



2018/0329(COD)

16.1.2019

*****I**

DRAFT REPORT

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)
(COM(2018)0634 – C8-0407/2018 – 2018/0329(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Judith Sargentini

(Recast – Rule 104 of the Rules of Procedure)

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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)
(COM(2018)0634 – C8-0407/2018 – 2018/0329(COD))**

(Ordinary legislative procedure – recast)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0634),
 - having regard to Article 294(2) and Article 79(2)(c) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0407/2018),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of ... ¹,
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts²,
 - having regard to the letter of xxx sent by the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 104(3) of its Rules of Procedure,
 - having regard to Rules 104 and 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0000/2019),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the Commission proposal does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

¹ OJ C ... / Not yet published in the Official Journal.

² OJ C 77, 28.3.2002, p. 1.

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Title 1

Text proposed by the Commission

Amendment

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

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)

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

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. The use of the term 'illegal' to describe migrants in an irregular situation is inappropriate and should be avoided as it tends to stigmatize them by associating them with criminality. This horizontal amendment aims at replacing the word 'illegal' with 'irregular' for that purpose, and is based on recommendations made by the UN Committee on Migrant Workers, General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families. See CMW/C/GC/2, 28 August 2013, para. 4.

Amendment 2

Proposal for a directive

Recital 2

Text proposed by the Commission

Amendment

(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 2015¹¹*** .

(2) ***A dignified, humane, fair and*** effective return policy is an essential part of the Union's approach to better manage migration in all aspects.

¹¹ COM(2015) 285 final.

¹¹ COM(2015) 285 final.

Or. en

Amendment 3

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 4

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) 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, *protection of the rights of the child, protection of stateless persons* and *other* human rights obligations. Clear, transparent and fair rules need to be established to provide for an effective return policy which ensures coherence with and contributes to the integrity of the Common European Asylum System and the legal migration system. *Common standards and safeguards for*

return should be based on the ‘Twenty guidelines on forced return’ adopted by the Committee of Ministers of the Council of Europe on 4 May 2005.

Or. en

Justification

The Council of Europe’s ‘Twenty Guidelines on forced return’ serve as a key reference point for a fundamental rights compliant interpretation and application of the Return Directive. Your Rapporteur highlights the need to refer to this document as a basis for a fundamental rights-based interpretation of this Directive.

Amendment 5

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 6

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 ***international human rights law and*** the principle of non-refoulement ***as well as 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 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 the application of international standards on migration and the protection of migrant workers.

Amendment 7

Proposal for a directive

Recital 10

Text proposed by the Commission

(10) In accordance with Council Directive 2005/85/EC¹², 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.

Amendment

(10) In accordance with Council Directive 2005/85/EC¹², 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.

¹² 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).

¹² 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).

Or. en

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 8

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 increasing the incentives for voluntary departure 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, which may indicate*** that a risk of absconding exists. ***The determination of the existence of a risk of absconding should be carried out by a judicial authority following an examination of the individual circumstances of the third-country national concerned in line with the principles of necessity and***

proportionality.

Or. en

Justification

Your Rapporteur highlights that the risk of absconding must be decided on a case-by-case basis depending on the individual and/or family circumstances, in particular as the consequences of such as a designation are severe, including detention.

Amendment 9

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) *In order to ensure compliance with return decisions and cooperation in good faith between the competent authorities of the Member States and third-country nationals and to reinforce the effectiveness of the return procedure, measures should be established to improve cooperation of third-country nationals with the authorities throughout the return procedure*, including by *remaining present and available throughout the procedure*. At the same time, 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 assistance.

Justification

Access to timely, unbiased and reliable information allows migrants to make an informed decision and fosters preparedness for return and ownership of the return process, thereby enhancing prospects for sustainable reintegration. In order to ensure compliance with return decisions and cooperation in good faith between the competent authorities of the Member States and third-country nationals, clear return procedures should be established, and timely and adequate information should be provided to third-country nationals before and during the process of return.

Amendment 10**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 ***a*** period for voluntary departure of thirty days should be granted. ***A shorter period for voluntary departure of 15 days could*** be granted where it has been assessed that third-country nationals pose a risk of absconding. ***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 and present*** 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 allow children to finish the school year.***

Justification

This amendment is needed as it is inextricably linked to amendments tabled to Article 9

relating to voluntary departure. The Report seeks to bring clarity between the concepts of voluntary return and voluntary departure.

Amendment 11

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 migration management systems and allow migrants to return in a humane and dignified manner. Voluntary return should be allowed at all stages of the procedure.***

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to Article 14 relating to return management, establishing an obligation for Member States to set up national programmes to improve the operationalisation of all stages of the return procedure. Your Rapporteur considers that such national programmes 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 12

Proposal for a directive

Recital 14 a (new)

(14 a) In accordance with Directive 2009/52/EC of the European Parliament and of the Council^{1a}, 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^{1b}, 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.

^{1a} Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24).

^{1b} Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to Article 14 relating to return management establishing an obligation for Member States to set up national programmes to improve the operationalisation of all stages of the return procedure. Your Rapporteur considers that such national programmes 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 13

Proposal for a directive Recital 15 a (new)

Text proposed by the Commission

Amendment

(15 a) 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.

Or. en

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. See as well the definition of ‘persons in a vulnerable situation’ proposed by your Rapporteur in Article 3(9), inspired on 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. The paper introduces a definition of vulnerability that moves away from the categories of persons, but rather looks at a multitude of factors (individual, community, household, structural as well as situational) that can influence a person’s vulnerability. This definition requires a thorough individual assessment of the factors that both increase vulnerability and contribute to protection. That is, it is the interplay of factors at the individual, household, community, and structural levels, as well as

any situational factors that arise, that either increases or decreases the vulnerability of individuals, households, communities, and groups to violence, exploitation, abuse and rights violations.

Amendment 14

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

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. In Diouf the CJEU ruled that the period allowed to lodge an appeal must be sufficient in practical terms to enable the applicant to prepare and bring an effective action. It considered anything above fifteen days to be generally sufficient in this respect, while leaving the final assessment of the efficiency of the time limit to the national court.

Amendment 15

Proposal for a directive

Recital 17

Text proposed by the Commission

(17) The appeal against a return decision that is based on a decision

Amendment

deleted

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

Amendment 16

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 when there are pending cases before a criminal court, in order to ensure access to justice for both victims and suspects.***

Or. en

Justification

Your Rapporteur stresses that an appeal against a return decision should always have a suspensive effect or otherwise the applicant would lack an effective remedy. It is also too burdensome on judicial systems to require an additional procedure to treat the question of suspensive effect, as it is required in all cases that the risk of refoulement is assessed, including as part of an appeal.

Amendment 17

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 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.

