period allowed for voluntary departure and the possibility to impose detention in the event that the third-country national poses a risk to security and public order in cases clearly determined by law, and on access to programmes providing logistical, financial and other material or in-kind assistance. The possibility of voluntary return should be clearly pointed out to third-country nationals applying for international protection right at the start of the asylum procedure.*

Or. it

## Amendment 162 Barbara Spinelli

### Proposal for a directive Recital 12

#### *Text proposed by the Commission*

(12) *To reinforce the effectiveness of the return procedure, clear responsibilities for third-country nationals should be established, and in particular the obligation to cooperate with the authorities at all stages of the return procedure, including by providing the information and elements that are necessary in order to assess their individual situation. At the same time, it is necessary to ensure that third-country nationals are informed of the consequences of not complying with those obligations, in relation to the determination of the risk of absconding, the granting of a period for voluntary departure and the possibility to impose detention, and to the access to programmes providing logistical, financial and other*

#### *Amendment*

(12) It is necessary to ensure that third-country nationals are *provided with all relevant information on the return procedure in a language they understand so that they can engage with the return procedure. In particular, Member States should have the obligation to provide timely and adequate information to third-country nationals on the process of return including in relation to the different stages of the return procedure, the granting of a period for voluntary departure, determination and consequences of absconding, the possibility to impose detention, available remedies, possible applicability of entry bans and access to programmes providing legal, logistical, financial and other material or in-kind*

material or in-kind assistance.

assistance.

Or. en

### *Justification*

*Timely and adequate information should be provided to third-country nationals if a Member State decides to implement a return policy. These changes are in line with changes proposed in recital 4.*

## **Amendment 163**

**Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton**

### **Proposal for a directive**

#### **Recital 12**

##### *Text proposed by the Commission*

(12) To reinforce the effectiveness of the return procedure, clear responsibilities for third-country nationals should be established, and in particular the obligation to cooperate with the authorities at all stages of the return procedure, **including** by providing the information and elements that are necessary in order to assess their individual situation. At the same time, it is necessary to ensure that third-country nationals are informed of the consequences of not complying with those obligations, in relation to the determination of the risk of absconding, the granting of a period for voluntary departure and the possibility to impose detention, and to the access to programmes providing logistical, financial and other material or in-kind assistance.

##### *Amendment*

(12) To reinforce the effectiveness of the return procedure, clear responsibilities for third-country nationals should be established, and in particular the obligation to cooperate with the authorities at all stages of the return procedure by providing the information and elements that are necessary in order to assess their individual situation. At the same time, it is necessary to ensure that third-country nationals are informed of the consequences of not complying with those obligations, in relation to the determination of the risk of absconding, the granting of a period for voluntary departure and the possibility to impose detention, and to the access to programmes providing logistical, financial and other material or in-kind assistance.

Or. en

## **Amendment 164**

**Monika Hohlmeier, Kārlis Šadurskis, Heinz K. Becker, Rachida Dati**

### **Proposal for a directive**

#### **Recital 13**

*Text proposed by the Commission*

(13) Where there are no reasons to believe that the granting of a period for voluntary departure would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and an appropriate period for voluntary departure of up to thirty days, depending in particular on the prospect of return, should be granted. ***A period for voluntary departure should not be granted where it has been assessed that third-country nationals pose a risk of absconding, have had a previous application for legal stay dismissed as fraudulent or manifestly unfounded, or they pose a risk to public policy, public security or national security. An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case.***

*Amendment*

(13) Where there are no reasons to believe that the granting of a period for voluntary departure would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and an appropriate period for voluntary departure of up to thirty days, depending in particular on the prospect of return, should be granted. ***Member States should ensure that those third-country nationals in respect of whom it has been assessed that they pose a risk of absconding, who have had a previous application for legal stay dismissed as fraudulent or manifestly unfounded, or who pose a risk to public policy, public security or national security in particular on grounds of terrorism or serious crime, are not granted a period for voluntary departure.*** An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case.

Or. en

**Amendment 165**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive**

**Recital 13**

*Text proposed by the Commission*

(13) ***Where there are no reasons to believe that the granting of a period for voluntary departure would undermine the purpose of a return procedure,*** voluntary return should be preferred over forced return and an appropriate period for voluntary departure of ***up to*** thirty days,

*Amendment*

(13) Voluntary return should ***always*** be preferred over forced return and an appropriate period for voluntary departure of thirty days should be granted. ***Member States should be able to decide to grant a shorter period for voluntary departure of minimum 7 days and exceptionally not to***

*depending in particular on the prospect of return*, should be granted. A period for voluntary departure *should not be granted* where it has been assessed that *third-country* nationals pose a *risk of absconding, have had a previous application for legal stay dismissed as fraudulent or manifestly unfounded, or they pose a* risk to public policy, public security or national security. An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case.

*grant* a period for voluntary departure where it has been assessed that *third country* nationals pose a *genuine and present* risk to public policy, public security or national security. An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case.

Or. en

### *Justification*

*30 days seem to be an appropriate period to organize a voluntary departure. Nevertheless, in case of explicit expression of non-compliance with return-related measures applied by virtue of the Directive or non-compliance with a measure aiming at preventing the risk of absconding, or if the third national poses a genuine and present risk to public policy, national security or public security, this period could be shortened to 7 days; Member States may also not grant a period of voluntary departure. This amendment is linked to Article 9.*

## **Amendment 166**

**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

### **Proposal for a directive**

#### **Recital 13**

#### *Text proposed by the Commission*

(13) Where there are no reasons to believe that the granting of a period for voluntary departure would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and an appropriate period for voluntary departure of up to thirty days, depending in particular on the prospect of return, should be granted. A period for voluntary departure should not be granted where it has been assessed that third-country nationals pose a risk *of*

#### *Amendment*

(13) Where there are no reasons to believe that the granting of a period for voluntary departure would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and an appropriate period for voluntary departure of up to thirty days, depending in particular on the prospect of return, should be granted. A period for voluntary departure should not be granted where it has been assessed that third-country nationals pose a risk to public



*absconding, have had a previous application for legal stay dismissed as fraudulent or manifestly unfounded, or they pose a risk* to public policy, public security or national security. An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case.

policy, public security or national security. An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case.

Or. it

#### **Amendment 167**

**Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton, Auke Zijlstra**

#### **Proposal for a directive**

#### **Recital 13**

##### *Text proposed by the Commission*

(13) Where there are no reasons to believe that the granting of a period for voluntary departure would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and an appropriate period for voluntary departure of up to thirty days, depending in particular on the prospect of return, should be granted. A period for voluntary departure should not be granted where it has been assessed that third-country nationals pose a risk of absconding, have had a previous application for legal stay dismissed as fraudulent or manifestly unfounded, *or* they pose a risk to public policy, public security or national security. An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case.

##### *Amendment*

(13) Where there are no reasons to believe that the granting of a period for voluntary departure would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and an appropriate period for voluntary departure of up to thirty days, depending in particular on the prospect of return, should be granted. A period for voluntary departure should not be granted where it has been assessed that third-country nationals pose a risk of absconding, have had a previous application for legal stay dismissed as fraudulent or manifestly unfounded, they pose a risk to public policy, public security or national security, *or they have been convicted for a criminal offence, even with a non-definitive sentence.* An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case.

Or. en

## Amendment 168

Jussi Halla-aho

### Proposal for a directive

#### Recital 13

*Text proposed by the Commission*

(13) Where there are no reasons to believe that the granting of a period for voluntary departure would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and an appropriate period for voluntary departure of up to **thirty** days, depending in particular on the prospect of return, should be granted. A period for voluntary departure should not be granted where it has been assessed that third-country nationals pose a risk of absconding, have had a previous application for legal stay dismissed as fraudulent or manifestly unfounded, or they pose a risk to public policy, public security or national security. An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case.

*Amendment*

(13) Where there are no reasons to believe that the granting of a period for voluntary departure would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and an appropriate period for voluntary departure of up to **ten** days, depending in particular on the prospect of return, should be granted. A period for voluntary departure should not be granted where it has been assessed that third-country nationals pose a risk of absconding, have had a previous application for legal stay dismissed as fraudulent or manifestly unfounded, or they pose a risk to public policy, public security or national security. ***In exceptional cases where the prospect of voluntary return is high***, an extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case.

Or. en

## Amendment 169

Barbara Spinelli

### Proposal for a directive

#### Recital 13

*Text proposed by the Commission*

(13) ***Where there are no reasons to believe that the granting of a period for voluntary departure would undermine the***

*Amendment*

(13) ***If a Member State chooses to implement*** a return ***policy***, voluntary return should be preferred over forced return and

*purpose of a return procedure*, voluntary return should be preferred over forced return and *an appropriate* period for voluntary departure of *up to thirty days, depending in particular on the prospect of return*, should be granted. A period for voluntary departure *should not be granted* where it has been assessed that third-country nationals pose a *risk of absconding, have had a previous application for legal stay dismissed as fraudulent or manifestly unfounded, or they pose a risk to public policy*, public security or national security. An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case.

a period for voluntary departure of *six months* should be granted. *Member States should be able to decide not to grant* a period for voluntary departure where it has been assessed that third-country nationals pose a *genuine, present and evidence-based* risk to public security or national security. An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case, *including to children to finish their studies, to pregnant women to give birth to their children, to victims of trafficking waiting for justice while their case is pending and to ill persons with healthcare needs*.

Or. en

#### *Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to Article 9 relating to voluntary departure.*

#### **Amendment 170** **Sophia in 't Veld, Angelika Mlinar**

#### **Proposal for a directive** **Recital 13**

##### *Text proposed by the Commission*

(13) Where there are no reasons to believe that the granting of a period for voluntary departure would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and an appropriate period for voluntary departure of *up to* thirty days, depending in particular on the prospect of return, should be granted. A period for voluntary departure *should not* be granted where it has been assessed that third-country nationals pose a risk of

##### *Amendment*

(13) Where there are no reasons to believe that the granting of a period for voluntary departure would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and an appropriate period for voluntary departure of thirty days, depending in particular on the prospect of return, should be granted. A *shorter* period for voluntary departure *could* be granted where it has been assessed that third-country nationals pose a risk of

absconding, have had a previous application for legal stay dismissed as fraudulent *or manifestly unfounded*, or they pose a risk to public policy, public security or national security. An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case.

absconding, have had a previous application for legal stay dismissed as fraudulent or they pose a risk to public policy, public security or national security. An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case.

Or. en

### *Justification*

*In line with the amendments to Article 9, all options for voluntary departure should be strengthened, including by offering a 30-day period of voluntary return. Shorter periods are to be possible under certain conditions.*

## **Amendment 171** **Barbara Spinelli**

### **Proposal for a directive** **Recital 14**

#### *Text proposed by the Commission*

(14) In order to promote voluntary return, Member States should have operational programmes providing for enhanced return assistance and counselling, which *may* include support for reintegration in third countries of return, taking into account the common standards on Assisted Voluntary Return and Reintegration Programmes developed by the Commission in cooperation with Member States and endorsed by the Council.

#### *Amendment*

(14) In order to promote voluntary return, Member States should have operational programmes providing for *case management*, enhanced return assistance and counselling, which *should* include support for reintegration in third countries of return, taking into account the common standards on Assisted Voluntary Return and Reintegration Programmes developed by the Commission in cooperation with Member States and endorsed by the Council. *Voluntary return, assisted voluntary return and reintegration programmes are essential pillars of a Union migration policy and allow migrants to return in a humane, dignified and rights-based manner. Voluntary return should be allowed at all stages of the procedure.*

**Amendment 172**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Monika Beňová, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive**

**Recital 14**

*Text proposed by the Commission*

(14) In order to promote voluntary return, Member States should have operational programmes providing for enhanced return assistance and counselling, which *may* include support for reintegration in third countries of return, taking into account the common standards on Assisted Voluntary Return and Reintegration Programmes developed by the Commission in cooperation with Member States and endorsed by the Council.

*Amendment*

(14) In order to promote voluntary return, Member States should have operational programmes providing for enhanced return assistance and counselling, which *should* include support for reintegration in third countries of return, taking into account the common standards on Assisted Voluntary Return and Reintegration Programmes developed by the Commission in cooperation with Member States and endorsed by the Council.

**Amendment 173**

**Barbara Spinelli**

**Proposal for a directive**

**Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

***(14a) In accordance with Directive 2009/52/EC of the European Parliament and of the Council, Member States should ensure that there are effective mechanisms through which third-country nationals can lodge complaints against their employers. In accordance with Directive 2012/29/EU of the European Parliament and of the Council, Member States should ensure that all victims of***

*crime receive appropriate information, support and protection and are able to participate in criminal proceedings. To this end, adequate mechanisms ensuring portable justice and access to redress mechanisms should be established as part of the national programmes on return and should ensure access to justice for issues relating to violations of Directive 2009/52/EC or Directive 2012/29/EU throughout the return procedure, including measures to ensure access to justice after return to a third country.*

Or. en

### *Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to Article 14. The Shadow Rapporteur agrees with the Rapporteur that the national programmes to improve the operationalisation of all stages of the return procedure should include reintegration measures and mechanisms ensuring portable justice and access to justice and redress for victims of crime or labour exploitation throughout the return procedure, including after return to a third country.*

#### **Amendment 174** **Barbara Spinelli**

#### **Proposal for a directive** **Recital 15 a (new)**

*Text proposed by the Commission*

*Amendment*

*(15a) Member States should ensure that a vulnerability assessment is carried out for persons facing return procedures. Factors increasing the risk of vulnerability may include, among others: individual factors such as age, sex and gender, status in society, beliefs and attitudes, emotional, psychological and cognitive characteristics and physical and mental well-being; household and family factors; community factors; structural factors or situational factors.*

*Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to recital 38 and Article 14 stressing the need for national return management systems to include specific mechanisms to identify and address potential vulnerabilities of persons facing a return procedure.*

**Amendment 175**

**Monika Hohlmeier, Kārlis Šadurskis, Heinz K. Becker, Rachida Dati**

**Proposal for a directive**

**Recital 15 a (new)**

*Text proposed by the Commission*

*Amendment*

***(15a) Member States should ensure that persons facing return procedures do not intentionally and fraudulently exploit factors that might be considered as potentially increasing their vulnerability.***

*Justification*

*This amendment is necessary for pressing reasons relating to the internal logic of the text as intended by the Commission in Article 14 with the effective functioning and setting up of national return management systems.*

**Amendment 176**

**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**

**Recital 16**

*Text proposed by the Commission*

*Amendment*

***(16) The deadline for lodging an appeal against decisions related to return should provide enough time to ensure access to an effective remedy, while taking into account that long deadlines can have a*** ***deleted***

*detrimental effect on return procedures. To avoid possible misuse of rights and procedures, a maximum period not exceeding five days should be granted to appeal against a return decision. This provision should only apply following a decision rejecting an application for international protection which became final, including after a possible judicial review.*

Or. en

#### *Justification*

*The period of five days provided for in the Commission proposal is too short to make effective use of the right to an appeal.*

#### **Amendment 177** **Barbara Spinelli**

#### **Proposal for a directive** **Recital 16**

##### *Text proposed by the Commission*

(16) The deadline for lodging an appeal against decisions related to return should provide enough time to ensure access to an effective remedy, ***while taking into account that long deadlines can have a detrimental effect on return procedures. To avoid possible misuse of rights and procedures, a maximum period not exceeding five days should be granted to appeal against a return decision. This provision should only apply following a decision rejecting an application for international protection which became final, including after a possible judicial review.***

##### *Amendment*

(16) The deadline for lodging an appeal against decisions related to return should provide enough time to ensure access to an effective remedy.

Or. en



### *Justification*

*The maximum time limit of five days to lodge an appeal in case the return decision is the consequence of a decision rejecting an asylum application should be deleted. Such short time limit undermines the effectiveness of the appeal in practice.*

#### **Amendment 178**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

#### **Proposal for a directive**

##### **Recital 16**

###### *Text proposed by the Commission*

(16) The deadline for lodging an appeal against decisions related to return should provide enough time to ensure access to an effective remedy, while taking into account that long deadlines can have a detrimental effect on return procedures. ***To avoid possible misuse of rights and procedures, a maximum period not exceeding five days should be granted to appeal against a return decision. This provision should only apply following a decision rejecting an application for international protection which became final, including after a possible judicial review.***

###### *Amendment*

(16) The deadline for lodging an appeal against decisions related to return should provide enough time to ensure access to an effective remedy, while taking into account that long deadlines can have a detrimental effect on return procedures.

Or. en

#### **Amendment 179**

**Nadine Morano**

#### **Proposal for a directive**

##### **Recital 16**

###### *Text proposed by the Commission*

(16) ***The deadline for lodging an appeal against decisions related to return should provide enough time to ensure access to an effective remedy, while taking into***

###### *Amendment*

(16) To avoid possible misuse of rights and procedures, a maximum period not exceeding five days should be granted to appeal against a return decision. This

***account that long deadlines can have a detrimental effect on return procedures.***

To avoid possible misuse of rights and procedures, a maximum period not exceeding five days should be granted to appeal against a return decision. This provision should only apply following a decision rejecting an application for international protection which became final, including after a possible judicial review.

provision should only apply following a decision rejecting an application for international protection which became final, including after a possible judicial review.