Or. en

Justification

The requirement that the effect of a return decision should be automatically suspended during the period for lodging the appeal against such decision at first instance and during the examination of the appeal where there is a risk of a breach of non-refoulement is welcomed as this reflects the jurisprudence of the ECtHR and the CJEU. However, your Rapporteur proposes to extend the requirement of suspensive effect to all other cases where fundamental rights are at risk in case of enforced return as this constitutes the best guarantee to ensure that their right to an effective remedy is respected in practice, including where other human rights such as the right to family unity, the right to a fair trial or to be protected from arbitrary deprivation of liberty upon return are at risk. Such an approach has also clear advantages from the perspective of the appeals process. A system whereby suspensive effect must be requested in all cases other than non-refoulement cases creates additional burden on the judiciary, as they may have to assess the same case twice where the Court comes to the

conclusion that suspensive effect is necessary pending the examination of the appeal on the merits. In line with the FRA Opinion on this recast, the Rapporteur stresses that the scope of the review under the EU asylum acquis does typically not cover the prohibition of refoulement as an absolute human rights imperative, beyond the refugee context as well as other rights, such as the right to respect for private and family life, which also in some circumstances constitute a bar to removal.

Amendment 18

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

Justification

Your Rapporteur strongly resists the proposal to make the suspensive effect contingent on the submission of new elements that significantly modify the specific circumstances of the individual case in case since the reason for suspension was already assessed in the context of the asylum procedure and subject to judicial review and the return decision is taken following an asylum procedure. This is justified on the premise that the risk of refoulement in such a case has already been assessed in the asylum procedure. However, this is a false assumption as the scope of the principle of non-refoulement under the return Directive is broader than the non-refoulement provisions laid down in the asylum acquis. Therefore, non-refoulement concerns relevant under the return acquis may not necessarily have been assessed in the context of the asylum procedure. Moreover, given the absolute nature of the non-refoulement principle as enshrined inter alia in Article 3 ECHR, Article 3 CAT and Article 4 EU Charter as interpreted by the ECtHR and the CJEU, making suspensive effect contingent on new

circumstances arising constitutes adding conditions that are not allowed under the EU Charter and the jurisprudence of the European Courts.

Amendment 19

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) 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. Your Rapporteur stresses that access to legal aid is one of the essential elements of an efficient and sustainable return policy.

Amendment 20

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 illegally but who cannot yet be removed should be addressed. Their *adequate* 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

This amendment is needed as it is inextricably linked to amendments 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.

Amendment 21

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/EC¹³. Member States should be ***able to rely on various possibilities*** to monitor forced return.

Amendment

(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,¹³ ***and common standards and safeguards for return should be based on the ‘Twenty guidelines on forced return’ adopted by the Committee of Ministers of the Council of Europe on 4 May 2005.*** Member States should be ***obliged*** to monitor forced return ***and should be permitted to rely to this end on the pool of forced return monitors established by the European Border and Coast Guard pursuant to Regulation (EU) xxx/xxx [European Border and Coast Guard Regulation] of the European Parliament and of the Council***^{13a}.

¹³ 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-

¹³ 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).

country nationals who are subjects of individual removal orders (OJ L 261, 6.8.2004, p. 28).

^{13a} Regulation (EU) xxx/xxx of the European Parliament and of the Council ... (OJ..., p...).

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recital 4 and to recital 40 relating to the need to establish common standards at EU level for the enforcement of return decisions and providing adequate support for the implementation of this Directive. This amendment is also inextricably linked to the ongoing reform of the EBCG Regulation and aims at ensuring that Member States have the obligation to monitor all forced return operations and have the possibility to rely on a pool of forced return monitors to be established by the EBCG.

Amendment 22

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 only be imposed by the competent authority*** when justified, following an individual assessment and in application of the principle of proportionality, ***and after*** a return decision ***has been issued.***

Or. en

Justification

Your Rapporteur is of the view that imposing entry bans on third-country nationals leaving the territory voluntarily is counterproductive and incompatible with the proposal's objective

of enhancing the effectiveness of returns. The deterrent effect of entry bans has not sufficiently been demonstrated by the Commission. Entry bans have significant implications on the future migration options of the third country national and reduce the ability to obtain FRU permissions, student visas, discretionary leave to remain, work permits etc. This will discourage voluntary return, as avoiding an entry ban can be an important consideration for those who are considering voluntary return.

Amendment 23

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 a measure of last resort.*** The use of detention for the purpose of removal should be ***limited 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. ***Alternatives to detention, in particular non-custodial, engagement-based models in the community, should be preferred.***

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. Your Rapporteur reiterates, in line with human rights law, that deprivation of liberty should be a measure of last resort. States should always first explore the possibility of using less restrictive options and develop alternatives to detention such as case-management systems, open reception centres, centres for special support to vulnerable migrants and community-based alternatives. A growing body of international research, best practice and evidence, shows that the most effective ATD are those that engage migrants in migration procedures, in particular through tailored case management. This involves a social work approach, empowering and building trust with migrants to work towards resolution of their case, thus achieving better results for both governments and the migrants involved. Global comparative research, looking at 250 examples of alternatives to detention in 60 countries, found that such alternatives achieve very high compliance rates of between 70 and 99%, and higher levels of case resolution and voluntary return, at a fraction (less than 20%) of the cost of detention. They work because people are more likely to stay engaged and comply with immigration requirements, including

negative decisions on their status, when they feel they have been through a fair and efficient process, and have been able to explore all migration outcomes. In contrast, approaches based on coercion and detention can encourage migrants to resist perceived injustice, and decrease their ability and motivation to cooperate with government requirements.

Amendment 24

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) ***This Directive should set out exhaustive grounds for the detention of a third-country national as part of a return procedure.*** Detention should ***only*** be imposed ***as a measure of last resort, when less coercive measures are found to be insufficient and*** following ***a vulnerability assessment and*** an individual assessment of each case, ***on the availability of measures alternative to detention and the existence of*** a risk of absconding. ***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. Detention is never in their best interests.***

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recitals 27 and 40 and Article 18. Detention of minors is never in their best interests, including when family units are available. A ban on detention of children should therefore be imposed to protect minors. Moreover, family unity should never be used to justify the decision to detain accompanied minors. The application of the concept of ‘best interests of the child’ moreover entails that parents or legal or customary primary caregivers should never be detained either. See e.g. ECtHR- Abdullahi Elmi and Aweys Abubakar v. Malta, Application No. 25794/13 and 28151/13, 22 February 2017 where the ECtHR highlighted the fact that a child’s extreme vulnerability is the decisive factor and takes precedence over considerations relating to the status of prohibited immigrant, as children have specific needs due to their age and lack of independence. The New York Declaration also reiterates this: “Reaffirming that all individuals who have crossed or are seeking to cross international borders are entitled to due process in the assessment of their legal status, entry and stay, we will consider reviewing

policies that criminalize cross-border movements. We will also pursue alternatives to detention while these assessments are under way. Furthermore, recognizing that detention for the purposes of determining migration status is seldom, if ever, in the best interest of the child, we will use it only as a measure of last resort, in the least restrictive setting, for the shortest possible period of time, under conditions that respect their human rights and in a manner that takes into account, as a primary consideration, the best interest of the child, and we will work towards the ending of this practice”.

Amendment 25

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 ***detention could be ordered by an administrative or a judicial authority and could only be justified when there is a 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 should be three months, which may be prolonged, no more than two times, for a further period of up to three months, should this be necessary and proportionate*** in order to complete the return procedures successfully, without prejudice to the established safeguards ensuring that detention is ***not arbitrary*** and for as long as removal arrangements are in progress.

Or. en

Justification

Your Rapporteur stresses that detention should only be imposed when there are reasonable prospects of removal, and the detention period should reflect this. Efforts should be focused on effective return, rather than further codifying and standardising longer periods of detention.

Amendment 26

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

Justification

Your Rapporteur highlights that criminal sanctions should not be imposed for mere irregular entry or stay. In El Dridi the CJEU established that imprisonment under criminal law is not consistent with the aims of the Return Directive. The UN Convention Relating to the Status of Refugees (1951) and its 1967 Protocol provide, in Article 31(1), that “states shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened...enter or are present in their territory without authorization.”

Amendment 27

Proposal for a directive Recital 31 a (new)

Text proposed by the Commission

Amendment

(31 a) Children’s rights apply to both cases involving unaccompanied and separated children and children within families. In the case of families, Member States need to consider the situation of each child when making decisions concerning the return of the family, including the return or removal of one parent. Member States must respect and protect the rights of each child within the

family and his or her right to private and family life, and must also consider the safety of the child within the family. Where needed, 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 during the procedure, or through the detention or removal of a parent. 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. This includes implementing alternatives to detention for the whole family and protecting parents from removal while the procedure is ongoing. Children and families should be provided with documentation indicating that they are in an ongoing procedure and not subject to detention. Children 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 by the Rapporteur in Article 12 on return and removal of minors and Article 20 on detention of minors and their families. The 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 28

Proposal for a directive Recital 31 b (new)

Text proposed by the Commission

Amendment

(31 b) An independent and qualified guardian with the necessary expertise and training to ensure that the best interests of the child are 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.*

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 Rapporteur in Article 12 on return and removal of minors and Article 20 on detention of minors and their families. The 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 29

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

Your Rapporteur proposes to delete the proposed border procedure as it raises serious concerns from a fundamental rights as well as an efficiency perspective.

Amendment 30

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

Justification

Your Rapporteur proposes to delete the proposed border procedure as it raises serious concerns from a fundamental rights as well as an efficiency perspective.

Amendment 31

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

Your Rapporteur proposes to delete the proposed border procedure as it raises serious concerns from a fundamental rights as well as an efficiency perspective.

Amendment 32

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

Your Rapporteur proposes to delete the proposed border procedure as it raises serious concerns from a fundamental rights as well as an efficiency perspective.

Amendment 33

Proposal for a directive

Recital 36

(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

Your Rapporteur proposes to delete the proposed border procedure as it raises serious concerns from a fundamental rights as well as an efficiency perspective.

Amendment 34

**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 **and reintegration** process. Each national system should provide timely information on the identity, legal situation **and result of the vulnerability assessment** of the third country national that are relevant for monitoring and following up on individual cases **through case management**. National return **management** systems should **not contain any** information **obtained during the personal interview carried out on the basis of Article X of Regulation (EU) XXX/XXX [Asylum Procedure Regulation] of the European Parliament and of the Council^{1a}**. Each national system should establish clear individual and vulnerability assessment procedures to provide tailored support through individualised case-management to each migrant throughout the return process in a gender and age sensitive manner. As part of case-management, the third-country nationals concerned should be informed of their available rights and options in the host or transit Member State and in the country of return, of the assistance that they will receive and of the conditions of the voluntary return and reintegration assistance process.

^{1a} Regulation (EU) XXX.XXX of the European Parliament and of the Council ... (OJ..., p....).

Or. en

Justification

The Rapporteur is concerned, as also highlighted in the Opinion by the EDPS on this recast, about the unclear description of the specific purpose(s) of the processing to be performed via the envisaged 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. Given the lack of additional

safeguards and clarification due to the lack of an impact assessment and as the details of such a “central system” still need to be determined through the ongoing reform of the EBCG Regulation, the deletion of such reference is proposed.

Amendment 35

Proposal for a directive Recital 38 a (new)

Text proposed by the Commission

Amendment

(38 a) When, following a best interests assessment, it is established that return would be in a minor’s best interests, 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 interests, whether the family is willing and able to receive the child and provide suitable immediate and long-term 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 interests’ assessment to ensure restoring contact would not be contrary to a child’s best interests. Where tracing is unsuccessful or where family reunification is found not to be in the child’s best interests, the quality and suitability of alternative care arrangements, both in the short and mid-longer term, should be considered within the procedure. Return should not cause children to become homeless. Community-based care solutions should be prioritised. The use of residential care should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the child concerned and in his or her best interests. Large residential care facilities are not an adequate care arrangement for children.

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 Rapporteur in Article 12 on return and removal of minors and Article 20 on detention of minors and their families. The 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 36

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 ***appropriate case management programmes, protection for persons in vulnerable situations, including measures to ensure effective protection of children in migration, provision of information, legal aid and interpretation, development and implementation of effective non-custodial engagement-based alternatives to detention, effective forced return monitoring systems***, return management systems and programmes for providing logistical, financial and other material or in-kind assistance to support the return – and the reintegration – of illegally staying third-country nationals.

Justification

Your Rapporteur highlights that 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 the 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 37**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, **and from the 1954 United Nations Convention Relating to the Status of Stateless Persons.**

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 38**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

Amendment

(46) The purpose of an effective, **dignified and fundamental rights-compliant** implementation of the return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry,

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.*

stay or residence in the Member States, in accordance with this Directive, is an essential component of *a holistic approach to migration.*

Or. en

Amendment 39

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 Council¹⁸, ***or under Article 36 of Directive (EU) 2016/680¹⁹***, 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)

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 Council¹⁸, 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.***

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.**

¹⁸ 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).

¹⁹ **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).**

¹⁸ 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

In line with the EDPS Opinion, your Rapporteur highlights that the Law Enforcement Directive is not applicable, because 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 laid down under 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 40

Proposal for a directive

Article 2 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to Article 22 on the border procedure. The exclusion of certain categories of third country nationals 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. Derogations to the scope of the Directive increase risks of incoherent application of return standards throughout the EU and render monitoring of compliance with human rights obligations and the EU Charter more complex. Finally, maintaining a possibility to exclude both categories of TCNs outside the scope of the Return Directive contributes to sustaining the legal fiction of non-entry on the territory of third country nationals who are present at or in the vicinity of the border by certain Member States. The application of distinct legal regimes based on the legal fiction of non-entry has been discarded by the ECtHR as irrelevant in the case of N.T. and N.D. v. Spain, as the third country nationals had come within the jurisdiction of the State as soon as the authorities had effective control on the individuals concerned.

Amendment 41

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

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

agreements *or other arrangements*, or

agreements, or

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recital 47 on readmission agreements being concluded or negotiated with third countries. Your Rapporteur stresses that, in order to ensure parliamentary scrutiny and democratic oversight, cooperation with third countries shall be based on formal readmission agreements, rather than on informal arrangements.

Amendment 42

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. Your Rapporteur believes 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 43

Proposal for a directive

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

8 a. ‘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 to return voluntarily or to enrol in an Assisted Voluntary Return and Reintegration programme;

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recital 14 and Article 9 relating to voluntary departure. Your Rapporteur highlights the importance of voluntary return as an essential pillar of a safe and dignified return policy. In 2015, States adopted the 2030 Agenda for Sustainable Development, with the objective of eradicating poverty in all its forms and dimensions and promote sustainable development. States pledged under Target 10.7 to facilitate orderly, safe, regular, and responsible migration and mobility of people, including through facilitating voluntary returns, thereby underlining the relevance of voluntary return and assisted voluntary return as an essential pillar of migration management systems and as a preferred option for migrants to return in a humane and dignified manner. In addition, voluntary return contributes to Target 10.2, which is to empower/promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion, or economic or other status – by supporting returnees in their economic, social and psychosocial reintegration processes in their countries and communities of origin.