Or. fr

#### *Justification*

*This amendment makes the paragraph shorter, clearer and more effective.*

### **Amendment 180**

**Jussi Halla-aho**

#### **Proposal for a directive**

##### **Recital 16**

###### *Text proposed by the Commission*

(16) The deadline for lodging an appeal against decisions related to return should provide enough time to ensure access to an effective remedy, while taking into account that long deadlines can have a detrimental effect on return procedures. To avoid possible misuse of rights and procedures, a maximum period not exceeding five days should be granted to appeal against a return decision. ***This provision should only apply*** following a decision rejecting an application for international protection which ***became final, including after a possible judicial review.***

###### *Amendment*

(16) The deadline for lodging an appeal against decisions related to return should provide enough time to ensure access to an effective remedy, while taking into account that long deadlines can have a detrimental effect on return procedures. To avoid possible misuse of rights and procedures, a maximum period not exceeding five days should be granted to appeal against a return decision ***once*** following a decision rejecting an application for international protection, ***against*** which ***there has been an opportunity to appeal.***

Or. en

## Amendment 181

Monika Hohlmeier, Kārlis Šadurskis, Heinz K. Becker, Rachida Dati

### Proposal for a directive

#### Recital 16

*Text proposed by the Commission*

(16) The deadline for lodging an appeal against decisions related to return should provide enough time to ensure access to an effective remedy, while taking into account that long deadlines *can* have a detrimental effect on return procedures. To avoid possible misuse of rights and procedures, a maximum period not exceeding *five* days should be granted to appeal against a return decision. This provision should only apply following a decision rejecting an application for international protection which became final, including after a possible judicial review.

*Amendment*

(16) The deadline for lodging an appeal against decisions related to return should provide enough time to ensure access to an effective remedy, while taking into account that long deadlines have a detrimental effect on return procedures. To avoid possible misuse of rights and procedures, a maximum period not exceeding *ten* days should be granted to appeal against a return decision. This provision should only apply following a decision rejecting an application for international protection which became final, including after a possible judicial review.

Or. en

## Amendment 182

Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster

### Proposal for a directive

#### Recital 17

*Text proposed by the Commission*

*(17) The appeal against a return decision that is based on a decision rejecting an application for international protection which was already subject to an effective judicial remedy should take place before a single level of jurisdiction only, since the third-country national concerned would have already had his or her individual situation examined and decided upon by a judicial authority in the context of the asylum procedure.*

*Amendment*

*deleted*

*Justification*

*The Shadow Rapporteur considers that it's not the aim of this recast to modify the organisation of the jurisdictions in the Member States and to have different rules for asylum seekers whose claim has been rejected and irregular migrants.*

**Amendment 183**

**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive****Recital 17**

*Text proposed by the Commission*

*Amendment*

**(17) *The appeal against a return decision that is based on a decision rejecting an application for international protection which was already subject to an effective judicial remedy should take place before a single level of jurisdiction only, since the third-country national concerned would have already had his or her individual situation examined and decided upon by a judicial authority in the context of the asylum procedure.*** **deleted**

*Justification*

*The consideration of appeals in the return procedure is not identical to the examination of the grounds to qualify for international protection in an asylum procedure.*

**Amendment 184**

**Barbara Spinelli**

**Proposal for a directive****Recital 17**

*Text proposed by the Commission*

*Amendment*

**(17) *The appeal against a return*** **deleted**

*decision that is based on a decision rejecting an application for international protection which was already subject to an effective judicial remedy should take place before a single level of jurisdiction only, since the third-country national concerned would have already had his or her individual situation examined and decided upon by a judicial authority in the context of the asylum procedure.*

Or. en

#### *Justification*

*The Shadow Rapporteur agrees with the Rapporteur that the proposal to impose a single level of jurisdiction on all Member States not only goes beyond the case-law of the CJEU (Case C-180/17, X and Y) but would also prevent certain Member States from applying higher levels of protection by virtue of their constitutions and is incompatible with the principle of procedural autonomy. Like the Rapporteur, the Shadow Rapporteur considers that the recast Directive should not interfere with the organisation of onward appeals, as this remains a national competence.*

#### **Amendment 185** **Nadine Morano**

#### **Proposal for a directive** **Recital 17**

##### *Text proposed by the Commission*

(17) The appeal against a return decision that is based on a decision rejecting an application for international protection which was already subject to an effective judicial remedy should take place before a single level of jurisdiction only, since the third-country national concerned would have already had his or her individual situation examined and decided upon by a judicial authority in the context of the asylum procedure.

##### *Amendment*

*(Does not affect the English version.)*

Or. fr

## Amendment 186

Jussi Halla-aho

### Proposal for a directive

#### Recital 17

*Text proposed by the Commission*

(17) The appeal against a return decision that is based on a decision rejecting an application for international protection ***which was already subject to an effective judicial remedy*** should take place before a single level of jurisdiction only, since the third-country national concerned would have already had his or her individual situation examined and decided upon by a judicial authority in the context of the asylum procedure.

*Amendment*

(17) The appeal against a return decision that is based on a decision rejecting an application for international protection should take place before a single level of jurisdiction only, since the third-country national concerned would have already had ***the opportunity to have*** his or her individual situation examined and decided upon by a judicial authority in the context of the asylum procedure.

Or. en

## Amendment 187

Emil Radev

### Proposal for a directive

#### Recital 17

*Text proposed by the Commission*

(17) The appeal against a return decision that is based on a decision rejecting an application for international protection which was already subject to an effective judicial remedy should take place before ***a single*** level of jurisdiction only, since the third-country national concerned would have already had his or her individual situation examined and decided upon by a judicial authority in the context of the asylum procedure.

*Amendment*

(17) The appeal against a return decision that is based on a decision rejecting an application for international protection which was already subject to an effective judicial remedy should take place before ***one*** level of jurisdiction only, since the third-country national concerned would have already had his or her individual situation examined and decided upon by a judicial authority in the context of the asylum procedure.

Or. en

**Amendment 188**  
**Nadine Morano**

**Proposal for a directive**  
**Recital 18**

*Text proposed by the Commission*

*Amendment*

**(18) An appeal against a return decision should have an automatic suspensive effect only in cases where there is a risk of breach of the principle of non-refoulement.** *deleted*

Or. fr

*Justification*

*It must be possible for the matter of determining whether or not there is a suspensive effect to be left to the discretion of the Member States.*

**Amendment 189**  
**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**  
**Recital 18**

*Text proposed by the Commission*

*Amendment*

**(18) An appeal against a return decision should have an automatic suspensive effect only in cases where there is a risk of breach of the principle of non-refoulement.** *deleted*

Or. en

*Justification*

*Given the irreversibility of the potential fundamental rights challenges after return, appeals should always have suspensive effect.*

**Amendment 190**  
**Barbara Spinelli**

**Proposal for a directive**  
**Recital 18**

*Text proposed by the Commission*

(18) An appeal against a return decision should have an automatic suspensive effect **only in cases where there is a risk of breach of the principle of non-refoulement.**

*Amendment*

(18) ***The effect of a return decision should be automatically suspended during the period for lodging the appeal against such decision at first instance and, where that appeal has been lodged within the set period, during the examination of the appeal and until the decision on the appeal has been notified to the applicant, in particular in cases where there is a risk of breach of the principle of non-refoulement.*** An appeal against a return decision should have an automatic suspensive effect ***including when there are cases pending before a criminal court, in order to ensure access to justice for both victims and suspects.***

Or. en

*Justification*

*Like the Rapporteur, the Shadow Rapporteur considers that the recast Directive should not interfere with the organisation of onward appeals, as this remains a national competence.*

**Amendment 191**  
**Jussi Halla-aho**

**Proposal for a directive**  
**Recital 18**

*Text proposed by the Commission*

(18) An appeal against a return decision should have ***an automatic*** suspensive effect only in cases where there is a risk of breach of the principle of non-refoulement.

*Amendment*

(18) An appeal against a return decision should have suspensive effect only in cases where there is a risk of breach of the principle of non-refoulement. ***The return decision is enforceable once the period for lodging an appeal has lapsed and in case of an appeal, after the assessment of the risk to breach the principle of non-***



*refoulement is done and where it is found that there is no such a risk.*

Or. en

#### **Amendment 192**

**Monika Hohlmeier, Kārlis Šadurskis, Heinz K. Becker, Rachida Dati**

#### **Proposal for a directive**

##### **Recital 18**

*Text proposed by the Commission*

(18) An appeal against a return decision should have an automatic suspensive effect only in cases where there is a risk of breach of the principle of non-refoulement.

*Amendment*

(18) An appeal against a return decision should have an automatic suspensive effect only in cases where there is a risk of breach of the principle of non-refoulement *or where there is clear evidence for exceptional personal circumstances such as severe impairments to health.*

Or. en

#### **Amendment 193**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

#### **Proposal for a directive**

##### **Recital 18**

*Text proposed by the Commission*

(18) An appeal against a return decision should have an automatic suspensive effect *only in cases where there is a risk of breach of the principle of non-refoulement.*

*Amendment*

(18) An appeal against a return decision should *always* have an automatic suspensive effect.

Or. en

#### **Amendment 194**

**Nadine Morano**

**Proposal for a directive**  
**Recital 19**

*Text proposed by the Commission*

*Amendment*

**(19) In cases where the principle of non-refoulement is not at stake, appeals against a return decision should not have an automatic suspensive effect. The judicial authorities should be able to temporarily suspend the enforcement of a return decision in individual cases for other reasons, either upon request of the third-country national concerned or acting ex officio, where deemed necessary. Such decisions should, as a rule, be taken within 48 hours. Where justified by the complexity of the case, judicial authorities should take such decision without undue delay.**

**deleted**

Or. fr

*Justification*

*It must be possible for the matter of determining whether or not there is a suspensive effect to be left to the discretion of the Member States.*

**Amendment 195**  
**Jussi Halla-aho**

**Proposal for a directive**  
**Recital 19**

*Text proposed by the Commission*

*Amendment*

**(19) In cases where the principle of non-refoulement is not at stake, appeals against a return decision should not have an automatic suspensive effect. The judicial authorities should be able to temporarily suspend the enforcement of a return decision in individual cases for other reasons, either upon request of the third-country national concerned or**

**deleted**

*acting ex officio, where deemed necessary. Such decisions should, as a rule, be taken within 48 hours. Where justified by the complexity of the case, judicial authorities should take such decision without undue delay.*

Or. en

#### **Amendment 196**

**Sophia in 't Veld, Angelika Mlinar**

#### **Proposal for a directive**

#### **Recital 19**

*Text proposed by the Commission*

*Amendment*

**(19) In cases where the principle of non-refoulement is not at stake, appeals against a return decision should not have an automatic suspensive effect. The judicial authorities should be able to temporarily suspend the enforcement of a return decision in individual cases for other reasons, either upon request of the third-country national concerned or acting ex officio, where deemed necessary. Such decisions should, as a rule, be taken within 48 hours. Where justified by the complexity of the case, judicial authorities should take such decision without undue delay.**

*deleted*

Or. en

#### *Justification*

*Given the irreversibility of the fundamental rights challenges after return, appeals should always have suspensive effects.*

#### **Amendment 197**

**Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton, Auke Zijlstra**

**Proposal for a directive**  
**Recital 19**

*Text proposed by the Commission*

(19) In cases where the principle of non-refoulement is not at stake, appeals against a return decision should not have ***an automatic*** suspensive effect. ***The judicial authorities should be able to temporarily suspend the enforcement of a return decision in individual cases for other reasons, either upon request of the third-country national concerned or acting ex officio, where deemed necessary. Such decisions should, as a rule, be taken within 48 hours. Where justified by the complexity of the case, judicial authorities should take such decision without undue delay.***

*Amendment*

(19) In cases where the principle of non-refoulement is not at stake, appeals against a return decision should not have ***a*** suspensive effect.

Or. en

**Amendment 198**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive**  
**Recital 19**

*Text proposed by the Commission*

(19) ***In cases where the principle of non-refoulement is not at stake, appeals against a return decision should not have an automatic suspensive effect.*** The judicial authorities should be able to ***temporarily*** suspend the enforcement of a return decision in individual cases for other reasons, either upon request of the third-country national concerned or acting ex officio, where deemed necessary. Such decisions should, ***as a rule***, be taken ***within 48 hours. Where justified by the complexity of the case, judicial authorities should take such decision*** without undue

*Amendment*

(19) The judicial authorities should be able to suspend the enforcement of a return decision in individual cases for other reasons, either upon request of the third-country national concerned or acting ex officio, where deemed necessary. Such decisions should, be taken without undue delay.

delay.

Or. en

## Amendment 199

Barbara Spinelli

### Proposal for a directive

#### Recital 19

*Text proposed by the Commission*

(19) ***In cases where the principle of non-refoulement is not at stake, appeals against a return decision should not have an automatic suspensive effect.*** The judicial authorities should be able to ***temporarily*** suspend the enforcement of a return decision in individual cases for other reasons, either upon request of the third-country national concerned or acting ex officio, ***where deemed necessary***. Such decisions should, ***as a rule***, be taken ***within 48 hours***. ***Where justified by the complexity of the case, judicial authorities should take such decision*** without undue delay.

*Amendment*

(19) The judicial authorities should be able to suspend the enforcement of a return decision in individual cases ***where the principle of non-refoulement is at stake and*** for other reasons, either upon request of the third-country national concerned or acting ex officio. Such decisions should be taken without undue delay.

Or. en

## Amendment 200

Sophia in 't Veld, Angelika Mlinar

### Proposal for a directive

#### Recital 20

*Text proposed by the Commission*

(20) ***To improve the effectiveness of return procedures and avoid unnecessary delays, without negatively affecting the rights of the third-country nationals concerned, the enforcement of the return decision should not be automatically suspended in cases where the assessment***

*Amendment*

***deleted***

*of the risk to breach the principle of non-refoulement already took place and judicial remedy was effectively exercised as part of the asylum procedure carried out prior to the issuing of the related return decision against which the appeal is lodged, unless the situation of the third-country national concerned would have significantly changed since.*

Or. en

*Justification*

*The consideration of non-refoulement in the return procedure is not identical to the examination of the grounds to qualify for international protection in an asylum procedure.*

**Amendment 201**  
**Barbara Spinelli**

**Proposal for a directive**  
**Recital 20**

*Text proposed by the Commission*

*Amendment*

*(20) To improve the effectiveness of return procedures and avoid unnecessary delays, without negatively affecting the rights of the third-country nationals concerned, the enforcement of the return decision should not be automatically suspended in cases where the assessment of the risk to breach the principle of non-refoulement already took place and judicial remedy was effectively exercised as part of the asylum procedure carried out prior to the issuing of the related return decision against which the appeal is lodged, unless the situation of the third-country national concerned would have significantly changed since.*

*deleted*

Or. en

## Amendment 202

Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster

### Proposal for a directive

#### Recital 20

*Text proposed by the Commission*

*Amendment*

(20) *To improve the effectiveness of return procedures and avoid unnecessary delays, without negatively affecting the rights of the third-country nationals concerned, the enforcement of the return decision should not be automatically suspended in cases where the assessment of the risk to breach the principle of non-refoulement already took place and judicial remedy was effectively exercised as part of the asylum procedure carried out prior to the issuing of the related return decision against which the appeal is lodged, unless the situation of the third-country national concerned would have significantly changed since.*

*deleted*

Or. en

## Amendment 203

Nadine Morano

### Proposal for a directive

#### Recital 20

*Text proposed by the Commission*

*Amendment*

(20) To improve the effectiveness of return procedures and avoid unnecessary delays, without negatively affecting the rights of the third-country nationals concerned, the ***enforcement of the return decision*** should ***not be automatically suspended in cases where the assessment of the risk to breach the principle of non-refoulement already took place and judicial remedy was effectively exercised***

(20) To improve the effectiveness of return procedures and avoid unnecessary delays, without negatively affecting the rights of the third-country nationals concerned, the ***Member States*** should be ***free to establish the procedures and cases in which the return decision is to be suspended, automatically or otherwise.***

*as part of the asylum procedure carried out prior to the issuing of the related return decision against which the appeal is lodged, unless the situation of the third-country national concerned would have significantly changed since.*

Or. fr

**Amendment 204**  
**Jussi Halla-aho**

**Proposal for a directive**  
**Recital 20**

*Text proposed by the Commission*

(20) To improve the effectiveness of return procedures and avoid unnecessary delays, without negatively affecting the rights of the third-country nationals concerned, the enforcement of the return decision should not be automatically suspended in cases where the assessment of the risk to breach the principle of non-refoulement already took place *and judicial remedy was effectively exercised as part of the asylum procedure carried out prior to the issuing of the related return decision against which the appeal is lodged, unless the situation of the third-country national concerned would have significantly changed since.*

*Amendment*

(20) To improve the effectiveness of return procedures and avoid unnecessary delays, without negatively affecting the rights of the third-country nationals concerned, the enforcement of the return decision should not be automatically suspended in cases where the assessment of the risk to breach the principle of non-refoulement already took place.

Or. en

**Amendment 205**  
**Anna Maria Corazza Bildt, Carlos Coelho, Tokia Saïfi, Caterina Chinnici, Nathalie Griesbeck, Vilija Blinkevičiūtė, Julie Ward, Roberta Metsola**

**Proposal for a directive**  
**Recital 21**



*Text proposed by the Commission*

(21) The necessary legal aid should be made available , upon request, to those who lack sufficient resources. National legislation should establish a list of instances where legal aid is to be considered necessary.

*Amendment*

(21) The necessary legal aid should be made available, upon request, to those who lack sufficient resources. National legislation should establish a list of instances where legal aid is to be considered necessary. ***Member States should ensure that children receive legal aid and information on their rights and procedures by qualified child protection authorities in a child-friendly manner and in a language that children understand.***

Or. en

**Amendment 206**

**Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton**

**Proposal for a directive**

**Recital 21**

*Text proposed by the Commission*

(21) The necessary legal aid should be made available , upon request, to those who lack sufficient resources. National legislation should establish a list of instances where legal aid is to be considered necessary.

*Amendment*

(21) The necessary legal aid should be made available, upon request ***and provided that the specific case has not been deemed inadmissible***, to those who lack sufficient resources. National legislation should establish a list of instances where legal aid is to be considered necessary.

Or. en

**Amendment 207**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive**

**Recital 21**

*Text proposed by the Commission*

*Amendment*

(21) The necessary legal aid should be made available , ***upon request***, to those who lack sufficient resources. National legislation should establish ***a list of instances where legal aid is to be considered necessary***.

(21) The necessary legal aid should be made available, ***free of charge***, to those who lack sufficient resources. National legislation should establish legal aid.