Amendment 44

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

This amendment is needed as 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. Your Rapporteur proposes 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. The paper introduces a definition of vulnerability, which moves away from the categories of persons, but rather looks at a multitude of factors (individual, community, household, structural as well as situational) that can influence a person’s vulnerability. This definition requires a thorough individual assessment of the factors that both increase vulnerability and contribute to protection. That is, it is the interplay of factors at the individual, household, community, and structural levels, as well as any situational factors that arise, that either increases or decreases the vulnerability of individuals, households, communities, and groups to violence, exploitation, abuse, and rights violations.

Amendment 45

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. Your 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 46

**Proposal for a directive
Article 6**

Text proposed by the Commission

Amendment

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

Justification

The long list of criteria proposed by the Commission to assess the risk of absconding, and the broad formulation thereof, may capture almost all irregularly staying third-country nationals. The assessment of the risk of absconding as proposed by the Commission may therefore 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. At the same time, the non-exhaustive character of the list allows Member States to adopt supplementary objective criteria, and, therefore, further expand the notion of the risk of absconding, contrary to the aim of defining and harmonizing the definition of the risk of absconding. Your Rapporteur believes that an individual assessment of the presence of a risk of absconding should always be carried out.

Amendment 47

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

Justification

Access to timely, unbiased and reliable information allows migrants to make an informed decision and fosters preparedness for return and ownership of the return process, thereby enhancing prospects for sustainable reintegration. Such information should be provided to third-country nationals in a language they understand and in relation to the different stages of the return procedure. In order to ensure coherence in the proposal, elements concerning provision of information, referred to in Article 15 in the proposal, have been included in this Article 7.

Amendment 48

Proposal for a directive Article 7 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

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

1. Member States shall ***take measures to facilitate cooperation between persons facing return procedures and*** the competent authorities of the Member States at all stages of the return procedures ***and***

include the following in particular:

inform third-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

Justification

Access to timely, unbiased and reliable information allows migrants to make an informed decision and fosters preparedness for return and ownership of the return process, thereby enhancing prospects for sustainable reintegration. Such information should be provided to third-country nationals in a language they understand and in relation to the different stages of the return procedure. In order to ensure coherence in the proposal, elements concerning provision of information, referred to in Article 15 in the proposal, have been included in this Article 7.

Amendment 49

Proposal for a directive

Article 7 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) *the duty to provide all the elements that are necessary for establishing or verifying identity;*

(a) *an overview and explanation of the different stages of the return procedure;*

Or. en

Amendment 50

Proposal for a directive

Article 7 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) *the duty to provide information on the third countries transited;*

deleted

Or. en

Amendment 51

Proposal for a directive

Article 7 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(c a) the consequences of not complying with an obligation to return following a return decision;

Or. en

Amendment 52

Proposal for a directive

Article 7 – paragraph 1 – point c b (new)

Text proposed by the Commission

Amendment

(c b) the time-frame of the procedure, including any time limits which the competent authorities are required to respect, including the time limits for detention;

Or. en

Amendment 53

Proposal for a directive

Article 7 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) the duty to lodge to the competent authorities of third countries a request for obtaining a valid travel document.

deleted

Or. en

Justification

The duty to request a travel document from the authorities of the country of origin, if implemented against persons who sought asylum and whose application is not yet decided in the final instance, creates a risk of violating the right to asylum and the principle of non-refoulement. Moreover, obtaining a travel document from the authorities of the country of origin may prove difficult.

Amendment 54

Proposal for a directive

Article 7 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(d a) a clear overview of the rights and obligations during the procedure, including the right to an effective remedy to appeal against or seek review of decisions related to return or detention as referred to in Articles 15 and 18 and the right to free legal assistance and interpretation;

Or. en

Amendment 55

Proposal for a directive

Article 7 – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(d b) the outcome of decisions related to return or detention as referred to in Articles 15 and 18, the reasons for that decision, and the elements taken into consideration for the purposes of the decision as well as the deadlines and manner in which such a decision may be challenged.

Or. en

Amendment 56

Proposal for a directive Article 7 – paragraph 2

Text proposed by the Commission

Amendment

2. *The elements referred to in point (a) of paragraph 1 shall include the third-country nationals' statements and documentation in their possession regarding the identity, nationality or nationalities, age, country or countries and place or places of previous residence, travel routes and travel documentation.*

deleted

Or. en

Amendment 57

Proposal for a directive Article 7 – paragraph 3

Text proposed by the Commission

Amendment

3. *Member States shall inform the third-country nationals about the consequences of not complying with the obligation referred to in paragraph 1.*

deleted

Or. en

Amendment 58

Proposal for a directive Article 7 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. *All the information referred to in paragraph 1 shall be provided in good time to enable the third-country national to exercise the rights guaranteed under this Directive. The information shall be provided both orally and in writing. In the case of minors, information shall be*

provided in a child-friendly manner by appropriately trained staff and with the involvement of the family members or of the guardian.

Or. en

Amendment 59

Proposal for a directive Article 7 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3 b. Member States shall make available generalised information sheets explaining the main elements of the return procedure.

Or. en

Amendment 60

Proposal for a directive Article 7 – paragraph 3 c (new)

Text proposed by the Commission

Amendment

3 c. Member States shall make available to the third-country national the assistance of a case-worker to assist him or her during the procedure in line with Article 14.

Or. en

Amendment 61

Proposal for a directive Article 7 – paragraph 3 d (new)

Text proposed by the Commission

Amendment

3 d. Member States shall provide third-country nationals in the process of return with the opportunity to communicate with the International Organisation for Migration (IOM) and with the contact details of organisations providing legal advice or counselling.

Or. en

Amendment 62

Proposal for a directive

Article 8 – paragraph 6 – subparagraph 1

Text proposed by the Commission

Amendment

Member States shall issue a return decision immediately after the adoption of a decision ending a legal stay of a third-country national, including a decision not granting a third-country national refugee status or subsidiary protection status in accordance with Regulation (EU) .../... [Qualification Regulation].

deleted

Or. en

Justification

Your Rapporteur stresses that a clear distinction should be maintained between the legal regime governing the status of asylum seekers and the legal regime governing the situation of persons subject to a return decision. Imposing an obligation on Member States to issue a return decision immediately after the adoption of a negative decision on an application for international protection will create unnecessary legal ambiguity as regards the asylum seeker's legal status pending an appeal or during the time period for lodging an appeal. Under the asylum acquis applicants for international protection are entitled to remain on the territory during the time period for lodging the appeal or pending an appeal procedure with suspensive effect. However, the issuance of a return decision confirms the irregular status of the individual concerned and therefore creates confusion over the person's right to remain on the territory both for the individual concerned and national and local authorities who may come into contact with the third country national without being familiar with asylum and migration law. Moreover, appeal procedures in asylum cases may take a long time, rendering

the initially issued return decision no longer reflecting the person's individual circumstances at the time of effecting return, as required under the EU Charter and the ECHR while humanitarian grounds may warrant a residence permit in the meantime. In such cases, the approach suggested by the EC would result in additional administrative burden, as authorities will be forced to issue additional return decisions for the same third country nationals. Therefore, your Rapporteur considers the proposed obligation to issue return decisions at the same time or immediately after a negative decision on the asylum application to be disproportionate and counterproductive.