Or. en

**Amendment 208**  
**Barbara Spinelli**

**Proposal for a directive**  
**Recital 21**

*Text proposed by the Commission*

*Amendment*

(21) ***The necessary*** legal aid should be made available , ***upon request***, to those who lack sufficient resources. National legislation should establish ***a list of instances where legal aid is to be considered necessary***.

(21) Legal aid should be made available, ***free of charge***, to those who lack sufficient resources. National legislation should establish ***the modalities in order to access*** legal aid.

Or. en

*Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to recital 40 relating to measures needed in order to ensure the effective implementation of this Directive and to Article 7 providing for the third country nationals' right to be informed during return procedures and Article 14 relating to return management.*

**Amendment 209**  
**Barbara Spinelli**

**Proposal for a directive**  
**Recital 22**

*Text proposed by the Commission*

*Amendment*

(22) The situation of third-country

(22) The situation of third-country

nationals who are staying *illegally but who cannot yet be removed* should be addressed. Their *basic* conditions of subsistence should be defined according to national legislation. In order to be able to demonstrate their specific situation in the event of administrative controls or checks, such persons should be provided with written confirmation of their situation. Member States should enjoy wide discretion concerning the form and format of the written confirmation and should also be able to include it in decisions related to return adopted under this Directive.

nationals who are staying *irregularly* should be addressed *in any event*. Their *adequate and dignified* conditions of subsistence should be defined according to national legislation *while Member States should look into the possibility to regularise them based on their existing ties to the Member State*. In order to be able to demonstrate their specific situation in the event of administrative controls or checks, such persons should be provided with written confirmation of their situation. Member States should enjoy wide discretion concerning the form and format of the written confirmation and should also be able to include it in decisions related to return adopted under this Directive.

Or. en

#### *Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to recital 4.*

#### **Amendment 210**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Monika Beňová, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

#### **Proposal for a directive**

#### **Recital 22**

##### *Text proposed by the Commission*

(22) The situation of third-country nationals who are staying *illegally* but who cannot yet be removed should be addressed. Their basic conditions of subsistence should be defined according to national legislation. In order to be able to demonstrate their specific situation in the event of administrative controls or checks, such persons should be provided with written confirmation of their situation. Member States should enjoy wide discretion concerning the form and format

##### *Amendment*

(22) The situation of third-country nationals who are staying *irregularly* but who cannot yet be removed should be addressed. Their basic conditions of subsistence should be defined according to national legislation. In order to be able to demonstrate their specific situation in the event of administrative controls or checks, such persons should be provided with written confirmation of their situation. Member States should enjoy wide discretion concerning the form and format

of the written confirmation and should also be able to include it in decisions related to return adopted under this Directive.

of the written confirmation and should also be able to include it in decisions related to return adopted under this Directive.

Or. en

### *Justification*

*Horizontal amendment linked to other admissible amendments. The word "illegal" is not considered as relevant in the context of migration. It will be replaced in the whole text by the term "irregular". International bodies including the United Nations General Assembly and International Organization for Migration have all recommended to use instead the terms "irregular" or "undocumented".*

## **Amendment 211** **Barbara Spinelli**

### **Proposal for a directive** **Recital 23**

#### *Text proposed by the Commission*

(23) The use of coercive measures should be expressly subject to the principles of proportionality and ***effectiveness with regard to the means used and objectives pursued. Minimum safeguards for the conduct of forced return should be established, taking into account Council Decision 2004/573/EC<sup>13</sup>. Member States should be able to rely on various possibilities to monitor forced return.***

#### *Amendment*

(23) The use of coercive measures ***should be banned. If Member States adopt such measures, they*** should be expressly subject to the principles of proportionality and ***necessity.***

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<sup>13</sup> ***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 subjects of individual removal orders (OJ L 261, 6.8.2004, p. 28).***

Or. en

*Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to recital 4 that state that return should always be voluntary.*

**Amendment 212**  
**Barbara Spinelli**

**Proposal for a directive**  
**Recital 24**

*Text proposed by the Commission*

*Amendment*

**(24) The effects of national return measures should be given a European dimension by establishing an entry ban prohibiting entry into and stay on the territory of all the Member States. 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 five years. In this context, particular account should be taken of the fact that the third-country national concerned has already been the subject of more than one return decision or removal order or has entered the territory of a Member State during an entry ban.**

**deleted**

Or. en

*Justification*

*Justification: This amendment is inextricably linked to amendments in recital 4.*

**Amendment 213**  
**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**  
**Recital 25**

*Text proposed by the Commission*

*Amendment*

**(25) When an illegally staying third-country national is detected during exit checks at the external borders, it may be appropriate to impose an entry ban in order to prevent future re-entry and therefore to reduce the risks of illegal immigration. When justified, following an individual assessment and in application of the principle of proportionality, an entry ban may be imposed by the competent authority without issuing a return decision in order to avoid postponing the departure of the third-country national concerned.**

**deleted**

Or. en

*Justification*

*Such a potential entry ban at exit could undermine the willingness of irregular third country nationals to leave voluntarily.*

#### **Amendment 214**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive**

**Recital 25**

*Text proposed by the Commission*

*Amendment*

**(25) When an illegally staying third-country national is detected during exit checks at the external borders, it may be appropriate to impose an entry ban in order to prevent future re-entry and therefore to reduce the risks of illegal immigration. When justified, following an individual assessment and in application of the principle of proportionality, an entry ban may be imposed by the competent authority without issuing a**

**deleted**

*return decision in order to avoid postponing the departure of the third-country national concerned.*

Or. en

*Justification*

*The Shadow Rapporteur doesn't understand the logic of this amendment. She doesn't want to punish people who are voluntary living the EU. This is linked to the amendment on Article 13.*

**Amendment 215**  
**Barbara Spinelli**

**Proposal for a directive**  
**Recital 25**

*Text proposed by the Commission*

(25) *When an illegally staying third-country national is detected during exit checks at the external borders, it may be appropriate to impose an entry ban in order to prevent future re-entry and therefore to reduce the risks of illegal immigration. When justified, following an individual assessment and in application of the principle of proportionality, an entry ban may be imposed by the competent authority without issuing a return decision in order to avoid postponing the departure of the third-country national concerned.*

*Amendment*

(25) Entry *bans should never* be imposed *for the sole reason of the irregular stay* of the *person*.

Or. en

*Justification*

*Imposing entry bans goes against the principle that people should be returned voluntarily as expressed in recital 4.*

**Amendment 216**  
**Emil Radev**

**Proposal for a directive**  
**Recital 25**

*Text proposed by the Commission*

(25) When an illegally staying third-country national is detected during exit checks at the external borders, ***it may be appropriate to*** impose an entry ban in order to prevent future re-entry and therefore to reduce the risks of illegal immigration. When justified, following an individual assessment and in application of the principle of proportionality, an entry ban may be imposed by the competent authority without issuing a return decision in order to avoid postponing the departure of the third-country national concerned.

*Amendment*

(25) When an illegally staying third-country national is detected during exit checks at the external borders, ***Member States should*** impose an entry ban in order to prevent future re-entry and therefore to reduce the risks of illegal immigration. When justified, following an individual assessment and in application of the principle of proportionality, an entry ban may be imposed by the competent authority without issuing a return decision in order to avoid postponing the departure of the third-country national concerned.

Or. en

**Amendment 217**

**Anna Maria Corazza Bildt, Carlos Coelho, Tokia Saïfi, Caterina Chinnici, Nathalie Griesbeck, Vilija Blinkevičiūtė, Julie Ward**

**Proposal for a directive**  
**Recital 27**

*Text proposed by the Commission*

(27) The use of detention for the purpose of removal should be subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient.

*Amendment*

(27) The use of detention for the purpose of removal should be ***a measure of last resort and*** subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient. ***Member States should develop alternatives to detention, such as community-based facilities for families with children and ensure that unaccompanied minors are not detained.***

Or. en



## Amendment 218

Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo

### Proposal for a directive

#### Recital 27

##### *Text proposed by the Commission*

(27) The use of detention for the purpose of removal should be subject to the principle of proportionality with regard to the means used and objectives pursued.

***Detention is justified only to prepare*** the return or carry out the removal process and if the application of less coercive measures would not be sufficient.

##### *Amendment*

(27) The use of detention for the purpose of removal should be subject to ***the risk a third-country national poses to security or public order and always be subject to*** the principle of proportionality with regard to the means used and the objectives pursued ***and geared towards preparing*** the return or ***to*** carry out the removal process and if the application of less coercive measures would not be sufficient.

Or. it

## Amendment 219

Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster

### Proposal for a directive

#### Recital 27

##### *Text proposed by the Commission*

(27) The use of detention for the purpose of removal should be subject to the principle of proportionality with regard to the means used and objectives pursued.

Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient.

##### *Amendment*

(27) The use of detention for the purpose of removal should be ***limited, always used at last resort and*** subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient.

Or. en

**Amendment 220**  
**Barbara Spinelli**

**Proposal for a directive**  
**Recital 27**

*Text proposed by the Commission*

(27) *The use of detention for the purpose of removal should be subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient.*

*Amendment*

(27) *Deprivation of liberty should be avoided and in any case never be applied in closed spaces. If a Member State chooses to implement a return policy, alternatives to detention, in particular non-custodial, engagement-based models in the community, should always be implemented.*

Or. en

*Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to Article 18 on detention and to recital 28 and Article 18.*

**Amendment 221**  
**Barbara Spinelli**

**Proposal for a directive**  
**Recital 28**

*Text proposed by the Commission*

(28) *Detention should be imposed, following an individual assessment of each case, where there is a risk of absconding, where the third-country national avoids or hampers the preparation of return or the removal process, or when the third country national concerned poses a risk to public policy, public security or national security.*

*Amendment*

(28) *In order to guarantee that Member States choosing to implement a return policy abide by fundamental rights safeguards, this Directive should oblige these Member States to provide for alternatives to detention and set out exhaustive and rights-based grounds for the exceptional detention of a third-country national as part of a return procedure and systematically exclude detention in closed spaces. Detention should never be imposed on vulnerable persons. As detention has a particularly*

*detrimental physical and psychological impact on children, whether unaccompanied or separated or with their families, they should not be detained nor should their parents and customary primary caregivers accompanying the children. Detention is never in the best interests of the child.*

Or. en

#### *Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to recitals 27 and 40 and Article 18.*

#### **Amendment 222**

**Jussi Halla-aho**

#### **Proposal for a directive**

#### **Recital 28**

##### *Text proposed by the Commission*

(28) Detention should be imposed, ***following an individual assessment of each case***, where there is a risk of absconding, where the third-country national avoids or hampers the preparation of return or the removal process, or when the third country national concerned poses a risk to public policy, public security or national security.

##### *Amendment*

(28) Detention should ***always*** be imposed where there is a risk of absconding, where the third-country national avoids or hampers the preparation of return or the removal process, or when the third country national concerned poses a risk to public policy, public security or national security. ***During the detention all the assets of the person concerned should be frozen. For the sake of national finances, the persons detained should be required to pay back, whenever possible, and to contribute to their upkeep by having daily household duties at the detention facilities.***

Or. en

#### **Amendment 223**

**Monika Hohlmeier, Kārlis Šadurskis, Heinz K. Becker, Rachida Dati**

**Proposal for a directive**  
**Recital 28**

*Text proposed by the Commission*

(28) Detention should be imposed, following an individual assessment of each case, where there is a risk of absconding, where the third-country national avoids or hampers the preparation of return or the removal process, or when the third country national concerned poses a risk to public policy, public security or national security.

*Amendment*

(28) Detention should be imposed, following an individual assessment of each case, where there is a risk of absconding, where the third-country national avoids or hampers the preparation of return or the removal process, or when the third country national concerned poses a risk to public policy, public security or national security, ***especially if belonging to terrorist or serious crime networks. This should also apply to minors between the age of 16 and 18, who have repeatedly committed criminal offences, thereby proving their unwillingness to abide by the law.***

Or. en

**Amendment 224**

**Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton, Auke Zijlstra**

**Proposal for a directive**  
**Recital 28**

*Text proposed by the Commission*

(28) Detention should be imposed, following an individual assessment of each case, where there is a risk of absconding, where the third-country national avoids or hampers the preparation of return or the removal process, ***or*** when the third country national concerned poses a risk to public policy, public security or national security.

*Amendment*

(28) Detention should be imposed, following an individual assessment of each case, where there is a risk of absconding, where the third-country national avoids or hampers the preparation of return or the removal process, when the third country national concerned poses a risk to public policy, public security or national security, ***or when he/she has been convicted for a criminal offence, even with a non-definitive sentence.***

Or. en

## Amendment 225

Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo

### Proposal for a directive

#### Recital 28

*Text proposed by the Commission*

(28) Detention should be imposed, following an individual assessment of each case, where ***there is a risk of absconding, where the third-country national avoids or hampers the preparation of return or the removal process, or when the third country national*** concerned poses a risk to public policy, public security or national security.

*Amendment*

(28) Detention should be imposed, following an individual assessment of each case, where the third-country national concerned poses a risk to public policy, public security or national security.

Or. it

## Amendment 226

Sophia in 't Veld, Angelika Mlinar

### Proposal for a directive

#### Recital 28

*Text proposed by the Commission*

(28) Detention ***should*** be imposed, following an individual assessment of each case, where there is a risk of absconding, where the third-country national avoids or hampers the preparation of return or the removal process, ***or when the third country national concerned poses a risk to public policy, public security or national security.***

*Amendment*

(28) Detention ***may*** be imposed, following an individual assessment of each case, where there is a risk of absconding, where the third-country national avoids or hampers the preparation of return or the removal process.

Or. en

#### *Justification*

*Detention should not become mandatory, as it is costly, both to the Member States and to the third country national, both economically and in terms of fundamental rights. The new ground introduced by the Commission is not specific enough and can be properly dealt with under current criminal and administrative law.*

## Amendment 227

Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster

### Proposal for a directive

#### Recital 28

##### *Text proposed by the Commission*

(28) Detention should be imposed, following an individual assessment of each case, where there is a risk of absconding, ***where the third-country national avoids or hampers the preparation of return or the removal process***, or when the third country national concerned poses a risk to public policy, public security or national security.

##### *Amendment*

(28) Detention should be imposed, following an individual assessment of each case, where there is a risk of absconding, or when the third country national concerned poses a risk to public policy, public security or national security.

Or. en

##### *Justification*

*According to NGOs and international organizations, it's absolutely not proven that the longer the detention is, the higher the return level rates are.*

## Amendment 228

Barbara Spinelli

### Proposal for a directive

#### Recital 29

##### *Text proposed by the Commission*

(29) Given that maximum detention ***periods in some Member States are not sufficient to ensure the implementation of return, a maximum period of detention between three and six months***, which may be prolonged, should ***be established*** in order ***to provide for sufficient time*** to complete the return procedures successfully, without prejudice to the established safeguards ensuring that detention is ***only applied when necessary***

##### *Amendment*

(29) Given that ***detention could be ordered by an administrative or a judicial authority and could only be justified when there is an evidence-based risk of absconding following an individual assessment, periodic judicial reviews of the necessity and proportionality of the detention of a third-country national in each individual case should be carried out by a judicial authority within a reasonable time. The*** maximum detention period

*and proportionate* and for as long as removal arrangements are in progress.

*should be two weeks*, which may be prolonged, *no more than one time, for a further period of up to two weeks*, should *this prove necessary and proportionate* in order to complete the return procedures successfully, without prejudice to the established safeguards ensuring that detention is *rights-based and not arbitrary* and for as long as removal arrangements are in progress.

Or. en

#### *Justification*

*The Shadow Rapporteur stresses that if a Member State chooses to implement a return policy, including detention, detention could only be imposed when there are reasonable prospects of removal, and the detention period should reflect this.*

#### **Amendment 229**

**Sophia in 't Veld, Angelika Mlinar**

#### **Proposal for a directive**

#### **Recital 29**

##### *Text proposed by the Commission*

(29) *Given that maximum detention periods in some Member States are not sufficient to ensure the implementation of return*, a maximum period of detention *between three and six* months, which may be prolonged, should be established in order to provide for sufficient time to complete the return procedures successfully, without prejudice to the established safeguards ensuring that detention is only applied when necessary and proportionate and for as long as removal arrangements are in progress.

##### *Amendment*

(29) A maximum period of detention *of* three months, which may be prolonged, should be established in order to provide for sufficient time to complete the return procedures successfully, without prejudice to the established safeguards ensuring that detention is only applied when necessary and proportionate and for as long as removal arrangements are in progress.

Or. en

*Justification*

*As various sources, including the EP impact assessment, have shown, more detention is not the answer to the current challenges of return and readmission the EU is facing.*

**Amendment 230**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive**

**Recital 29**

*Text proposed by the Commission*

(29) *Given that maximum detention periods in some Member States are not sufficient to ensure the implementation of return, a maximum period of detention between three and six months, which may be prolonged, **should be established** in order to provide for sufficient time to complete the return procedures successfully, without prejudice to the established safeguards ensuring that detention is only applied when necessary and proportionate and for as long as removal arrangements are in progress.*

*Amendment*

(29) *The maximum period of detention **should be two** months, which may be prolonged, **no more than two times, which means up to a maximum period of six months**, in order to provide for sufficient time to complete the return procedures successfully, without prejudice to the established safeguards ensuring that detention is only applied when necessary and proportionate and for as long as removal arrangements are in progress.*

Or. en

*Justification*

*According to NGOs and international organizations, it's absolutely not proven that the longer the detention is, the higher the return level rates are.*

**Amendment 231**

**Monika Hohlmeier, Kārlis Šadurskis, Heinz K. Becker, Rachida Dati**

**Proposal for a directive**

**Recital 29**

*Text proposed by the Commission*

(29) Given that maximum detention

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*Amendment*

(29) Given that maximum detention

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periods in some Member States are not sufficient to ensure the implementation of return, a maximum period of detention between three and **six** months, which may be prolonged, should be established in order to provide for sufficient time to complete the return procedures successfully, without prejudice to the established safeguards ensuring that detention is only applied when necessary and proportionate and for as long as removal arrangements are in progress.

periods in some Member States are not sufficient to ensure the implementation of return, a maximum period of detention between three and **twelve** months, which may be prolonged, should be established in order to provide for sufficient time to complete the return procedures successfully, without prejudice to the established safeguards ensuring that detention is only applied when necessary and proportionate and for as long as removal arrangements are in progress.

Or. en

### **Amendment 232**

**Maria Grapini**

#### **Proposal for a directive**

##### **Recital 29**

*Text proposed by the Commission*

(29) Given that maximum detention periods in some Member States are not sufficient to ensure the implementation of return, a maximum period of detention between **three and six** months, which may be prolonged, should be established in order to provide for sufficient time to complete the return procedures successfully, without prejudice to the established safeguards ensuring that detention is only applied when necessary and proportionate and for as long as removal arrangements are in progress.

*Amendment*

(29) Given that maximum detention periods in some Member States are not sufficient to ensure the implementation of return, a maximum period of detention between **two and four** months, which may be prolonged, should be established in order to provide for sufficient time to complete the return procedures successfully, without prejudice to the established safeguards ensuring that detention is only applied when necessary and proportionate and for as long as removal arrangements are in progress.

Or. ro

### **Amendment 233**

**Jussi Halla-aho**

#### **Proposal for a directive**

##### **Recital 29**

*Text proposed by the Commission*

(29) Given that maximum detention periods in some Member States are not sufficient to ensure the implementation of return, **a** maximum period of detention **between three and six months**, which may be prolonged, should be established in order to provide for sufficient time to complete the return procedures successfully, without prejudice to the established safeguards ensuring that detention is only applied when necessary and proportionate and for as long as removal arrangements are in progress.

*Amendment*

(29) Given that maximum detention periods in some Member States are not sufficient to ensure the implementation of return, **an initial** maximum period of detention which may be prolonged, should be established in order to provide for sufficient time to complete the return procedures successfully, without prejudice to the established safeguards ensuring that detention is only applied when necessary and proportionate and for as long as removal arrangements are in progress.

Or. en

**Amendment 234**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive**

**Recital 30**

*Text proposed by the Commission*

***(30) This Directive should not preclude Member States from laying down effective, proportionate and dissuasive penalties and criminal penalties, including imprisonment, in relation to the infringements of migration rules, provided that such penalties are compatible with the objectives of this Directive, do not compromise the application of this Directive and are in full respect of fundamental rights.***

*Amendment*

***deleted***

Or. en

**Amendment 235**

**Barbara Spinelli**

**Proposal for a directive**  
**Recital 30**

*Text proposed by the Commission*

*Amendment*

**(30) This Directive should not preclude Member States from laying down effective, proportionate and dissuasive penalties and criminal penalties, including imprisonment, in relation to the infringements of migration rules, provided that such penalties are compatible with the objectives of this Directive, do not compromise the application of this Directive and are in full respect of fundamental rights.**

**deleted**

Or. en

**Amendment 236**  
**Jussi Halla-aho**

**Proposal for a directive**  
**Recital 30**

*Text proposed by the Commission*

*Amendment*

**(30) This Directive should not preclude Member States *from laying down* effective, proportionate and dissuasive penalties and criminal penalties, including imprisonment, in relation to the infringements of migration rules, provided that such penalties are compatible with the objectives of this Directive, do not compromise the application of this Directive and are in full respect of fundamental rights.**

**(30) Member States *should lay down* effective, proportionate and dissuasive penalties and criminal penalties, including imprisonment, in relation to the infringements of migration rules, *with the aim of, among other things, persuading third-country nationals to return and third countries to comply with their duty to take back their citizens*, provided that such penalties are compatible with the objectives of this Directive, do not compromise the application of this Directive and are in full respect of fundamental rights.**

Or. en

## Amendment 237

Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton, Auke Zijlstra

### Proposal for a directive

#### Recital 30

*Text proposed by the Commission*

(30) This Directive should not preclude Member States from laying down effective, proportionate and dissuasive penalties and criminal penalties, including imprisonment, in relation to the infringements of **migration** rules, **provided that such penalties are compatible with the objectives of this Directive, do not compromise the application of this Directive and are in full respect of fundamental rights.**

*Amendment*

(30) This Directive should not preclude Member States from laying down effective, proportionate and dissuasive penalties and criminal penalties, including imprisonment, in relation to the infringements of **immigration** rules.

Or. en

## Amendment 238

Monika Hohlmeier, Kārlis Šadurskis, Heinz K. Becker, Rachida Dati

### Proposal for a directive

#### Recital 30

*Text proposed by the Commission*

(30) This Directive **should not preclude** Member States **from laying** down effective, proportionate and dissuasive penalties and criminal penalties, including imprisonment, in relation to the infringements of migration rules, provided that such penalties are compatible with the objectives of this Directive, do not compromise the application of this Directive and are in full respect of fundamental rights.

*Amendment*

(30) This Directive **encourages** Member States **to lay** down effective, proportionate and dissuasive penalties and criminal penalties, including imprisonment, in relation to the infringements of migration rules, **especially with regard to convicted terrorists, organised crime offenders and offenders of severe crimes such as rape**, provided that such penalties are compatible with the objectives of this Directive, do not compromise the application of this Directive and are in full respect of fundamental rights.

Or. en

## Amendment 239

Barbara Spinelli

### Proposal for a directive

#### Recital 31

*Text proposed by the Commission*

(31) Third-country nationals *in detention* should be treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law. Without prejudice to the initial apprehension by law-enforcement authorities, regulated by national legislation, *detention* should, as a rule, *take place in specialised detention facilities*.

*Amendment*

(31) Third-country nationals should be treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law. Without prejudice to the initial apprehension by law-enforcement authorities, regulated by national legislation, *third-country nationals who are found to be in an irregular situation* should, as a rule, *be hosted in an open reception facility while Member States are looking into the possibility to regularise their situation based on their existing ties to the Member State*.

Or. en

#### *Justification*

*This amendment is needed as it is inextricably linked to the amendment tabled to recital 4. In line with human rights law, people should not be detained based on their migration status. States should always first explore the possibility of regularising the situation and put people in open reception centres.*

## Amendment 240

Barbara Spinelli

### Proposal for a directive

#### Recital 31 a (new)

*Text proposed by the Commission*

*Amendment*

*(31a) Children's rights apply to both cases involving unaccompanied and separated children and children within families. In the case of families, Member States should respect and protect the rights of each child within the family and*

*his or her right to private and family life, and should also take into full account the safety of the child within the family. Appropriate care and accommodation arrangements that enable children and families to live together in communities should be implemented. Children should not be separated from their parents. In keeping with the principles of family unity and the best interests of the child, families should be kept together unless the child's safety would be at risk. Forced return of children should never occur. Children and families should be provided with documentation indicating that they are in an ongoing procedure and not subject to detention. Children and parents should be ensured access to education, health care and other services.*

Or. en

#### *Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to recitals 28 and 40. This amendment is also strictly linked to changes proposed in Article 12 on return and removal of minors and Article 20 on detention of minors and their families.*

**Amendment 241**  
**Barbara Spinelli**

**Proposal for a directive**  
**Recital 31 b (new)**

*Text proposed by the Commission*

*Amendment*

*(31b) An independent and qualified guardian with the necessary expertise and training to ensure that the best interests of the child are fully taken into consideration should be appointed to assist unaccompanied and separated children. To that end, the guardian should be involved in the procedure to find a durable solution for the child in his or her best interests.*

*Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to recitals 28 and 40. This amendment is also strictly linked to changes proposed in Article 12 on return and removal of minors and Article 20 on detention of minors and their families. Like the Rapporteur, the Shadow Rapporteur introduces additional safeguards to ensure that the best interests of the child are always the primary consideration.*

**Amendment 242**

**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

**Proposal for a directive****Recital 32**

*Text proposed by the Commission*

*Amendment*

**(32) Without prejudice to the possibility for Member States not to apply this Directive with regard to the cases referred to in Article 2(2)(a), when a border procedure is applied in accordance with Regulation (EU) .../... [Asylum Procedure Regulation], a specific border procedure should follow for the return of illegally staying third-country nationals whose application for international protection under that asylum border procedure has been rejected in order to ensure direct complementarity between the asylum and return border procedures and prevent gaps between the procedures. In such cases, it is necessary to establish specific rules that ensure the coherence and synergy between the two procedures and preserve the integrity and effectiveness of the whole process.** **deleted**

Or. it

**Amendment 243**

**Barbara Spinelli**

**Proposal for a directive**  
**Recital 32**

*Text proposed by the Commission*

*Amendment*

**(32) Without prejudice to the possibility for Member States not to apply this Directive with regard to the cases referred to in Article 2(2)(a), when a border procedure is applied in accordance with Regulation (EU) .../... [Asylum Procedure Regulation], a specific border procedure should follow for the return of illegally staying third-country nationals whose application for international protection under that asylum border procedure has been rejected in order to ensure direct complementarity between the asylum and return border procedures and prevent gaps between the procedures. In such cases, it is necessary to establish specific rules that ensure the coherence and synergy between the two procedures and preserve the integrity and effectiveness of the whole process.** *deleted*

Or. en

*Justification*

*The Shadow Rapporteur agrees with the Rapporteur to delete the proposed border procedure as it raises serious concerns from a fundamental rights as well as an efficiency perspective.*

**Amendment 244**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive**  
**Recital 32**

*Text proposed by the Commission*

*Amendment*

**(32) Without prejudice to the possibility for Member States not to apply this Directive with regard to the cases referred** *deleted*



*to in Article 2(2)(a), when a border procedure is applied in accordance with Regulation (EU) .../... [Asylum Procedure Regulation], a specific border procedure should follow for the return of illegally staying third-country nationals whose application for international protection under that asylum border procedure has been rejected in order to ensure direct complementarity between the asylum and return border procedures and prevent gaps between the procedures. In such cases, it is necessary to establish specific rules that ensure the coherence and synergy between the two procedures and preserve the integrity and effectiveness of the whole process.*

Or. en

*Justification*

*This amendment is linked to the deletion of Article 22.*

**Amendment 245**

**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**

**Recital 32**

*Text proposed by the Commission*

*Amendment*

**(32)** *Without prejudice to the possibility for Member States not to apply this Directive with regard to the cases referred to in Article 2(2)(a), when a border procedure is applied in accordance with Regulation (EU) .../... [Asylum Procedure Regulation], a specific border procedure should follow for the return of illegally staying third-country nationals whose application for international protection under that asylum border procedure has been rejected in order to ensure direct complementarity between the asylum and return border procedures* **deleted**

***and prevent gaps between the procedures. In such cases, it is necessary to establish specific rules that ensure the coherence and synergy between the two procedures and preserve the integrity and effectiveness of the whole process.***

Or. en

### *Justification*

*In line with the proposed deletion of Art 22, the border procedure as proposed by the Commission in this recast cannot be properly legislated on here without a view on the Asylum Procedures Regulation. On top, the border procedure as proposed foresees limited rights and risks undermining the actual safeguards foreseen in this Directive.*

## **Amendment 246**

**Emil Radev**

### **Proposal for a directive**

#### **Recital 32**

#### *Text proposed by the Commission*

(32) Without prejudice to the possibility for Member States not to apply this Directive with regard to the cases referred to in Article 2(2)(a), **when** a border procedure is applied in accordance with Regulation (EU) .../... [Asylum Procedure Regulation], a specific border procedure should follow for the return of illegally staying third-country nationals whose application for international protection under that asylum border procedure has been rejected in order to ensure direct complementarity between the asylum and return border procedures and prevent gaps between the procedures. In such cases, it is necessary to establish specific rules that ensure the coherence and synergy between the two procedures and preserve the integrity and effectiveness of the whole process.

#### *Amendment*

(32) Without prejudice to the possibility for Member States not to apply this Directive with regard to the cases referred to in Article 2(2)(a), **if** a border procedure is applied in accordance with Regulation (EU) .../... [Asylum Procedure Regulation], a specific border procedure should follow for the return of illegally staying third-country nationals whose application for international protection under that asylum border procedure has been rejected in order to ensure direct complementarity between the asylum and return border procedures and prevent gaps between the procedures. In such cases, it is necessary to establish specific rules that ensure the coherence and synergy between the two procedures and preserve the integrity and effectiveness of the whole process.

Or. en

**Amendment 247**

**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

**Proposal for a directive**

**Recital 33**

*Text proposed by the Commission*

*Amendment*

**(33) To ensure effective return in the context of the border procedure, a period for voluntary departure should not be granted. However, a period for voluntary departure should be granted to third-country nationals who hold a valid travel document and cooperate with the competent authorities of the Member States at all stages of the return procedures. In such cases, to prevent absconding, third-country nationals should hand over the travel document to the competent authority until their departure.** *deleted*

Or. it

**Amendment 248**

**Barbara Spinelli**

**Proposal for a directive**

**Recital 33**

*Text proposed by the Commission*

*Amendment*

**(33) To ensure effective return in the context of the border procedure, a period for voluntary departure should not be granted. However, a period for voluntary departure should be granted to third-country nationals who hold a valid travel document and cooperate with the competent authorities of the Member States at all stages of the return procedures. In such cases, to prevent absconding, third-country nationals should hand over the travel document to** *deleted*

*the competent authority until their departure.*

Or. en

*Justification*

*The Shadow Rapporteur agrees with the Rapporteur to delete the proposed border procedure as it raises serious concerns from a fundamental rights as well as an efficiency perspective.*

**Amendment 249**

**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**

**Recital 33**

*Text proposed by the Commission*

*Amendment*

**(33) To ensure effective return in the context of the border procedure, a period for voluntary departure should not be granted. However, a period for voluntary departure should be granted to third-country nationals who hold a valid travel document and cooperate with the competent authorities of the Member States at all stages of the return procedures. In such cases, to prevent absconding, third-country nationals should hand over the travel document to the competent authority until their departure.**

*deleted*

Or. en

**Amendment 250**

**Maria Grapini**

**Proposal for a directive**

**Recital 33**

*Text proposed by the Commission*

*Amendment*

**(33) To ensure effective return in the**

**(33) To ensure effective return in the**

context of the border procedure, a period for voluntary departure should not be granted. However, a period for voluntary departure should be granted to third-country nationals who hold a valid travel document and cooperate with the competent authorities of the Member States at all stages of the return procedures. In such cases, to prevent absconding, third-country nationals should hand over the travel document to the competent authority until their departure.

context of the border procedure, a period for voluntary departure should not be granted. However, a period for voluntary departure should be granted to third-country nationals who hold a valid travel document and cooperate with the competent authorities of the Member States at all stages of the return procedures. In such cases, to prevent absconding, third-country nationals should hand over the travel document to the competent authority until their departure **and a deadline should be set for voluntary departure.**

Or. ro

#### **Amendment 251**

**Monika Hohlmeier, Kārlis Šadurskis, Heinz K. Becker, Rachida Dati**

#### **Proposal for a directive**

##### **Recital 33**

*Text proposed by the Commission*

(33) To ensure effective return in the context of the border procedure, a period for voluntary departure should not be granted. However, a period for voluntary departure **should** be granted to third-country nationals who hold a valid travel document and cooperate with the competent authorities of the Member States at all stages of the return procedures. In such cases, to prevent absconding, third-country nationals should hand over the travel document to the competent authority until their departure.

*Amendment*

(33) To ensure effective return in the context of the border procedure, a period for voluntary departure should not be granted. However, a period for voluntary departure **may** be granted to third-country nationals who hold a valid travel document and cooperate **fully** with the competent authorities of the Member States at all stages of the return procedures. In such cases, to prevent absconding, third-country nationals should hand over the travel document to the competent authority until their departure.

Or. en

#### **Amendment 252**

**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

#### **Proposal for a directive**

##### **Recital 34**

*Text proposed by the Commission*

*Amendment*

**(34) For a rapid treatment of the case, a maximum time limit is to be granted to appeal against a return decision following a decision rejecting an application for international protection adopted under the border procedure and which became final.**

*deleted*

Or. it

**Amendment 253**

**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**

**Recital 34**

*Text proposed by the Commission*

*Amendment*

**(34) For a rapid treatment of the case, a maximum time limit is to be granted to appeal against a return decision following a decision rejecting an application for international protection adopted under the border procedure and which became final.**

*deleted*

Or. en

**Amendment 254**

**Barbara Spinelli**

**Proposal for a directive**

**Recital 34**

*Text proposed by the Commission*

*Amendment*

**(34) For a rapid treatment of the case, a maximum time limit is to be granted to appeal against a return decision following a decision rejecting an application for international protection adopted under the border procedure and which became**

*deleted*

*final.*

Or. en

*Justification*

*The Shadow Rapporteur agrees with the Rapporteur to delete the proposed border procedure as it raises serious concerns from a fundamental rights as well as an efficiency perspective.*

**Amendment 255**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive**

**Recital 34**

*Text proposed by the Commission*

*Amendment*

**(34) For a rapid treatment of the case, a maximum time limit is to be granted to appeal against a return decision following a decision rejecting an application for international protection adopted under the border procedure and which became final.**

**deleted**

Or. en

*Justification*

*This amendment is linked to the amendment aimed at deleting Article 22.*

**Amendment 256**

**Jussi Halla-aho**

**Proposal for a directive**

**Recital 34**

*Text proposed by the Commission*

*Amendment*

**(34) For a rapid treatment of the case, a maximum time limit is to be granted to appeal against a return decision following a**

**(34) For a rapid treatment of the case, a maximum time limit is to be granted to appeal *once* against a return decision**

decision rejecting an application for international protection adopted under the border procedure and which *became final*.

following a decision rejecting an application for international protection adopted under the border procedure and *against* which *there has been an opportunity to appeal*.