Amendment 63

Proposal for a directive

Article 8 – paragraph 6 – subparagraph 2

Text proposed by the Commission

This Directive shall not prevent Member States from adopting a return decision together with a decision ending a legal stay of a third-country national, a decision on a removal and/or entry ban in a single administrative or judicial decision or act as provided for in their national legislation.

Amendment

This Directive shall not prevent Member States from adopting a return decision together with a ***final*** decision ending a legal stay of a third-country national, a decision on a removal and/or entry ban in a single administrative or judicial decision or act as provided for in their national legislation, ***without prejudice to the safeguards under Chapter III and under other relevant provisions of Union and national law, including the right to respect for private and family life, the right to asylum, the principle of non-refoulement and the right to an effective remedy.***

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. This amendment is aimed at preventing the risk of violations of rights enshrined in Article 47 of the EU Charter of Fundamental Rights when implementing the Return Directive.

Amendment 64

Proposal for a directive

Article 8 – paragraph 6 – subparagraph 3

Text proposed by the Commission

Amendment

The first and second subparagraphs are without prejudice to the safeguards under Chapter III and under other relevant provisions of Union and national law.

deleted

Or. en

Justification

As the first subparagraph is deleted, this paragraph is merged in paragraph 6. To prevent the risk of violations of rights enshrined in Articles 7, 18, 19 and 47 of the EU Charter of Fundamental Rights when implementing the Return Directive, your Rapporteur proposes to strengthen the safeguards in proposed Article 8(6) and in line with recommendations provided by the EU Fundamental Rights Agency in its opinion on this recast.

Amendment 65

Proposal for a directive

Article 9 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

A return decision shall provide for an appropriate period for voluntary departure of ***up to*** thirty days, without prejudice to the exception referred to in paragraphs 2 and 4. Member States may provide in their national legislation that such a period shall be granted only following an application by the third-country national concerned. In such a case, Member States shall inform the third-country nationals concerned of the possibility of submitting such an application.

A return decision shall provide for an appropriate period for voluntary departure of thirty days, without prejudice to the exception referred to in paragraphs 2 and 4. Member States may provide in their national legislation that such a period shall be granted only following an application by the third-country national concerned. In such a case, Member States shall inform the third-country nationals concerned of the possibility of submitting such an application.

Or. en

Justification

Your Rapporteur shares the view of the Commission that voluntary departure of third country nationals subject to an obligation to return is preferred over forced return and therefore must be encouraged as much as possible. The proposed changes by the Commission with regard to the minimum and maximum time period for voluntary departure and the obligation on Member States not to grant a voluntary departure period undermine such approach. Recent

research by the European Migration Network (2017) has revealed that there is little evidence to show that providing a period of voluntary departure of less than seven days will increase the number of those who will take up voluntary departure. Member States have also pointed to difficulties in effectively implementing voluntary departure in short time frames and consider insufficient length of voluntary departure periods as a challenge. Moreover, in practice, periods needed for voluntary departure are significantly longer than seven days and additional extensions must be granted anyway in several instances. Your Rapporteur believes that rather than reducing the minimum time limit for voluntary departure, the recast Return Directive should, as a rule, establish such time limit at 30 days.

Amendment 66

Proposal for a directive

Article 9 – paragraph 4 – introductory part

Text proposed by the Commission

4. Member States **shall not grant** a period for voluntary departure **in following cases**:

Amendment

4. Member States **may shorten to 15 days** a period for voluntary departure **where there is a risk of absconding**.

Or. en

Justification

Your Rapporteur considers the obligation not to grant a voluntary departure period on the basis of a broadly defined concept of risk of absconding, or in case an application for legal stay was dismissed as manifestly unfounded, to be disproportionate and counterproductive. The persons concerned would hence be deprived of the possibility of complying with a return decision autonomously, before such decision is enforced through coercive measures, with all the costs, both human and financial, that this entails. This would undermine the primacy of voluntary return over forced return.

Amendment 67

Proposal for a directive

Article 9 – paragraph 4 – point a

Text proposed by the Commission

(a) **where there is a risk of absconding determined in accordance with Article 6 ;**

Amendment

deleted

Or. en

Justification

Your Rapporteur considers the obligation not to grant a voluntary departure period on the basis of a broadly defined concept of risk of absconding, or in case an application for legal stay was dismissed as manifestly unfounded, to be disproportionate and counterproductive. The persons concerned would hence be deprived of the possibility of complying with a return decision autonomously, before such decision is enforced through coercive measures, with all the costs, both human and financial, that this entails. This would undermine the primacy of voluntary return over forced return.

Amendment 68

Proposal for a directive

Article 9 – paragraph 4 – point b

Text proposed by the Commission

Amendment

(b) where an application for legal stay has been dismissed as manifestly unfounded or fraudulent; **deleted**

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to Article 9(4), proposing the possibility to shorten a period for voluntary departure in specific cases, rather than obliging not to grant a period for voluntary departure as this would undermine the primacy of voluntary return. This amendment is also linked, in the case of rejection of an asylum application, to the ongoing reform of the Asylum Procedures Regulation, which specifies in which cases an application for international protection should be dismissed as manifestly unfounded or fraudulent. In addition, as highlighted by the EU Fundamental Rights Agency in its opinion on this recast, the category of persons whose application for legal stay has been dismissed as “manifestly unfounded” would cover all rejected asylum applicants from countries designated as “safe countries of origin” or “safe third countries”. In practice, the operation of proposed Article 9 (4) could affect returnees from whole regions. For example, looking at the figures of the IOM on voluntary returns from the EU to the Western Balkans countries in 2017 - all of which are considered for inclusion in a common EU list of safe countries of origin - over 17,500 people returned home with IOM assistance. The envisaged new rules can lead to an exponential increase in forced returns of persons who are currently the chief beneficiaries of voluntary returns, with the Member States having to bear the associated costs and procedural burdens.

Amendment 69

Proposal for a directive

Article 9 – paragraph 4 – point c

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Text proposed by the Commission

Amendment

(c) where the third-country national concerned poses a risk to public policy, public security or national security. **deleted**

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to paragraph 4 of Article 9, proposing the possibility to shorten a period for voluntary departure in specific cases, rather than the obligation not to grant a period for voluntary departure as this would undermine the primacy of voluntary return. This is merged in Article 9(4a) (new) as proposed by the Rapporteur.

Amendment 70

**Proposal for a directive
Article 9 – paragraph 4 a (new)**

Text proposed by the Commission

Amendment

4 a. Member States may decide not to grant a period for voluntary departure where the third-country national concerned poses a genuine and present risk to public security or national security.

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to paragraph 4 of Article 9, proposing the possibility to shorten a period for voluntary departure in specific cases, rather than the obligation not to grant a period for voluntary departure as this would undermine the primacy of voluntary return. The existence of a genuine and present risk to public security or national security needs to be assessed on a case-by-case basis in the return procedure.