Or. en

#### **Amendment 257**

**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

#### **Proposal for a directive**

#### **Recital 35**

*Text proposed by the Commission*

*Amendment*

**(35) *An appeal against a return decision taken in the context of the border procedure should have an automatic suspensive effect in cases where there is a risk of breach of the principle of non-refoulement, there has been a significant change in the situation of the third-country national concerned since the adoption under the asylum border procedure of the decision rejecting his or her application for international protection, or if no judicial remedy was effectively exercised against the decision rejecting his or her application for international protection adopted under the asylum border procedure.***

*deleted*

Or. it

#### **Amendment 258**

**Nadine Morano**

#### **Proposal for a directive**

#### **Recital 35**

*Text proposed by the Commission*

*Amendment*

**(35) *An appeal against a return decision taken in the context of the border***

*deleted*



*procedure should have an automatic suspensive effect in cases where there is a risk of breach of the principle of non-refoulement, there has been a significant change in the situation of the third-country national concerned since the adoption under the asylum border procedure of the decision rejecting his or her application for international protection, or if no judicial remedy was effectively exercised against the decision rejecting his or her application for international protection adopted under the asylum border procedure.*

Or. fr

#### *Justification*

*It must be possible for the matter of determining whether or not there is a suspensive effect to be left to the discretion of the Member States.*

#### **Amendment 259**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

#### **Proposal for a directive Recital 35**

*Text proposed by the Commission*

*Amendment*

**(35) *An appeal against a return decision taken in the context of the border procedure should have an automatic suspensive effect in cases where there is a risk of breach of the principle of non-refoulement, there has been a significant change in the situation of the third-country national concerned since the adoption under the asylum border procedure of the decision rejecting his or her application for international protection, or if no judicial remedy was effectively exercised against the decision rejecting his or her application for***

***deleted***

*international protection adopted under the asylum border procedure.*

Or. en

*Justification*

*This amendment is linked to the amendment aimed at deleting Article 22.*

**Amendment 260**

**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**

**Recital 35**

*Text proposed by the Commission*

*Amendment*

**(35) *An appeal against a return decision taken in the context of the border procedure should have an automatic suspensive effect in cases where there is a risk of breach of the principle of non-refoulement, there has been a significant change in the situation of the third-country national concerned since the adoption under the asylum border procedure of the decision rejecting his or her application for international protection, or if no judicial remedy was effectively exercised against the decision rejecting his or her application for international protection adopted under the asylum border procedure.***

*deleted*

Or. en

**Amendment 261**

**Barbara Spinelli**

**Proposal for a directive**

**Recital 35**

*Text proposed by the Commission*

*Amendment*

**(35) An appeal against a return decision taken in the context of the border procedure should have an automatic suspensive effect in cases where there is a risk of breach of the principle of non-refoulement, there has been a significant change in the situation of the third-country national concerned since the adoption under the asylum border procedure of the decision rejecting his or her application for international protection, or if no judicial remedy was effectively exercised against the decision rejecting his or her application for international protection adopted under the asylum border procedure.**

**deleted**

Or. en

*Justification*

*The Shadow Rapporteur agrees with the Rapporteur to delete the proposed border procedure as it raises serious concerns from a fundamental rights as well as an efficiency perspective.*

**Amendment 262  
Jussi Halla-aho**

**Proposal for a directive  
Recital 35**

*Text proposed by the Commission*

*Amendment*

(35) An appeal against a return decision taken in the context of the border procedure should have ***an automatic*** suspensive effect in cases where there is a risk of breach of the principle of non-refoulement, ***there has been a significant change in the situation of the third-country national concerned since the adoption under the asylum border procedure of the decision rejecting his or her application for international***

(35) An appeal against a return decision taken in the context of the border procedure should ***be examined within a week from the appeal and should only*** have suspensive effect in cases where there is a risk of breach of the principle of non-refoulement.

*protection, or if no judicial remedy was effectively exercised against the decision rejecting his or her application for international protection adopted under the asylum border procedure.*

Or. en

### **Amendment 263**

**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

#### **Proposal for a directive**

#### **Recital 36**

*Text proposed by the Commission*

*Amendment*

**(36) It is necessary and proportionate to ensure that a third country national who was already detained during the examination of his or her application for international protection as part of the asylum border procedure may be kept in detention in order to prepare the return and/or carry out the removal process, once his or her application has been rejected. To avoid that a third country national is automatically released from detention and allowed entry into the territory of the Member State despite having been denied a right to stay, a limited period of time is needed in order to try to enforce the return decision issued at the border. The third-country national concerned may be detained in the context of the border procedure for a maximum period of four months and as long as removal arrangements are in progress and executed with due diligence. That period of detention should be without prejudice to other periods of detention established by this Directive. Where it has not been possible to enforce return by the end of the former period, further detention of the third-country national may be ordered under another provision of this Directive and for the duration**

*deleted*

*provided for therein.*

Or. it

**Amendment 264**

**Barbara Spinelli**

**Proposal for a directive**

**Recital 36**

*Text proposed by the Commission*

*Amendment*

**(36) *It is necessary and proportionate to ensure that a third country national who was already detained during the examination of his or her application for international protection as part of the asylum border procedure may be kept in detention in order to prepare the return and/or carry out the removal process, once his or her application has been rejected. To avoid that a third country national is automatically released from detention and allowed entry into the territory of the Member State despite having been denied a right to stay, a limited period of time is needed in order to try to enforce the return decision issued at the border. The third-country national concerned may be detained in the context of the border procedure for a maximum period of four months and as long as removal arrangements are in progress and executed with due diligence. That period of detention should be without prejudice to other periods of detention established by this Directive. Where it has not been possible to enforce return by the end of the former period, further detention of the third-country national may be ordered under another provision of this Directive and for the duration provided for therein.*** **deleted**

Or. en

*Justification*

*The Shadow Rapporteur agrees with the Rapporteur to delete the proposed border procedure as it raises serious concerns from a fundamental rights as well as an efficiency perspective.*

**Amendment 265**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive**

**Recital 36**

*Text proposed by the Commission*

*Amendment*

**(36) *It is necessary and proportionate to ensure that a third country national who was already detained during the examination of his or her application for international protection as part of the asylum border procedure may be kept in detention in order to prepare the return and/or carry out the removal process, once his or her application has been rejected. To avoid that a third country national is automatically released from detention and allowed entry into the territory of the Member State despite having been denied a right to stay, a limited period of time is needed in order to try to enforce the return decision issued at the border. The third-country national concerned may be detained in the context of the border procedure for a maximum period of four months and as long as removal arrangements are in progress and executed with due diligence. That period of detention should be without prejudice to other periods of detention established by this Directive. Where it has not been possible to enforce return by the end of the former period, further detention of the third-country national may be ordered under another provision of this Directive and for the duration provided for therein.*** **deleted**

*Justification*

*This amendment is linked to the amendment aimed at deleting Article 22.*

**Amendment 266****Jussi Halla-aho****Proposal for a directive****Recital 36***Text proposed by the Commission*

(36) It is necessary and proportionate to ensure that a third country national who was already detained during the examination of his or her application for international protection as part of the asylum border procedure *may* be kept in detention in order to prepare the return and/or carry out the removal process, once his or her application has been rejected. To avoid that a third country national is automatically released from detention and allowed entry into the territory of the Member State despite having been denied a right to stay, ***a limited period of time is needed in order to try to enforce the return decision issued at the border.*** The third-country national concerned may be detained in the context of the border procedure for ***a maximum period of four months and*** as long as removal arrangements are in progress and executed with due diligence. ***That period of detention should be without prejudice to other periods of detention established by this Directive. Where it has not been possible to enforce return by the end of the former period, further detention of the third-country national may be ordered under another provision of this Directive and for the duration provided for therein.***

*Amendment*

(36) It is necessary and proportionate to ensure that a third country national who was already detained during the examination of his or her application for international protection as part of the asylum border procedure ***should*** be kept in detention in order to prepare the return and/or carry out the removal process, once his or her application has been rejected to avoid that a third country national is automatically released from detention and allowed entry into the territory of the Member State despite having been denied a right to stay. The third-country national concerned may be detained in the context of the border procedure for as long as removal arrangements are in progress and executed with due diligence.

## **Amendment 267**

**Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton, Auke Zijlstra**

### **Proposal for a directive**

#### **Recital 36**

##### *Text proposed by the Commission*

(36) It is necessary and proportionate to ensure that a third country national who was already detained during the examination of his or her application for international protection as part of the asylum border procedure may be kept in detention in order to prepare the return and/or carry out the removal process, once his or her application has been rejected. To avoid that a third country national is automatically released from detention and allowed entry into the territory of the Member State despite having been denied a right to stay, a limited period of time is needed in order to try to enforce the return decision issued at the border. The third-country national concerned may be detained in the context of the border procedure for a maximum period of **four** months and as long as removal arrangements are in progress and executed with due diligence. That period of detention should be without prejudice to other periods of detention established by this Directive. Where it has not been possible to enforce return by the end of the former period, further detention of the third-country national may be ordered under another provision of this Directive and for the duration provided for therein.

##### *Amendment*

(36) It is necessary and proportionate to ensure that a third country national who was already detained during the examination of his or her application for international protection as part of the asylum border procedure may be kept in detention in order to prepare the return and/or carry out the removal process, once his or her application has been rejected. To avoid that a third country national is automatically released from detention and allowed entry into the territory of the Member State despite having been denied a right to stay, a limited period of time is needed in order to try to enforce the return decision issued at the border. The third-country national concerned may be detained in the context of the border procedure for a maximum period of **six** months and as long as removal arrangements are in progress and executed with due diligence. That period of detention should be without prejudice to other periods of detention established by this Directive. Where it has not been possible to enforce return by the end of the former period, further detention of the third-country national may be ordered under another provision of this Directive and for the duration provided for therein.

Or. en

## **Amendment 268**

**Barbara Spinelli**



**Proposal for a directive**  
**Recital 37**

*Text proposed by the Commission*

*Amendment*

**(37) Member States should have rapid access to information on return decisions and entry bans issued by other Member States. Such access should take place in accordance with Regulation (EU) .../...<sup>14</sup> [Regulation on the use of the Schengen Information System for the return of illegally staying third country nationals] and Regulation (EC) No 1987/2006 of the European Parliament and of the Council<sup>15</sup>, including to facilitate mutual recognition of these decisions amongst competent authorities, by virtue of Council Directive 2001/40/EC<sup>16</sup> and Council Decision 2004/191/EC<sup>17</sup>.**

*deleted*

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<sup>14</sup> [Regulation on the use of the Schengen Information System for the return of illegally staying third country nationals] (OJ L ...).

<sup>15</sup> Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4).

<sup>16</sup> Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-country nationals (OJ L 149, 2.6.2001, p. 34).

<sup>17</sup> Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-country nationals, OJ L 149, 2.6.2001, p. 34; and Council Decision 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of

*decisions on the expulsion of third-country nationals (OJ L 60, 27.2.2004, p. 55).*

Or. en

*Justification*

*The Shadow Rapporteur expresses concerns about the rules governing the collection and processing of sensitive data in the SIS, the broadening of institutional access to data and the extension of the data retention period for most of the alerts on persons, according to the European Data Protection Supervisor (EDPS) opinion of May 2017 ([https://edps.europa.eu/sites/edp/files/publication/17-05-02\\_sis\\_ii\\_opinion\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/17-05-02_sis_ii_opinion_en.pdf)).*

**Amendment 269**  
**Barbara Spinelli**

**Proposal for a directive**  
**Recital 38**

*Text proposed by the Commission*

*Amendment*

**(38) *Establishing return management systems in Member States contributes to the efficiency of the return process. Each national system should provide timely information on the identity and legal situation of the third country national that are relevant for monitoring and following up on individual cases. To operate efficiently and in order to significantly reduce the administrative burden, such national return systems should be linked to the Schengen Information System to facilitate and speed up the entering of return-related information, as well as to the central system established by the European Border and Coast Guard Agency in accordance with Regulation (EU) .../... [EBCG Regulation].***

***deleted***

Or. en

### *Justification*

*The Shadow Rapporteur is concerned about the unclear description of the specific purpose(s) of the processing to be performed via the envisaged national and central system to be set up and operated by the EBCG and of the categories of personal data to be processed for each of these purposes.*

#### **Amendment 270**

**Monika Hohlmeier, Kārlis Šadurskis, Heinz K. Becker, Rachida Dati**

#### **Proposal for a directive**

##### **Recital 38**

###### *Text proposed by the Commission*

(38) Establishing return management systems in Member States contributes to the efficiency of the return process. Each national system should provide timely information on the identity and legal situation of the third country national that are relevant for monitoring and following up on individual cases. To operate efficiently and in order to significantly reduce the administrative burden, such national return systems should be linked to the Schengen Information System to facilitate and speed up the entering of return-related information, *as well as* to the central system established by the European Border and Coast Guard Agency in accordance with Regulation (EU) .../... [EBCG Regulation].

###### *Amendment*

(38) Establishing return management systems in Member States contributes to the efficiency of the return process. Each national system should provide timely information on the identity and legal situation of the third country national that are relevant for monitoring and following up on individual cases. To operate efficiently and in order to significantly reduce the administrative burden, such national return systems should be linked to the Schengen Information System to facilitate and speed up the entering of return-related information, to the central system established by the European Border and Coast Guard Agency in accordance with Regulation (EU) .../... [EBCG Regulation] *as well as other relevant central information systems.*

Or. en

#### **Amendment 271**

**Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton**

#### **Proposal for a directive**

##### **Recital 38**

*Text proposed by the Commission*

(38) Establishing return management systems in Member States contributes to the efficiency of the return process. Each national system should provide timely information on the identity and legal situation of the third country national that are relevant for monitoring and following up on individual cases. To operate efficiently ***and in order to significantly reduce the administrative burden***, such national return systems should be linked to the Schengen Information System to facilitate and speed up the entering of return-related information, as well as to the central system established by the European Border and Coast Guard Agency in accordance with Regulation (EU) .../... [EBCG Regulation].

*Amendment*

(38) Establishing return management systems in Member States contributes to the efficiency of the return process. Each national system should provide timely information on the identity and legal situation of the third country national that are relevant for monitoring and following up on individual cases. To operate efficiently, such national return systems should be linked to the Schengen Information System to facilitate and speed up the entering of return-related information, as well as to the central system established by the European Border and Coast Guard Agency in accordance with Regulation (EU) .../... [EBCG Regulation].

Or. en

**Amendment 272**  
**Barbara Spinelli**

**Proposal for a directive**  
**Recital 38 a (new)**

*Text proposed by the Commission*

*Amendment*

***(38a) When, following a best interest assessment, it is established that return would be in a minor's best interest, Member States should ensure that specific safeguards are in place for separated or unaccompanied children returning to a third country. Where family has been traced, Member States should ensure that child-protection actors assess, through appropriate case-management, whether family reunification is in the child's best interest, whether the family is willing and able to receive the child and provide suitable immediate care, and take into account both the child's and the family's***

*views on reunification. Family tracing should only be done by qualified actors and following a best interest's assessment to ensure restoring contact would not be contrary to a child's best interest. Where tracing is unsuccessful or where family reunification is found not to be in the child's best interest, return should not occur.*

Or. en

### *Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to recitals 28 and 40. This amendment is also strictly linked to changes proposed by the Shadow Rapporteur and the Rapporteur in Article 12 on return and removal of minors and Article 20 on detention of minors and their families. Like the Rapporteur, the Shadow Rapporteur introduces additional safeguards to ensure that the best interests of the child are always the primary consideration as part of return procedures involving children.*

### **Amendment 273**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Monika Beňová, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

### **Proposal for a directive Recital 38 a (new)**

*Text proposed by the Commission*

*Amendment*

***(38a) Union data protection legislation is applicable to any processing of personal data in the return management systems of the Member States, including the communication of this data to the central system operated by the European Border and Coast Guard Agency. Return management systems should respect the principles of lawfulness, fairness and transparency; purpose limitation; data minimisation; accuracy; storage limitation; integrity and confidentiality; and accountability of the data controller. The national return management systems should not contain any information***

*obtained during the personal interview carried out on the basis of Article 15 of Directive 2013/32/EU (Asylum Procedures Directive).*

Or. en

### *Justification*

*The return management systems should respect the current European regulation regarding data protection. This amendment is necessary because it is inextricably linked to other admissible amendments, namely the amendment tabled to Article 14(1).*

### **Amendment 274** **Barbara Spinelli**

#### **Proposal for a directive** **Recital 40**

##### *Text proposed by the Commission*

(40) The Union provides financial and operational support in order to achieve an effective implementation of this Directive. Member States should make best use of the available Union financial instruments, programmes and projects in the field of return, in particular under Regulation (EU) .../... [Regulation establishing the Asylum and Migration Fund], *as well as of the operational assistance by the European Border and Coast Guard Agency according to Regulation (EU) .../... [EBCG Regulation]*. Such support should be used in particular for establishing *return* management systems and programmes for providing logistical, financial and other material or in-kind assistance to support the return – and *where relevant* the reintegration – of *illegally* staying third-country nationals.

##### *Amendment*

(40) The Union provides financial and operational support in order to achieve an effective *and fundamental rights compliant* implementation of this Directive. Member States should make best use of the available Union financial instruments, programmes and projects in the field of return, in particular under Regulation (EU) .../... [Regulation establishing the Asylum and Migration Fund]. Such support should be used in particular for establishing *appropriate case management programmes, protection for persons invulnerable situations, including measures to ensure effective protection of children in migration as well as of pregnant women and victims of trafficking, provision of information, legal aid and interpretation, development and implementation of effective non-custodial engagement-based alternatives to detention, effective forced return monitoring* systems, and programmes for providing logistical, financial and other material or in-kind assistance to support

the return – and the reintegration – of *irregularly* staying third-country nationals.

Or. en

### *Justification*

*Member States should draw on EU financial and operational support, in particular to establish and implement actions supporting effective and fundamental rights compliant return policies at Member State level, including those designated as priority actions under the proposed Asylum and Migration Fund. This has been reiterated by the EU Fundamental Rights Agency in its reasoned opinion on this recast.*

### **Amendment 275**

**Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton**

### **Proposal for a directive**

#### **Recital 40**

#### *Text proposed by the Commission*

(40) The Union provides financial and operational support in order to achieve an effective implementation of this Directive. Member States should make best use of the available Union financial instruments, programmes and projects in the field of return, in particular under Regulation (EU) .../... [Regulation establishing the Asylum and Migration Fund], as well as of the operational assistance by the European Border and Coast Guard Agency according to Regulation (EU) .../... [EBCG Regulation]. Such support should be used in particular for establishing return management systems and programmes for providing logistical, financial and other material or in-kind assistance to support the return – and where *relevant* the reintegration – of illegally staying third-country nationals.