Amendment 71

**Proposal for a directive
Article 9 a (new)**

Text proposed by the Commission

Amendment

Article 9 a

Voluntary Return

Voluntary return of a third-country national who has been issued a return decision shall be allowed at all stages of the return procedure.

Or. en

Justification

This amendment is needed as inextricably linked to amendments tabled to recital 14 and Article 9 relating to voluntary departure. Your Rapporteur highlights the importance of voluntary return as an essential pillar of a safe and dignified return policy. In 2015, States adopted the 2030 Agenda for Sustainable Development, with the objective of eradicating poverty in all its forms and dimensions and promote sustainable development. States pledged under Target 10.7 to facilitate orderly, safe, regular, and responsible migration and mobility of people, including through facilitating voluntary returns, thereby underlining the relevance of voluntary return and assisted voluntary return as an essential pillar of migration management systems and as a preferred option for migrants to return in a humane and dignified manner. In addition, voluntary return contributes to Target 10.2, which is to empower/promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion, or economic or other status – by supporting returnees in their economic, social and psychosocial reintegration processes in their countries and communities of origin.

Amendment 72

**Proposal for a directive
Article 10 – paragraph 1**

Text proposed by the Commission

Amendment

1. Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted in accordance with Article 9(4) or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 9. Those measures shall include **all** measures **necessary** to confirm the identity of illegally staying third-country nationals

1. Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted in accordance with Article 9(4) or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 9. Those measures shall include measures to confirm the identity of illegally staying third-country nationals who do not hold a valid

who do not hold a valid travel document and to obtain such a document.

travel document and to obtain such a document.

Or. en

Amendment 73

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

2. If a Member State has granted a period for voluntary departure in accordance with Article 9, the return decision may be enforced only after the period has expired, unless a risk as referred to in Article 9(4) arises during that period.

Amendment

2. If a Member State has granted a period for voluntary departure in accordance with Article 9, the return decision may be enforced only after the period has expired, unless a risk as referred to in Article 9(4) arises during that period, ***in which case the period for voluntary departure may be shortened in accordance with Article 9(4) and 9(4a).***

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to paragraph 4 of Article 9, relating to the possibility for Member States to shorten a period for voluntary departure to 15 days in specific cases.

Amendment 74

Proposal for a directive Article 10 – paragraph 6

Text proposed by the Commission

6. Member States shall provide for an effective forced-return monitoring system.

Amendment

6. Member States shall provide for an effective forced-return monitoring system ***and shall ensure that all forced-return operations are duly monitored by independent return monitors, adequately trained on fundamental rights. Member States may rely on the pool of forced return monitors established by the European Border and Coast Guard***

*pursuant to Regulation (EU) xxx/xxx
[European Border and Coast Guard
Regulation].*

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recital 4 relating to the need to establish common standards at EU level for the enforcement of return decisions, based on human rights law. This amendment is also inextricably linked to the ongoing reform of the EBCG Regulation and aims at ensuring that Member States have the obligation to monitor all forced return operations and have the possibility, as also suggested by EBCG Agency in its non-paper on this recast, to rely on a pool of forced return monitors to be established by the EBCG.

Amendment 75

Proposal for a directive

Article 11 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(b a) the third-country national's participation in ongoing criminal or administrative proceedings as victims, suspects or witnesses, in particular in relation to Directive 2009/52/EC, Directive 2011/36/EU of the European Parliament and of the Council^{1a}, and Directive 2012/29/EU.

^{1a} Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to Article 14 and

recital 15a (new) relating to return management and establishing an obligation for Member States to set up national programmes to improve the operationalisation of all stages of the return procedure. Your Rapporteur considers that Member States should provide for appropriate mechanisms to ensure access to justice and redress mechanisms and should consider postponing removal in order to allow victims, suspects of witnesses to participate in criminal proceedings.

Amendment 76

Proposal for a directive

Article 12 – title

Text proposed by the Commission

Amendment

Return and removal of **unaccompanied** minors

Return and removal of minors

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recitals and 40. This amendment is also strictly linked to changes proposed by the Rapporteur in Article 12 on return and removal of minors and Article 20 on detention of minors and their families. The 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, irrespective of whether they are unaccompanied, separated or accompanied by their families.

Amendment 77

Proposal for a directive

Article 12 – paragraph 1

Text proposed by the Commission

Amendment

1. Before deciding to issue a return decision in respect of an unaccompanied **minor**, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.

1. ***As soon as possible after the minor's identification and in any case before*** deciding to issue a return decision in respect of ***the minor, Member States shall carry out a best interests assessment, to identify durable solutions for the child, based on a consideration of his or her best interests, whether he or she is within a family or is an unaccompanied or separated child. In cases where return is identified as serving the child's best interests, specific and appropriate***

implementation measures shall be put in place. Assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recitals 28 and 40. Detention of minors is never in their best interests, including when family units are available. A ban on detention of children should therefore be imposed to protect minors. The application of the concept of 'best interests of the child' moreover entails that parents or legal or customary primary caregivers should never be detained either. See e.g. ECtHR-Abdullahi Elmi and Aweys Abubakar v. Malta, Application No. 25794/13 and 28151/13, 22 February 2017

Amendment 78

Proposal for a directive Article 12 – paragraph 2

Text proposed by the Commission

2. Before **removing** an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian **or** adequate **reception facilities in the State of return**.

Amendment

2. Before **returning** an unaccompanied **or separated** minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family **or** a nominated guardian **and provide for appropriate transfer of care and custodial arrangements that are adequate and appropriate for the individual minor**.

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recitals 28 and 40. Detention of minors is never in their best interests, including when family units are available. A ban on detention of children should therefore be imposed to protect minors. The application of the concept of 'best interests of the child' moreover entails that parents or legal or customary primary caregivers should never be detained either. See e.g. ECtHR-

Abdullahi Elmi and Aweys Abubakar v. Malta, *Application No. 25794/13 and 28151/13*, 22 February 2017.

Amendment 79

Proposal for a directive

Article 12 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Member States shall provide minors and families with documentation indicating that they are in an ongoing return procedure and shall not be subject to detention.

Or. en

Justification

*This amendment is needed as it is inextricably linked to amendments tabled to recitals 28 and 40. Detention of minors is never in their best interests, including when family units are available. A ban on detention of children should therefore be imposed to protect minors. The application of the concept of 'best interests of the child' moreover entails that parents or legal or customary primary caregivers should never be detained either. See e.g. ECtHR-Abdullahi Elmi and Aweys Abubakar v. Malta, *Application No. 25794/13 and 28151/13*, 22 February 2017.*

Amendment 80

Proposal for a directive

Article 12 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2 b. Member States shall ensure that an independent and qualified guardian with the necessary expertise and training who could ensure that the best interests of the child are taken into consideration is appointed to assist unaccompanied and separated children. To that end, the guardian shall 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 recital 28 on detention of third-country nationals pending return and to recital 40 relating to necessary support to achieve an effective implementation of this Directive. In order to ensure that the best interests of the child are always the primary consideration, a guardian for separated and unaccompanied children should be appointed. This amendment is based on the FRA Handbook on Guardianship for children deprived of parental care, p.26 et seq.

Amendment 81**Proposal for a directive****Article 12 – paragraph 2 c (new)***Text proposed by the Commission**Amendment*

2 c. Return and reintegration assistance shall be granted to all minors and their families.