#### *Amendment*

(40) The Union provides financial and operational support in order to achieve an effective implementation of this Directive. Member States should make best use of the available Union financial instruments, programmes and projects in the field of return, in particular under Regulation (EU) .../... [Regulation establishing the Asylum and Migration Fund], as well as of the operational assistance by the European Border and Coast Guard Agency according to Regulation (EU) .../... [EBCG Regulation]. Such support should be used in particular for establishing return management systems and programmes for providing logistical, financial and other material or in-kind assistance to support the return – and where *deemed necessary* the reintegration – of illegally staying third-country nationals.

Or. en

## Amendment 276

Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster

### Proposal for a directive

#### Recital 40

##### *Text proposed by the Commission*

(40) The Union provides financial and operational support in order to achieve an effective implementation of this Directive. Member States should make best use of the available Union financial instruments, programmes and projects in the field of return, in particular under Regulation (EU) .../... [Regulation establishing the Asylum and Migration Fund], as well as of the operational assistance by the European Border and Coast Guard Agency according to Regulation (EU) .../... [EBCG Regulation]. Such support should be used in particular for establishing return management systems and programmes for providing logistical, financial and other material or in-kind assistance to support the return – *and where relevant* the reintegration – *of illegally* staying third-country nationals.

##### *Amendment*

(40) The Union provides financial and operational support in order to achieve an effective implementation of this Directive. Member States should make best use of the available Union financial instruments, programmes and projects in the field of return, in particular under Regulation (EU) .../... [Regulation establishing the Asylum and Migration Fund], as well as of the operational assistance by the European Border and Coast Guard Agency according to Regulation (EU) .../... [EBCG Regulation]. Such support should be used in particular for establishing return management systems and programmes for providing logistical, financial and other material or in-kind assistance to support the return *and* the reintegration *of irregularly* staying third-country nationals.

Or. en

##### *Justification*

*Horizontal amendment. The word "illegal" is not considered as relevant in the context of migration. It will be replaced in the whole text by "irregular". International bodies including the United Nations General Assembly and International Organization for Migration have all recommended to use instead the terms "irregular" or "undocumented".*

## Amendment 277

Sophia in 't Veld, Angelika Mlinar, Nathalie Griesbeck

### Proposal for a directive

#### Recital 40 a (new)



**(40a) In order to supplement non-essential elements of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of establishing the specific modalities for the operation of the central system established in accordance with Article 50 of Regulation (EU) .../... [EBCG Regulation] and the communication between the national systems and the central systems. Those modalities should include clearly identifying the purposes of the processing via this centralised system and of the categories of personal data to be processed for each of these purposes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.**

Or. en

*Justification*

*This amendment is a standard provision that is needed to accompany the amendment to Article 14(2) aimed at introducing an empowerment for the Commission to adopt delegated acts, more particularly for the establishment of the specific modalities for the operation of the central system for return management to be established in accordance with Article 50 of the future EBCG Regulation, and for the communication between the national systems and the central system.*

## Amendment 278

Barbara Spinelli

### Proposal for a directive

#### Recital 41

##### *Text proposed by the Commission*

(41) 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 its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. 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.

##### *Amendment*

(41) Since the objective of this Directive, namely to establish **rights-based** rules concerning return **and** removal cannot be sufficiently achieved by **all** the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary **and proportionate** to achieve that objective.

Or. en

##### *Justification*

*Inextricably linked to amendments to recital 4.*

## Amendment 279

Barbara Spinelli

### Proposal for a directive

#### Recital 44

##### *Text proposed by the Commission*

(44) 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.

##### *Amendment*

(44) 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, **from the 1954 United Nations Convention Relating**

*to the Status of Stateless Persons and from the 1989 United Nations Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*

Or. en

*Justification*

*This amendment is needed as it is inextricably linked to the amendment tabled to recital 4 relating to the need for the European Union policy on return to be founded on principles and rights stemming from international human rights law.*

**Amendment 280**  
**Barbara Spinelli**

**Proposal for a directive**  
**Recital 45**

*Text proposed by the Commission*

(45) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

*Amendment*

(45) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union *and the European Convention on Human Rights.*

Or. en

*Justification*

*This amendment is needed as it is inextricably linked to the amendment tabled to recital 4 relating to the need for the European Union policy on return to be founded on principles and rights stemming from international human rights law.*

**Amendment 281**  
**Barbara Spinelli**

**Proposal for a directive**  
**Recital 46**

*Text proposed by the Commission*

*Amendment*

**(46) The purpose of an effective implementation of the return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States, in accordance with this Directive, is an essential component of the comprehensive efforts to tackle irregular migration and represents an important reason of substantial public interest.**

*deleted*

Or. en

**Amendment 282**  
**Jussi Halla-aho**

**Proposal for a directive**  
**Recital 46**

*Text proposed by the Commission*

*Amendment*

(46) The purpose of an effective implementation of the return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States, in accordance with this Directive, is an essential component of the comprehensive efforts to tackle irregular migration and represents an important reason of substantial public interest.

(46) The purpose of an effective implementation of the return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States, in accordance with this Directive, is an essential component of the comprehensive efforts to tackle irregular migration and represents an important reason of substantial public interest. ***A systematic exploration of possibilities for cooperation with third countries as recipients of returnees is therefore necessary. Even a temporary willingness of a third country, be it the country of origin or other third country, to accept returnees from the Union should be the Member States' priority as a means to achieving the objective of improved return rates.***

Or. en

### Amendment 283

Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster

#### Proposal for a directive

##### Recital 46

###### *Text proposed by the Commission*

(46) The purpose of an effective implementation of the return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States, in accordance with this Directive, is **an essential component** of the **comprehensive efforts to tackle irregular migration and represents an important reason of substantial public interest**.

###### *Amendment*

(46) The purpose of an effective **and dignified** implementation of the return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States, in accordance with this Directive, is **one of the components** of the **European migration policy**.

Or. en

### Amendment 284

Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton, Auke Zijlstra

#### Proposal for a directive

##### Recital 46

###### *Text proposed by the Commission*

(46) The purpose of an effective implementation of the return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States, in accordance with this Directive, is an essential component of the comprehensive efforts to tackle **irregular migration** and represents an important reason of substantial public interest.

###### *Amendment*

(46) The purpose of an effective implementation of the return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States, in accordance with this Directive, is an essential component of the comprehensive efforts to tackle **illegal immigration** and represents an important reason of substantial public interest.

Or. en

## Amendment 285

Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster

### Proposal for a directive

#### Recital 47

##### *Text proposed by the Commission*

(47) Member States' return authorities need to process personal data to ensure the proper implementation of return procedures and the successful enforcement of return decisions. The third countries of return are often not the subject of adequacy decisions adopted by the Commission under Article 45 of Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>18</sup>, ***or under Article 36 of Directive (EU) 2016/680<sup>19</sup>***, and have often not concluded ***or do not intend to conclude*** a readmission agreement with the Union or otherwise provide for appropriate safeguards within the meaning of Article 46 of Regulation (EU) 2016/679 ***or within the meaning of the national provisions transposing Article 37 of Directive (EU) 2016/680. Despite the extensive efforts of the Union in cooperating with the main countries of origin of illegally staying third-country nationals subject to an obligation to return, it is not always possible to ensure such third countries systematically fulfil the obligation established by international law to readmit their own nationals.*** Readmission agreements, concluded or being negotiated by the Union or the Member States and providing for appropriate safeguards for the transfer of data to third countries pursuant to Article 46 of Regulation (EU) 2016/679 ***or pursuant to the national provisions transposing Article 36 of Directive (EU) 2016/680***, cover a limited number of such third countries. In the situation where such agreements do not exist, personal data should be transferred ***by Member States' competent*** authorities

##### *Amendment*

(47) Member States' return authorities need to process personal data to ensure the proper implementation of return procedures and the successful enforcement of return decisions. The third countries of return are often not the subject of adequacy decisions adopted by the Commission under Article 45 of Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>18</sup>, and have often not concluded a readmission agreement with the Union or otherwise provide for appropriate safeguards within the meaning of Article 46 of Regulation (EU) 2016/679. Readmission agreements, concluded or being negotiated by the Union or the Member States and providing for appropriate safeguards for the transfer of data to third countries pursuant to Article 46 of Regulation (EU) 2016/679 cover a limited number of such third countries. In the situation where such agreements do not exist, personal data should ***not*** be transferred ***to*** authorities ***of third countries.***

*for the purposes of implementing the return operations of the Union, in line with the conditions laid down in Article 49(1)(d) of Regulation (EU) 2016/679 or in the national provisions transposing Article 38 of Directive (EU) 2016/680.*

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<sup>18</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119 4.5.2016, p. 1).

<sup>19</sup> *Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119 4.5.2016, p. 89).*

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<sup>18</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119 4.5.2016, p. 1).

Or. en

#### *Justification*

*Cooperation with third countries should only be based on official and formal agreements to ensure parliamentary scrutiny.*

#### **Amendment 286** **Barbara Spinelli**

#### **Proposal for a directive** **Recital 47**

*Text proposed by the Commission*

(47) Member States' return authorities need to process personal data to ensure the

*Amendment*

(47) Member States' return authorities need to process personal data to ensure the

proper implementation of return procedures and the successful enforcement of return decisions. The third countries of return are often not the subject of adequacy decisions adopted by the Commission under Article 45 of Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>18</sup>, ***or under Article 36 of Directive (EU) 2016/680<sup>19</sup>***, and have often not concluded ***or do not intend to conclude*** a readmission agreement with the Union or otherwise provide for appropriate safeguards within the meaning of Article 46 of Regulation (EU) 2016/679 ***or within the meaning of the national provisions transposing Article 37 of Directive (EU) 2016/680. Despite the extensive efforts of the Union in cooperating with the main countries of origin of illegally staying third-country nationals subject to an obligation to return, it is not always possible to ensure such third countries systematically fulfil the obligation established by international law to readmit their own nationals.*** Readmission agreements, concluded or being negotiated by the Union or the Member States and providing for appropriate safeguards for the transfer of data to third countries pursuant to Article 46 of Regulation (EU) 2016/679 ***or pursuant to the national provisions transposing Article 36 of Directive (EU) 2016/680, cover a limited number of such*** third countries. In the situation where such agreements do not exist, personal data should be transferred by Member States' competent authorities ***for the purposes of implementing the return operations of the Union, in line with the conditions laid down in Article 49(1)(d) of Regulation (EU) 2016/679 or in the national provisions transposing Article 38 of Directive (EU) 2016/680.***

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<sup>18</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of

proper implementation of return procedures and the successful enforcement of return decisions. The third countries of return are often not the subject of adequacy decisions adopted by the Commission under Article 45 of Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>18</sup>, and have often not concluded a readmission agreement with the Union or otherwise provide for appropriate safeguards within the meaning of Article 46 of Regulation (EU) 2016/679. Readmission agreements, concluded or being negotiated by the Union or the Member States and providing for appropriate safeguards for the transfer of data to third countries pursuant to Article 46 of Regulation (EU) 2016/679, ***should include binding and enforceable data protection assurances by those*** third countries. In the situation where such agreements do not exist, personal data should ***not*** be transferred by Member States' competent authorities ***to authorities of third countries.***

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<sup>18</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of



personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119 4.5.2016, p. 1).

personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119 4.5.2016, p. 1).

***<sup>19</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119 4.5.2016, p. 89).***

Or. en

#### *Justification*

*In line with the EDPS Opinion, the Shadow Rapporteur agrees with the Rapporteur that the Law Enforcement Directive is not applicable, since the data processing activities regulated under this proposal (based on Art. 79(2)(c) TFEU, empowering the Union to adopt measures in the field of illegal immigration and unauthorized residence), as per Art. 1 (Subject matter), namely "common standards and procedures to be applied in Member States for returning illegally staying third-country nationals", due to their 'administrative nature', do not fall under the scope of that Directive.*

**Amendment 287**  
**Barbara Spinelli**

**Proposal for a directive**  
**Recital 54**

*Text proposed by the Commission*

*Amendment*

***(54) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.***

***deleted***

**Amendment 288**  
**Barbara Spinelli**

**Proposal for a directive**  
**Article 1 – paragraph 1**

*Text proposed by the Commission*

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 Union law as well as international law, including refugee protection and human rights obligations.

*Amendment*

This Directive sets out standards and procedures to be applied in Member States **which choose to implement a policy** for returning **irregularly** staying third-country nationals, in **order to ensure its compliance** with fundamental rights as general principles of Union law as well as international law, including refugee protection and human rights obligations.

Or. en

*Justification*

*This amendment is needed as it is inextricably linked to the amendment tabled to recital 4.*

**Amendment 289**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kshetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive**  
**Article 1 – paragraph 1**

*Text proposed by the Commission*

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 Union law as well as international law, including refugee protection and human rights obligations.

*Amendment*

This Directive sets out common standards and procedures to be applied in Member States for returning **irregularly** staying third-country nationals, in accordance with fundamental rights as general principles of Union law as well as international law, including refugee protection and human rights obligations.

*Justification*

*Horizontal amendment inextricably linked to other admissible amendments. The word "illegal" is not considered as relevant in the context of migration. It will be replaced in the whole text by the term "irregular". International bodies including the United Nations General Assembly and International Organization for Migration have all recommended to use instead the terms "irregular" or "undocumented".*

**Amendment 290**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive  
Article 2 – paragraph 1**

*Text proposed by the Commission*

1. This Directive applies to third-country nationals staying ***illegally*** on the territory of a Member State.

*Amendment*

1. This Directive applies to third-country nationals staying ***irregularly*** on the territory of a Member State.

Or. en

*Justification*

*Horizontal amendment inextricably linked to other admissible amendments. The word "illegal" is not considered as relevant in the context of migration. It will be replaced in the whole text by the term "irregular". International bodies including the United Nations General Assembly and International Organization for Migration have all recommended to use instead the terms "irregular" or "undocumented".*

**Amendment 291**

**Barbara Spinelli**

**Proposal for a directive  
Article 2 – paragraph 2 – point a**

*Text proposed by the Commission*

***(a) are subject to a refusal of entry in accordance with Article 14 of Regulation***

*Amendment*

***deleted***

***(EU) 2016/399 , or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State;***

Or. en

*Justification*

*This amendment is linked to amendments tabled to Article 22. The exclusion of certain categories of TCN from the scope of the Directive and non-application of key safeguards such as the voluntary departure period, the application of non-coercive alternative measures to detention or the right to an effective remedy is problematic from the perspective of legal certainty and non-discrimination increasing risks of incoherent application of return standards throughout the Union and render monitoring of compliance with human rights obligations and the EU Charter more complex.*

**Amendment 292  
Barbara Spinelli**

**Proposal for a directive  
Article 2 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures.

*Amendment*

(b) are subject to return as a criminal law sanction or as a consequence of a criminal law sanction ***as a result of a serious crime***, according to national law, or who are the subject of extradition procedures, ***provided the rights of the returnee, included the right to fair trial, have been guaranteed;***

Or. en

*Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to Article 16 relating to remedies available to third-country nationals as part of this Directive.*

## Amendment 293

Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster

### Proposal for a directive

#### Article 3 – paragraph 1 – point 2

##### *Text proposed by the Commission*

2. ‘**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 6 of Regulation (EU) 2016/399 or other conditions for entry, stay or residence in that Member State;

##### *Amendment*

2. ‘**irregular** 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 6 of Regulation (EU) 2016/399 or other conditions for entry, stay or residence in that Member State;

Or. en

##### *Justification*

*Horizontal amendment inextricably linked to other admissible amendments. The word "illegal" is not considered as relevant in the context of migration. It will be replaced in the whole text by the term "irregular". International bodies including the United Nations General Assembly and International Organization for Migration have all recommended to use instead the terms "irregular" or "undocumented".*

## Amendment 294

Barbara Spinelli

### Proposal for a directive

#### Article 3 – paragraph 1 – point 3 – introductory part

##### *Text proposed by the Commission*

3. ‘return’ means the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced — to:

##### *Amendment*

3. ‘return’ means the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced — to **his or her country of origin**.