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recital 28 on detention of third-country nationals pending return and to recital 40 relating to necessary support to achieve an effective implementation of this Directive.

Amendment 82**Proposal for a directive****Article 13 – paragraph 1 – subparagraph 1 – introductory part***Text proposed by the Commission**Amendment*

Return decisions **shall** be accompanied by an entry ban:

Return decisions **may** be accompanied by an entry ban:

Or. en

Justification

This amendment is needed as inextricably linked to amendments tabled to recital 14 and

Article 9 relating to voluntary departure and recital 25 relating to entry bans. Your Rapporteur is of the view that imposing entry bans on third-country nationals leaving the territory voluntarily is counterproductive and incompatible with the proposal's objective of enhancing the effectiveness of return while the deterrent effect of entry bans is not sufficiently demonstrated by the Commission because of the lack of an impact assessment as part of this proposal.

Amendment 83

Proposal for a directive

Article 13 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) if the obligation to return has not been complied with.

Amendment

(b) if the obligation to return has not been complied with **and a removal has been carried out pursuant to Article 10.**

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recital 14 and Article 9 relating to voluntary departure and recital 25 relating to entry bans. Your Rapporteur is of the view that imposing entry bans on third-country nationals leaving the territory voluntarily is counterproductive and incompatible with the proposal's objective of enhancing the effectiveness of return while the deterrent effect of entry bans is not sufficiently demonstrated by the Commission because of the lack of an impact assessment as part of this proposal.

Amendment 84

Proposal for a directive

Article 13 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In **other** cases return decisions **may** be accompanied by an entry ban.

Amendment

In cases **involving children**, return decisions **shall not** be accompanied by an entry ban.

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recital 14,

recital 28 and Article 9 relating to voluntary departure and recital 25 relating to entry bans. Your Rapporteur is of the view that, in particular in the case of children, imposing entry bans would be disproportionate.

Amendment 85

Proposal for a directive Article 13 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States may impose an entry ban, which does not accompany a return decision, to a third-country national who has been illegally staying in the territory of the Member States and whose illegal stay is detected in connection with border checks carried out at exit in accordance with Article 8 of Regulation (EU) 2016/399, where justified on the basis of the specific circumstances of the individual case and taking into account the principle of proportionality.

deleted

Or. en

Justification

The Commission proposal alters the nature of entry bans by creating a legal basis for issuing entry bans without a return decision to third country nationals detected during exit border controls. Your Rapporteur is of the view that imposing entry bans on third-country nationals leaving the territory is counterproductive and incompatible with the proposal's objective of enhancing the effectiveness of return while the deterrent effect of such measure on future irregular entry of the third country nationals concerned is not sufficiently demonstrated by the Commission. Imposing an entry ban upon exit on third country nationals who were residing irregularly on the territory will discourage rather than encourage them leaving the territory on their own initiative. Furthermore, it is difficult to see in practice how proportionality and the individual circumstances of the third country national concerned will be assessed in the context of an exit procedure at a border crossing point. Your Rapporteur considers it likely that this may result in quasi-automatic issuance of entry bans in practice without proper individual assessment of the specific circumstances of the third country national concerned.

Amendment 86

Proposal for a directive Article 13 – paragraph 3

Text proposed by the Commission

Amendment

3. The length of the entry ban shall be determined with due regard to all relevant circumstances of the individual case and shall not in principle exceed five years. It may however exceed five years if the third-country national represents a serious threat to **public policy**, public security or national security.

3. The length of the entry ban shall be determined with due regard to all relevant circumstances of the individual case and shall not in principle exceed five years. It may however exceed five years if the third-country national represents a serious **genuine and present** threat to public security or national security.

Or. en

Justification

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

Amendment 87

Proposal for a directive

Article 13 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

Member States shall consider withdrawing or suspending an entry ban where a third-country national who is the subject of an entry ban issued in accordance with paragraph 1, second subparagraph, can demonstrate that he or she has left the territory of a Member State in full compliance with a return decision.

deleted

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recital 14 and Article 9 relating to voluntary departure and recital 25 relating to entry bans. Your Rapporteur is of the view that imposing entry bans on third-country nationals leaving the territory voluntarily is counterproductive and incompatible with the proposal's objective of enhancing the effectiveness of return while the deterrent effect of entry bans is not sufficiently demonstrated by the Commission because of the lack of an impact assessment as part of this proposal.

Amendment 88

Proposal for a directive

Article 13 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Victims of trafficking in human beings who have been granted a residence permit pursuant to Council Directive 2004/81/EC²⁸ shall not be subject of an entry ban ***without prejudice to paragraph 1, first subparagraph, point (b), and*** provided that the third-country national concerned does not represent a threat to ***public policy***, public security or national security.

²⁸ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (OJ L 261, 6.8.2004, p. 19).

Amendment

Victims of trafficking in human beings who have been granted a residence permit pursuant to Council Directive 2004/81/EC²⁸ shall not be subject of an entry ban, provided that the third-country national concerned does not represent a ***genuine and present*** threat to public security or national security.

²⁸ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (OJ L 261, 6.8.2004, p. 19).

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recital 14 and Article 9 relating to voluntary departure, article 9 relating to voluntary departure and recital 25 relating to entry bans. Your Rapporteur is of the view that imposing entry bans on third-country nationals leaving the territory voluntarily is counterproductive and incompatible with the proposal's objective of enhancing the effectiveness of return while the deterrent effect of entry bans is not sufficiently demonstrated by the Commission because of the lack of an impact assessment as part of this proposal.

Amendment 89

Proposal for a directive

Article 14 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. Member States shall ensure that individual assessments are carried out to provide tailored support to each migrant throughout the return process in a gender and age sensitive manner.

Or. en

Justification

Your Rapporteur highlights that rights-based and dignified return and sustainable reintegration are best implemented through appropriate case management ensuring durable solutions for returnees and improving cooperation between the third-country nationals in the process of return and the authorities involved.

Amendment 90

Proposal for a directive

Article 14 – paragraph -1 a (new)

Text proposed by the Commission

Amendment

-1 a. Member States shall ensure that third-country nationals in the process of return are provided with individualised counselling through appropriate case-management. As part of case-management, the third-country nationals concerned shall be informed of their available rights and options in the host or transit Member State and in the country of return, on the assistance that they would receive and on the conditions of the voluntary return and reintegration assistance process.

Or. en

Justification

Your Rapporteur highlights that rights-based and dignified return and sustainable reintegration are best implemented through appropriate case management ensuring durable solutions for returnees and improving cooperation between the third-country nationals in the process of return and the authorities involved.

Amendment 91

Proposal for a directive Article 14 – paragraph -1 b (new)

Text proposed by the Commission

Amendment

-1 b. Counselling shall be provided in a language that can be understood by the third-country national. It shall take place in conditions that allow migrants to ask questions and express their views freely, including their concerns.

Or. en

Justification

Your Rapporteur highlights that rights-based and dignified return and sustainable reintegration are best implemented through appropriate case management ensuring durable solutions for returnees and improving cooperation between the third-country nationals in the process of return and the authorities involved.

Amendment 92

Proposal for a directive Article 14 – paragraph -1 c (new)

Text proposed by the Commission

Amendment

-1 c. At all stages of the procedure, it shall be possible for the third-country national concerned to avail himself or herself of existing procedures to determine and apply for residence status, including international protection procedures and other procedures that provide status.