Or. en

*Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to recital 47.*

**Amendment 295**

**Barbara Spinelli**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 3 – point a**

*Text proposed by the Commission*

*Amendment*

**(a) his or her country of origin, or deleted**

Or. en

*Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to recital 47.*

**Amendment 296**

**Heinz K. Becker, Monika Hohlmeier, Kārlis Šadurskis**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 3 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) a country of transit in accordance deleted  
with Union or bilateral readmission  
agreements or other arrangements, or**

Or. en

*Justification*

*The deletion is necessary because our amendment to change Article 3(1)(3)(c) includes this point already. If our amendment on Article 3(1)(3)(c) is adopted, there is no more need for this part, Article 3(1)(3)(b) would become superfluous.*

**Amendment 297**

**Barbara Spinelli**

**Proposal for a directive**  
**Article 3 – paragraph 1 – point 3 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) a country of transit in accordance with Union or bilateral readmission agreements or other arrangements, or** **deleted**

Or. en

*Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to recital 47.*

**Amendment 298**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive**  
**Article 3 – paragraph 1 – point 3 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) a country of transit in accordance with Union or bilateral readmission agreements *or other arrangements*, or**

**(b) a country of transit in accordance with Union or bilateral readmission agreements , or**

Or. en

*Justification*

*Cooperation with third countries should only be based on official and formal agreements to ensure parliamentary scrutiny. This amendment is necessary because it is inextricably linked to other admissible amendments, namely the amendment tabled to Recital 47.*

**Amendment 299**  
**Barbara Spinelli**

**Proposal for a directive**  
**Article 3 – paragraph 1 – point 3 – point c**

*Text proposed by the Commission*

*Amendment*

(c) *another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted;* *deleted*

Or. en

*Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to recital 47.*

### **Amendment 300**

**Heinz K. Becker, Monika Hohlmeier, Kārlis Šadurskis**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 3 – point c**

*Text proposed by the Commission*

*Amendment*

(c) *another* third country, *to* which the third-country national *concerned* voluntarily decides to return and in which he or she will be accepted;

(c) *any* third country, *in* which the third-country national will be accepted *and where there is no risk of breaching the principle of non-refoulement;*

Or. en

*Justification*

*This amendment is necessary because practise has shown that the Return Directive is not applicable any more without using this extension of countries to which returns can be executed. The internal logic and functionality of this text is endangered without our suggested change. Implementing our amendment is the basis to ensure the application of the rule of law.*

### **Amendment 301**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 4**



*Text proposed by the Commission*

*Amendment*

4. '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;

4. 'return decision' means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be **irregular** and imposing or stating an obligation to return;

Or. en

*Justification*

*Horizontal amendment inextricably linked to other admissible amendments. The word "illegal" is not considered as relevant in the context of migration. It will be replaced in the whole text by the term "irregular". International bodies including the United Nations General Assembly and International Organization for Migration have all recommended to use instead the terms "irregular" or "undocumented".*

**Amendment 302**

**Sophia in 't Veld, Angelika Mlinar, Nathalie Griesbeck**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 7**

*Text proposed by the Commission*

*Amendment*

7. 'risk of absconding' means the existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is the subject of return procedures may abscond;

7. 'risk of absconding' means the **proven** existence of **specific** reasons in an individual case, which are based on objective **and specific** criteria **strictly** defined by law to believe that a third-country national who is the subject of return procedures may abscond;

Or. en

*Justification*

*This amendment is needed as it is inextricably linked to the amendment tabled on Article 6 on the risk of absconding. This proposed definition is more precise, will lead to legal certainty and is in line with the Parliament's position on other files, such as in the CEAS.*

## Amendment 303

Barbara Spinelli

### Proposal for a directive

#### Article 3 – paragraph 1 – point 7

*Text proposed by the Commission*

7. ‘risk of absconding’ means the existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is the subject of return procedures may abscond;

*Amendment*

7. ‘risk of absconding’ means the ***proven*** existence of reasons in an individual case which are based on ***specific and*** objective criteria ***strictly*** defined by law to believe that a third-country national who is the subject of return procedures may abscond;

Or. en

#### *Justification*

*This amendment is needed as it is inextricably linked to the deletion amendment tabled to Article 6 on the risk of absconding. The Shadow rapporteur agrees with the Rapporteur that the assessment of the risk of absconding as proposed by the Commission may result in extended and automatic use of detention or deprive large numbers of third country nationals from a period of voluntary departure, thereby undermining key principles of proportionality and necessity, and thus proposes a revised definition of "risk of absconding" in Article 3.*

## Amendment 304

Barbara Spinelli

### Proposal for a directive

#### Article 3 – paragraph 1 – point 8 a (new)

*Text proposed by the Commission*

*Amendment*

***8a. ‘voluntary return’ means compliance with the obligation to return at any stage of the return procedure, as a consequence of an informed decision, taken freely by the person concerned in the absence of any physical, psychological, or material pressure to return voluntarily or to enrol in an Assisted Voluntary Return and Reintegration programme;***

*Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to recital 14 and Article 9 relating to voluntary departure.*

**Amendment 305**  
**Barbara Spinelli**

**Proposal for a directive**  
**Article 3 – paragraph 1 – point 9**

*Text proposed by the Commission*

9. ‘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.*

*Amendment*

9. ‘*persons in a vulnerable situation*’ means *persons facing a diminished capacity to resist, cope with, or recover from violence, exploitation, abuse or violations of their rights due to the presence of factors and circumstances at the individual, community, household, structural and/or situational level that increase the risk of, and exposure to, such violence, exploitation, abuse, or rights violations or due to the absence of factors that protect against such violence, exploitation, abuse and rights violations.*

Or. en

*Justification*

*The Shadow Rapporteur agrees with the Rapporteur to propose a definition of ‘persons in a vulnerable situation’ aligned with the definition provided in the IOM Thematic Paper on Protection of the Human Rights and Fundamental Freedoms of Migrants and the Specific Needs of Migrants in vulnerable situations, developed as contribution to the preparatory process of the Global Compact for Migration.*

**Amendment 306**  
**Sophia in 't Veld, Angelika Mlinar, Nathalie Griesbeck**

**Proposal for a directive**  
**Article 3 – paragraph 1 – point 9**

*Text proposed by the Commission*

9. ‘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.

*Amendment*

9. ‘vulnerable persons’ means minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, **lesbian, gay, bisexual, trans and intersex persons, persons belonging to religious minorities, non-believers**, and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual **and gender-based** violence.

Or. en

*Justification*

*This amendment is needed as it is inextricably linked to the amendment on Article 14 on the return management system to include specific attention for vulnerable persons. This amendment will widen the scope of this definition to persons that can be found to be in serious situations of vulnerability, and this amendment is also in line with the Parliament's position in other files, such as in the CEAS.*

**Amendment 307**

**Anna Maria Corazza Bildt, Carlos Coelho, Tokia Saïfi, Caterina Chinnici, Nathalie Griesbeck, Vilija Blinkevičiūtė, Julie Ward, Roberta Metsola**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 9**

*Text proposed by the Commission*

9. ‘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.

*Amendment*

9. ‘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 **and exploitation**.

Or. en

*Justification*

*The amendment aims at clarifying who are to be considered "vulnerable persons". Victims of human trafficking and exploitation, for example, are also to be considered as vulnerable persons.*

**Amendment 308**

**Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton, Auke Zijlstra**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 9 a (new)**

*Text proposed by the Commission*

*Amendment*

**9a. 'principle of non-refoulement' means the prohibition of expulsion or return according to Article 33 of the 1951 Convention Relating to the Status of Refugees.**

Or. en

*Justification*

*This amendment is necessary for pressing reasons relating to the internal logic and legal certainty of the text.*

**Amendment 309**

**Barbara Spinelli**

**Proposal for a directive**

**Article 4 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. With regard to third-country nationals excluded from the scope of this Directive in accordance with Article 2(2)(a), Member States shall:**

**deleted**

**(a) ensure that their treatment and level of protection are no less favourable than as set out in Article 10(4) and (5) (limitations on use of coercive measures), Article 11(2)(a) (postponement of**

*removal), Article 17(1)(b) and (d) (emergency health care and taking into account needs of vulnerable persons), and Articles 19 and 20 (detention conditions) and*

*(b) respect the principle of non-refoulement.*

Or. en

#### *Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to Article 22 on the border procedure. Like the Rapporteur, the Shadow Rapporteur proposes the deletion of Article 4(4) for the reasons stated as part of the justification to the deletion amendment tabled to Article 2(2)(a). This amendment has been tabled for consistency reasons.*

#### **Amendment 310**

**Sophia in 't Veld, Angelika Mlinar, Nathalie Griesbeck**

#### **Proposal for a directive**

#### **Article 4 – paragraph 4 – point a**

##### *Text proposed by the Commission*

(a) ensure that their treatment and level of protection are no less favourable than as set out in Article 10(4) and (5) (limitations on use of coercive measures), Article 11(2)(a) (postponement of removal), Article **17(1)(b)** and (d) (emergency health care and taking into account needs of vulnerable persons), and Articles 19 and 20 (detention conditions) and

##### *Amendment*

(a) ensure that their treatment and level of protection are no less favourable than as set out in Article 10(4) and (5) (limitations on use of coercive measures), Article 11(2)(a) (postponement of removal), Article **12 (return and removal of children), Article 15 (form), Article 16 (remedies), Article 17 (safeguards pending return)**14(1)(b) and (d) (emergency health care and taking into account needs of vulnerable persons), **Article 18 (detention)** and Articles 19 and 20(detention conditions) and

Or. en

#### *Justification*

*This amendment is needed as it is inextricably linked to the amendments tabled to Article 22 on the border procedure. Although Art. 2(2)(a) foresees the possibility to exclude certain*

*categories of third country nationals from the scope of this Directive, this should not lead to lowering of the applicable standards.*

### **Amendment 311**

**Sophia in 't Veld, Angelika Mlinar, Nathalie Griesbeck**

#### **Proposal for a directive**

#### **Article 4 – paragraph 4 – point b**

*Text proposed by the Commission*

(b) respect the principle of non-refoulement.

*Amendment*

(b) respect the principle of non-refoulement, ***best interest of the child, family life and state of health (Article 5)***

Or. en

#### *Justification*

*This amendment is needed as it is inextricably linked to the amendments tabled to Article 22 on the border procedure. Although Art. 2(2)(a) foresees the possibility to exclude certain categories of third country nationals from the scope of this Directive, this should not lead to lowering of the applicable standards.*

### **Amendment 312**

**Anna Maria Corazza Bildt, Carlos Coelho, Tokia Saïfi, Caterina Chinnici, Nathalie Griesbeck, Vilija Blinkevičiūtė, Julie Ward, Roberta Metsola**

#### **Proposal for a directive**

#### **Article 5 – paragraph 1 – introductory part**

*Text proposed by the Commission*

When implementing this Directive, Member States shall take due account of:

*Amendment*

When ***adopting a return decision and*** implementing this Directive, Member States shall take due account of:

Or. en

#### *Justification*

*The amendment is inextricably linked to the proposed amendment on Recital 4 and the obligation of Member States to respect the UN Convention of the right of the Child. It is necessary to ensure that the consideration of the best interests of the child, referred to in*

*Article 5(1)(a), is taken into account not only while implementing the Directive, but also when adopting a return decision.*

### **Amendment 313**

**Sophia in 't Veld, Angelika Mlinar, Nathalie Griesbeck**

#### **Proposal for a directive**

#### **Article 5 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) the best interests of the child;

(a) the best interests of the child ***as the primary consideration in all decisions concerning minors;***

Or. en

#### *Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to Article 14 on the return management system, in which due attention should be given to vulnerable persons, including minors.*

### **Amendment 314**

**Anna Maria Corazza Bildt, Carlos Coelho, Tokia Saïfi, Caterina Chinnici, Nathalie Griesbeck, Vilija Blinkevičiūtė, Julie Ward, Roberta Metsola**

#### **Proposal for a directive**

#### **Article 5 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) the best interests of the child;

(a) the best interests of the child ***in all cases where children are affected;***

Or. en

#### *Justification*

*The amendment is inextricably linked to the proposed amendment on Recital 4 and the obligation of Member States to respect the UN Convention of the right of the Child. It is necessary to ensure that the consideration of the best interests of the child, referred to in Article 5(1)(a), is taken into account not only while implementing the Directive, but also when adopting a return decision.*



**Amendment 315**  
**Barbara Spinelli**

**Proposal for a directive**  
**Article 5 – paragraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(ca) the special needs of disabled people, elderly people, pregnant women, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.***

Or. en

*Justification*

*This amendment is needed as it is inextricably linked to amendments tabled to recital 38 and Article 14 stressing the need to identify and address potential vulnerabilities of persons facing a return procedure.*

**Amendment 316**  
**Barbara Spinelli**

**Proposal for a directive**  
**Article 6**

*Text proposed by the Commission*

*Amendment*

**6 Article 6 deleted**

***Risk of absconding***

***1. The objective criteria referred to in point 7 of Article 3 shall include at least the following criteria:***

- (a) lack of documentation proving the identity;***
- (b) lack of residence, fixed abode or***

*reliable address;*

*(c) lack of financial resources;*

*(d) illegal entry into the territory of the Member States;*

*(e) unauthorised movement to the territory of another Member State;*

*(f) explicit expression of intent of non-compliance with return-related measures applied by virtue of this Directive;*

*(g) being subject of a return decision issued by another Member State;*

*(h) non-compliance with a return decision, including with an obligation to return within the period for voluntary departure;*

*(i) non-compliance with the requirement of Article 8(2) to go immediately to the territory of another Member State that granted a valid residence permit or other authorisation offering a right to stay;*

*(j) not fulfilling the obligation to cooperate with the competent authorities of the Member States at all stages of the return procedures, referred to in Article 7;*

*(k) existence of conviction for a criminal offence, including for a serious criminal offence in another Member State;*

*(l) ongoing criminal investigations and proceedings;*

*(m) using false or forged identity documents, destroying or otherwise disposing of existing documents, or refusing to provide fingerprints as required by Union or national law;*

*(n) opposing violently or fraudulently the return procedures;*

*(o) not complying with a measure aimed at preventing the risk of absconding referred to in Article 9(3);*

**(p) not complying with an existing entry ban.**

**2.**

***The existence of a risk of absconding shall be determined on the basis of an overall assessment of the specific circumstances of the individual case, taking into account the objective criteria referred to in paragraph 1.***

***However, Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when one of the objective criteria referred to in points (m), (n), (o) and (p) of paragraph 1 is fulfilled.***

Or. en

#### **Amendment 317**

**József Nagy, Andrea Bocskor**

#### **Proposal for a directive**

#### **Article 6**

*Text proposed by the Commission*

*Amendment*

#### Article 6

#### Article 6

Risk of absconding

Risk of absconding

1. The objective criteria referred to in point 7 of Article 3 shall include at least the following criteria:

1. The objective criteria referred to in point 7 of Article 3 shall include at least the following criteria:

***(a) lack of documentation proving the identity;***

***deleted***

***(b) lack of residence, fixed abode or reliable address;***

***deleted***

***(c) lack of financial resources;***

***deleted***

***(d) illegal entry into the territory of the Member States;***

***deleted***

***(e) unauthorised movement to the territory of another Member State;***

***deleted***

**(f) explicit expression of intent of non-compliance with return-related measures**

**(f) explicit expression of intent of non-compliance with return-related measures**

applied by virtue of this Directive;

- (g) being subject of a return decision issued by another Member State;
- (h) non-compliance with a return decision, including with an obligation to return within the period for voluntary departure;
- (i) non-compliance with the requirement of Article 8(2) to go immediately to the territory of another Member State that granted a valid residence permit or other authorisation offering a right to stay;
- (j) not fulfilling the obligation to cooperate with the competent authorities of the Member States at all stages of the return procedures, referred to in Article 7;
- (k) existence of conviction for a criminal offence, including for a serious criminal offence in another Member State;
- (l) ongoing criminal investigations and proceedings;
- (m) using false or forged identity documents, destroying or otherwise disposing of existing documents, or refusing to provide fingerprints as required by Union or national law;
- (n) opposing violently or fraudulently the return procedures;
- (o) not complying with a measure aimed at preventing the risk of absconding referred to in Article 9(3);
- (p) not complying with an existing entry ban.

2. The existence of a risk of absconding shall be determined on the basis of an overall assessment of the specific circumstances of the individual case, taking into account the objective criteria referred to in paragraph 1.

However, Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when one of the objective criteria referred

applied by virtue of this Directive;

- (g) being subject of a return decision issued by another Member State;
- (h) non-compliance with a return decision, including with an obligation to return within the period for voluntary departure;
- (i) non-compliance with the requirement of Article 8(2) to go immediately to the territory of another Member State that granted a valid residence permit or other authorisation offering a right to stay;
- (j) not fulfilling the obligation to cooperate with the competent authorities of the Member States at all stages of the return procedures, referred to in Article 7;
- (k) existence of conviction for a criminal offence, including for a serious criminal offence in another Member State;
- (l) ongoing criminal investigations and proceedings;
- (m) using false or forged identity documents, destroying or otherwise disposing of existing documents, or refusing to provide fingerprints as required by Union or national law;
- (n) opposing violently or fraudulently the return procedures;
- (o) not complying with a measure aimed at preventing the risk of absconding referred to in Article 9(3);
- (p) not complying with an existing entry ban.

2. The existence of a risk of absconding shall be determined on the basis of an overall assessment of the specific circumstances of the individual case, taking into account the objective criteria referred to in paragraph 1.

However, Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when one of the objective criteria referred

to in points (m), (n), (o) and (p) of paragraph 1 is fulfilled.

to in points (m), (n), (o) and (p) of paragraph 1 is fulfilled.

Or. en

*Justification*

*A strong need exists for Union-wide objective criteria for the determination of the existence or not of a risk of absconding, including unauthorised secondary movements. To prevent diverging or ineffective interpretations, a common, non-exhaustive, list of objective criteria to determine the existence of a risk of absconding is needed, as part of an overall assessment of the specific circumstances of the individual case.*

**Amendment 318**  
**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**  
**Article 6 – paragraph -1 (new)**

*Text proposed by the Commission*

*Amendment*

***-1. The existence of a risk of absconding shall be determined on the basis of an overall assessment of the specific circumstances and the future behaviour that can be reasonably expected in the individual case, taking into account the following objective criteria:***

Or. en

**Amendment 319**  
**Barbara Spinelli**

**Proposal for a directive**  
**Article 6 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

***1. The objective criteria referred to in point 7 of Article 3 shall include at least the following criteria:*** ***deleted***

***(a) lack of documentation proving the***

*identity;*

*(b) lack of residence, fixed abode or reliable address;*

*(c) lack of financial resources;*

*(d) illegal entry into the territory of the Member States;*

*(e) unauthorised movement to the territory of another Member State;*

*(f) explicit expression of intent of non-compliance with return-related measures applied by virtue of this Directive;*

*(g) being subject of a return decision issued by another Member State;*

*(h) non-compliance with a return decision, including with an obligation to return within the period for voluntary departure;*

*(i) non-compliance with the requirement of Article 8(2) to go immediately to the territory of another Member State that granted a valid residence permit or other authorisation offering a right to stay;*

*(j) not fulfilling the obligation to cooperate with the competent authorities of the Member States at all stages of the return procedures, referred to in Article 7;*

*(k) existence of conviction for a criminal offence, including for a serious criminal offence in another Member State;*

*(l) ongoing criminal investigations and proceedings;*

*(m) using false or forged identity documents, destroying or otherwise disposing of existing documents, or refusing to provide fingerprints as required by Union or national law;*

*(n) opposing violently or fraudulently the return procedures;*

*(o) not complying with a measure aimed at preventing the risk of*

*absconding referred to in Article 9(3);*

*(p) not complying with an existing entry ban.*

Or. en

#### **Amendment 320**

**Jeroen Lenaers**

#### **Proposal for a directive**

#### **Article 6 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. The objective criteria *referred to in point 7 of Article 3* shall include at least the following criteria:

*Amendment*

1. The *existence of a risk of absconding shall be determined on the basis of an overall assessment of the specific circumstances of the individual case, taking into account* objective criteria, *which* shall include at least the following criteria:

Or. en

#### **Amendment 321**

**Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton, Auke Zijlstra**

#### **Proposal for a directive**

#### **Article 6 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. The objective criteria referred to in point 7 of Article 3 shall include at least the following criteria:

*Amendment*

1. The objective criteria referred to in point 7 of Article 3 shall include at least *one of* the following criteria:

Or. en

#### **Amendment 322**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge**

**Proposal for a directive**  
**Article 6 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. The objective criteria referred to in point 7 of Article 3 shall include **at least** the following criteria:

*Amendment*

1. The objective criteria referred to in point 7 of Article 3 shall **exclusively** include the following criteria:

Or. en

**Amendment 323**  
**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**  
**Article 6 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. The objective criteria referred to in point 7 of Article 3 **shall** include **at least** the following criteria:

*Amendment*

1. The objective criteria referred to in point 7 of Article 3 **may only** include the following criteria:

Or. en

*Justification*

*The Commission proposed a broad and non-exhaustive list of objective criteria that could cover virtually all irregular third-country nationals. This would have a serious effect due to the connection with detention and voluntary departure. It would be better to provide legal certainty and harmonisation and introduce an exhaustive list of objective criteria here. The criteria should be precise and be actually linked with the risk of absconding.*

**Amendment 324**  
**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

**Proposal for a directive**  
**Article 6 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. The objective criteria referred to in point 7 of Article 3 **shall include at least the following criteria:**

*Amendment*

1. **By** the objective criteria referred to in point 7 of Article 3 **is meant:**



**Amendment 325**

**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

**Proposal for a directive**

**Article 6 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

**(a) lack of documentation proving the identity;** **deleted**

**Amendment 326**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge**

**Proposal for a directive**

**Article 6 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

**(a) lack of documentation proving the identity;** **deleted**

**Amendment 327**

**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**

**Article 6 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

**(a) lack of documentation proving the identity;** **deleted**

**Amendment 328**  
**Anna Maria Corazza Bildt**

**Proposal for a directive**  
**Article 6 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

**(a) lack of documentation proving the identity;** **deleted**

Or. en

**Amendment 329**  
**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

**Proposal for a directive**  
**Article 6 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) lack of residence, fixed abode or reliable address;** **deleted**

Or. it

**Amendment 330**  
**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**  
**Article 6 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) lack of residence, fixed abode or reliable address;** **deleted**

Or. en

**Amendment 331**  
**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Monika Beňová, Cécile Kashetu Kyenge**

**Proposal for a directive**  
**Article 6 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) lack of residence, fixed abode or reliable address;** **deleted**

Or. en

**Amendment 332**  
**Anna Maria Corazza Bildt**

**Proposal for a directive**  
**Article 6 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) lack of residence, fixed abode or reliable address;** **deleted**

Or. en

**Amendment 333**  
**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

**Proposal for a directive**  
**Article 6 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

**(c) lack of financial resources;** **deleted**

Or. it

**Amendment 334**  
**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**  
**Article 6 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) *lack of financial resources;* *deleted*

Or. en

**Amendment 335**

**Anna Maria Corazza Bildt**

**Proposal for a directive**

**Article 6 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) *lack of financial resources;* *deleted*

Or. en

**Amendment 336**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Monika Beňová, Cécile Kashetu Kyenge**

**Proposal for a directive**

**Article 6 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) *lack of financial resources;* *deleted*

Or. en

**Amendment 337**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge**

**Proposal for a directive**

**Article 6 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

(d) *illegal entry into the territory of the Member States;* *deleted*

**Amendment 338**  
**Anna Maria Corazza Bildt**

**Proposal for a directive**  
**Article 6 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

**(d) illegal entry into the territory of  
the Member States;** **deleted**

Or. en

**Amendment 339**  
**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**  
**Article 6 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

**(d) illegal entry into the territory of  
the Member States;** **deleted**

Or. en

**Amendment 340**  
**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

**Proposal for a directive**  
**Article 6 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

**(d) illegal entry into the territory of  
the Member States;** **deleted**

Or. it

**Amendment 341**

**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

**Proposal for a directive**

**Article 6 – paragraph 1 – point e**

*Text proposed by the Commission*

*Amendment*

**(e) unauthorised movement to the territory of another Member State;** *deleted*

Or. it

**Amendment 342**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge**

**Proposal for a directive**

**Article 6 – paragraph 1 – point e**

*Text proposed by the Commission*

*Amendment*

**(e) unauthorised movement to the territory of another Member State;** *deleted*

Or. en

**Amendment 343**

**Emil Radev**

**Proposal for a directive**

**Article 6 – paragraph 1 – point e**

*Text proposed by the Commission*

*Amendment*

**(e) unauthorised movement to the territory of another Member State;** **(e) unauthorised movement to the territory of another Member State *or of a third country, or attempts to do so;***

Or. en

**Amendment 344**

**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

**Proposal for a directive**  
**Article 6 – paragraph 1 – point g**

*Text proposed by the Commission*

*Amendment*

**(g) *being subject of a return decision issued by another Member State;*** ***deleted***

Or. it

**Amendment 345**  
**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

**Proposal for a directive**  
**Article 6 – paragraph 1 – point h**

*Text proposed by the Commission*

*Amendment*

**(h) *non-compliance with a return decision, including with an obligation to return within the period for voluntary departure;*** ***deleted***

Or. it

**Amendment 346**  
**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

**Proposal for a directive**  
**Article 6 – paragraph 1 – point i**

*Text proposed by the Commission*

*Amendment*

**(i) *non-compliance with the requirement of Article 8(2) to go immediately to the territory of another Member State that granted a valid residence permit or other authorisation offering a right to stay;*** ***deleted***

Or. it

#### **Amendment 347**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge**

#### **Proposal for a directive**

#### **Article 6 – paragraph 1 – point i**

*Text proposed by the Commission*

(i) non-compliance with the requirement of Article 8(2) to go ***immediately*** to the territory of another Member State that granted a valid residence permit or other authorisation offering a right to stay;

*Amendment*

(i) non-compliance with the requirement of Article 8(2) to go to the territory of another Member State that granted a valid residence permit or other authorisation offering a right to stay;

Or. en

#### **Amendment 348**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge**

#### **Proposal for a directive**

#### **Article 6 – paragraph 1 – point j**

*Text proposed by the Commission*

(j) ***not fulfilling the obligation to cooperate with the competent authorities of the Member States at all stages of the return procedures, referred to in Article 7;***

*Amendment*

***deleted***

Or. en

#### **Amendment 349**

**Sophia in 't Veld, Angelika Mlinar**

#### **Proposal for a directive**

#### **Article 6 – paragraph 1 – point j**

*Text proposed by the Commission*

(j) ***not fulfilling the obligation to cooperate with the competent authorities of the Member States at all stages of the***

*Amendment*

***deleted***



*return procedures, referred to in Article 7;*

Or. en

#### **Amendment 350**

**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

#### **Proposal for a directive**

#### **Article 6 – paragraph 1 – point j**

*Text proposed by the Commission*

*Amendment*

**(j) *not fulfilling the obligation to cooperate with the competent authorities of the Member States at all stages of the return procedures, referred to in Article 7;***

***deleted***

Or. it

#### **Amendment 351**

**Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton, Auke Zijlstra**

#### **Proposal for a directive**

#### **Article 6 – paragraph 1 – point k**

*Text proposed by the Commission*

*Amendment*

**(k) existence of conviction for a criminal offence, including for a serious criminal offence in another Member State;**

**(k) existence of conviction for a criminal offence, *even with a non-definitive sentence*, including for a serious criminal offence in another Member State;**

Or. en

#### **Amendment 352**

**Sophia in 't Veld, Angelika Mlinar**

#### **Proposal for a directive**

#### **Article 6 – paragraph 1 – point k**

*Text proposed by the Commission*

*Amendment*

**(k) existence of conviction *for a***

**(k) existence of conviction for a serious**

*criminal offence, including* for a serious criminal offence in *another* Member State;

criminal offence in *a* Member State;

Or. en

**Amendment 353**

**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**

**Article 6 – paragraph 1 – point l**

*Text proposed by the Commission*

*Amendment*

**(l) ongoing criminal investigations and proceedings;**

**deleted**

Or. en

**Amendment 354**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge**

**Proposal for a directive**

**Article 6 – paragraph 1 – point m**

*Text proposed by the Commission*

*Amendment*

**(m) using false or forged identity documents, destroying or otherwise disposing of existing documents, or refusing to provide fingerprints as required by Union or national law;**

**deleted**

Or. en

**Amendment 355**

**Jussi Halla-aho**

**Proposal for a directive**

**Article 6 – paragraph 1 – point m**

*Text proposed by the Commission*

*Amendment*

(m) using false or forged identity documents, destroying or otherwise disposing of existing documents, or refusing to provide fingerprints as required by Union or national law;

(m) using false or forged identity documents, destroying or otherwise disposing of existing documents, or refusing to provide fingerprints as required by Union or national law, ***or having provided false verbal information;***

Or. en

**Amendment 356**

**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**

**Article 6 – paragraph 1 – point m**

*Text proposed by the Commission*

*Amendment*

(m) ***using false or forged identity documents,*** destroying or otherwise disposing of existing documents, or refusing to provide fingerprints as required by Union or national law;

(m) destroying or otherwise disposing of existing documents, or refusing to provide fingerprints as required by Union or national law;

Or. en

**Amendment 357**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge**

**Proposal for a directive**

**Article 6 – paragraph 1 – point n**

*Text proposed by the Commission*

*Amendment*

(n) ***opposing violently or fraudulently the return procedures;***

***deleted***

Or. en

**Amendment 358**

**Emil Radev**

**Proposal for a directive**

**Article 6 – paragraph 1 – point n**

*Text proposed by the Commission*

(n) opposing violently or fraudulently the return procedures;

*Amendment*

(n) opposing violently or fraudulently the return procedures, ***including by deliberately providing false information in an oral or written form or deliberately concealing essential information about the case prior to the return;***

Or. en

**Amendment 359**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge**

**Proposal for a directive**

**Article 6 – paragraph 1 – point o**

*Text proposed by the Commission*

(o) ***not complying with a measure aimed at preventing the risk of absconding referred to in Article 9(3);***

*Amendment*

***deleted***

Or. en

**Amendment 360**

**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**

**Article 6 – paragraph 1 – point p**

*Text proposed by the Commission*

(p) ***not complying with an existing entry ban.***

*Amendment*

***deleted***

Or. en

**Amendment 361**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge**

**Proposal for a directive**

**Article 6 – paragraph 1 – point p**

*Text proposed by the Commission*

*Amendment*

**(p) not complying with an existing entry ban.** **deleted**

Or. en

**Amendment 362**

**Heinz K. Becker, Monika Hohlmeier, Rachida Dati, Kārlis Šadurskis**

**Proposal for a directive**

**Article 6 – paragraph 1 – point p a (new)**

*Text proposed by the Commission*

*Amendment*

**(pa) risk to public policy, public security or national security.**

Or. en

**Amendment 363**

**Barbara Spinelli**

**Proposal for a directive**

**Article 6 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. The existence of a risk of absconding shall be determined on the basis of an overall assessment of the specific circumstances of the individual case, taking into account the objective criteria referred to in paragraph 1.** **deleted**

**However, Member States shall establish that a risk of absconding is presumed in**

*an individual case, unless proven otherwise, when one of the objective criteria referred to in points (m), (n), (o) and (p) of paragraph 1 is fulfilled.*

Or. en

#### **Amendment 364**

**Anna Maria Corazza Bildt, Carlos Coelho, Roberta Metsola**

#### **Proposal for a directive**

#### **Article 6 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

The existence of a risk of absconding shall be determined on the basis of an overall assessment of the specific circumstances of the *individual* case, taking into account the objective criteria referred to in paragraph 1.

*Amendment*

The existence of a risk of absconding shall be determined on the basis of an overall *individual* assessment of the specific circumstances of the case, taking into account the objective criteria referred to in paragraph 1.

Or. en

#### **Amendment 365**

**Sophia in 't Veld, Angelika Mlinar**

#### **Proposal for a directive**

#### **Article 6 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*However, Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when one of the objective criteria referred to in points (m), (n), (o) and (p) of paragraph 1 is fulfilled.*

*Amendment*

*deleted*

Or. en

#### **Amendment 366**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef**

Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge

**Proposal for a directive**

**Article 6 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***However, Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when one of the objective criteria referred to in points (m), (n), (o) and (p) of paragraph 1 is fulfilled.***

***deleted***

Or. en

**Amendment 367**

**Laura Ferrara, Ignazio Corrao, Fabio Massimo Castaldo**

**Proposal for a directive**

**Article 6 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***However, Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when one of the objective criteria referred to in points (m), (n), (o) and (p) of paragraph 1 is fulfilled.***

***deleted***

Or. it

**Amendment 368**

**Jeroen Lenaers**

**Proposal for a directive**

**Article 6 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***However, Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when one of the objective criteria referred to in points (m), (n), (o) and (p) of***

**Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when one of the objective criteria referred to in points *(f), (g), (h), (i), (j), (k), (m), (n), (o) and (p)***

paragraph 1 is fulfilled.

of paragraph 1 is fulfilled.

Or. en

### **Amendment 369**

**Jussi Halla-aho**

#### **Proposal for a directive**

#### **Article 6 – paragraph 2 – subparagraph 2**

##### *Text proposed by the Commission*

However, Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when one of the objective criteria referred to in points (m), (n), (o) and (p) of paragraph 1 is fulfilled.

##### *Amendment*

However, Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when one of the objective criteria referred to in points **(f), (g), (h), (j)**, (m), (n), (o) and (p) of paragraph 1 is fulfilled.

Or. en

##### *Justification*

*The amendment aims at increasing the effectiveness of measures intended to prevent absconding and secondary movements by making more criteria indicative of the risk of absconding.*

### **Amendment 370**

**Giancarlo Scottà, Harald Vilimsky, Nicolas Bay, Gilles Lebreton, Auke Zijlstra**

#### **Proposal for a directive**

#### **Article 6 – paragraph 2 – subparagraph 2**

##### *Text proposed by the Commission*

However, Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when one of the objective criteria referred to in points (m), (n), (o) and (p) of paragraph 1 is fulfilled.

##### *Amendment*

However, Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when one of the objective criteria referred to in points **(k), (l)**, (m), (n), (o) and (p) of paragraph 1 is fulfilled.

Or. en



**Amendment 371**

**Heinz K. Becker, Monika Hohlmeier, Rachida Dati, Kārlis Šadurskis**

**Proposal for a directive**

**Article 6 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

However, Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when one of the objective criteria referred to in points (m), (n), (o) **and (p)** of paragraph 1 is fulfilled.

*Amendment*

However, Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when one of the objective criteria referred to in points (m), (n), (o), **(p) and (p a)** of paragraph 1 is fulfilled.

Or. en

**Amendment 372**

**Nadine Morano**

**Proposal for a directive**

**Article 6 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

However, Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when one of the objective criteria referred to in **points (m), (n), (o) and (p) of paragraph 1** is fulfilled.

*Amendment*

However, Member States shall establish that a risk of absconding is presumed in an individual case, unless proven otherwise, when one of the objective criteria referred to in **paragraph 1, points (d) to (p) inclusive**, is fulfilled.

Or. fr

*Justification*

*The objective criteria referred to in points (d) to (p) are characteristic of a likely risk of absconding.*

**Amendment 373**

**Barbara Spinelli**

**Proposal for a directive**

**Article 7 – title**

*Text proposed by the Commission*

*Amendment*

**Obligation to cooperate**

**Provision of information on the return procedure**

Or. en

**Amendment 374**

**Sophia in 't Veld, Angelika Mlinar**

**Proposal for a directive**

**Article 7 – title**

*Text proposed by the Commission*

*Amendment*

**Obligation to cooperate**

**Information and cooperation**

Or. en

**Amendment 375**

**Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster**

**Proposal for a directive**

**Article 7 – title**

*Text proposed by the Commission*

*Amendment*

**Obligation to cooperate**

**Cooperation**

Or. en

**Amendment 376**

**Barbara Spinelli**

**Proposal for a directive**

**Article 7 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

1. Member States shall **impose on**

1. Member States shall **inform** third-

third-country nationals *the obligation to cooperate with the competent authorities* of the *Member States at all* stages of the return procedures. *That obligation* shall include the following in particular:

country nationals *in the process of return, in a language which they understand, in a concise, transparent, intelligible and easily accessible form, using clear and plain language*, of the stages of the return procedures. *The information provided* shall include the following in particular:

Or. en

#### Amendment 377

Sylvie Guillaume, Christine Revault d'Allonnes Bonnefoy, Ana Gomes, Josef Weidenholzer, Péter Niedermüller, Monika Beňová, Cécile Kashetu Kyenge, Birgit Sippel, Dietmar Köster

#### Proposal for a directive

#### Article 7 – paragraph 1 – introductory part

##### *Text proposed by the Commission*

1. Member States shall *impose on* third-country nationals *the obligation to cooperate with* the competent authorities of the Member States at all stages of the return procedures. *That obligation* shall *include the following in particular*:

##### *Amendment*

1. Member States shall *facilitate the cooperation between* third-country nationals *and* the competent authorities of the Member States at all stages of the return procedures. *All information on the procedure shall be given to the third country nationals in a language which they understand.*

Or. en