Or. en

Justification

Your Rapporteur highlights that rights-based and dignified return and sustainable reintegration are best implemented through appropriate case management ensuring durable

solutions for returnees and improving cooperation between the third-country nationals in the process of return and the authorities involved.

Amendment 93

Proposal for a directive

Article 14 – paragraph 1

Text proposed by the Commission

1. Each Member State shall set up, operate, maintain and further develop a national return management system, which shall ***process all the necessary information for implementing this Directive, in particular as regards*** the management of individual cases as well as of any return-related procedure.

Amendment

1. Each Member State shall set up, operate, maintain and further develop a national return management system, which shall ***support*** the management of individual cases as well as of any return-related procedure, ***including reintegration in the country of return.***

Or. en

Amendment 94

Proposal for a directive

Article 14 – paragraph 2

Text proposed by the Commission

2. ***The national system shall be set up in a way which ensures technical compatibility allowing for communication with the central system established in accordance with Article 50 of Regulation (EU) .../... [EBCG Regulation].***

Amendment

deleted

Or. en

Justification

The Rapporteur is concerned, as also highlighted in the Opinion by the EDPS on this recast, about the unclear description of the specific purpose(s) of the processing to be performed via the envisaged 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. Given the lack of additional safeguards and clarification due to the lack of an impact assessment, and as the details of such a “central system” still need to be determined through the ongoing reform of the EBCG Regulation, a deletion of such reference is proposed.

Amendment 95

Proposal for a directive

Article 14 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Such assistance *may* include support for reintegration in the third country of return.

Amendment

Such assistance *shall* include support for reintegration in the third country of return.

Or. en

Amendment 96

Proposal for a directive

Article 14 – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

National programmes shall include a continuum of care for the third-country national throughout all stages of the return and reintegration process. This shall include the provision of adequate information on conditions in countries of return prior to departure, appropriate transfer of care for persons in vulnerable situations and custodial arrangements for unaccompanied and separated children. National programmes shall include mechanisms for the appropriate transfer of legal assistance and access to justice and redress mechanisms, access to relevant national administrative and criminal proceedings, in particular, in accordance with Directives 2009/52/EC, 2011/36/EU and 2012/29/EU, throughout the return procedure, including measures to ensure access to justice after return to a third country.

Or. en

Justification

Rights-based and dignified return and sustainable reintegration are best implemented through appropriate case management ensuring durable solutions for returnees. Your Rapporteur highlights that it is essential for victims and witnesses to be able to participate in relevant proceedings and access justice.

Amendment 97

Proposal for a directive

Article 14 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

The granting of such assistance, including its kind and extent, shall be subject to the cooperation of the third-country national concerned with the competent authorities of the Member States as provided for in Article 7 of this Directive.

deleted

Or. en

Justification

The last subparagraph of proposed Article 14(3) makes access to voluntary return programmes conditional on the cooperation of the returnee with the authorities, which, as eloquently described in FRA Opinion 6, would often be difficult to operationalise and would discourage persons from returning voluntarily.

Amendment 98

Proposal for a directive

Article 15 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall provide, ***upon request***, a written or oral translation of the main elements of decisions related to return, as referred to in paragraph 1, including information on the available legal remedies in a language the third-country national understands ***or may reasonably be presumed to understand***.

2. Member States shall provide a written or oral translation of the main elements of decisions related to return, as referred to in paragraph 1, including information on the available legal remedies in a language the third-country national understands.

Justification

In order to ensure coherence in the proposal, elements concerning provision of information have been moved from Article 15 to Article 7. Access to timely, unbiased and reliable information allows migrants to make an informed decision and fosters preparedness for return and ownership of the return process, thereby enhancing prospects for sustainable reintegration. Such information should be provided to third-country nationals in a language they understand and in relation to the different stages of the return procedure.

Amendment 99**Proposal for a directive
Article 15 – paragraph 3***Text proposed by the Commission**Amendment*

3. Member States may decide not to apply paragraph 2 to third country nationals who have illegally entered the territory of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State. **deleted**

In such cases decisions related to return, as referred to in paragraph 1, shall be given by means of a standard form as set out under national legislation.

Member States shall make available generalised information sheets explaining the main elements of the standard form in at least five of those languages which are most frequently used or understood by illegal migrants entering the Member State concerned.

Justification

In order to ensure coherence in the proposal, elements concerning provision of information have been moved from Article 15 to Article 7. Access to timely, unbiased and reliable information allows migrants to make an informed decision and fosters preparedness for

return and ownership of the return process, thereby enhancing prospects for sustainable reintegration. Such information should be provided to third-country nationals in a language they understand and in relation to the different stages of the return procedure.

Amendment 100

Proposal for a directive

Article 16 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The third-country national concerned shall be granted the right to appeal before a single level of jurisdiction against the return decision where that decision is based on a decision rejecting an application for international protection taken in accordance with Regulation EU) .../... [Asylum Procedure Regulation] that was subject to an effective judicial review in accordance with Article 53 of that Regulation.

deleted

Or. en

Justification

Your Rapporteur fully supports the proposed deletion of administrative authorities as competent appeal bodies in line with Article 47 of the EU Charter of Fundamental Rights. However, the Rapporteur stresses 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. Interfering with the organisation of onward appeals is incompatible with the principle of procedural autonomy.

Amendment 101

Proposal for a directive

Article 16 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

The enforcement of the return decision shall be automatically suspended during the period for bringing *the* appeal *at first instance and, where that appeal has been lodged within the set period*, during the

The enforcement of the return decision shall be automatically suspended during the period for bringing *an* appeal *against such decision*, during the examination of the appeal *and until the decision on the*

examination of the appeal, where there is a risk to breach the principle of non-refoulement. ***Should a further appeal against a first or subsequent appeal decision be lodged, and in all other cases, the enforcement of the return decision shall not be suspended unless a court or tribunal decides otherwise taking into due account the specific circumstances of the individual case upon the applicant's request or acting ex officio.***

appeal has been notified to the applicant, in particular where there is a risk to breach the principle of non-refoulement. ***An appeal against a return decision shall have an automatic suspensive effect, this shall include instances where there are pending cases before a criminal court, in order to ensure access to justice for both victims and suspects.***

Or. en

Justification

Your Rapporteur stresses that an appeal against a return decision should always have a suspensive effect or otherwise the applicant would lack an effective remedy. It is also too burdensome on judicial systems to require an additional procedure to treat the question of suspensive effect, as it is required in all cases that the risk of refoulement is assessed, including as part of an appeal.

Amendment 102

Proposal for a directive Article 16 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

Member States shall ensure that a decision on the request for temporary suspension of the enforcement of a return decision is taken within 48 hours from the lodging of such a request by the third-country national concerned. In individual cases involving complex issues of fact or law, the time-limits set out in this paragraph may be extended, as appropriate, by the competent judicial authority.

deleted

Or. en

Justification

Your Rapporteur stresses that an appeal against a return decision should always have a

suspensive effect or otherwise the applicant would lack an effective remedy. It is also too burdensome on judicial systems to require an additional procedure to treat the question of suspensive effect, as it is required in all cases that the risk of refoulement is assessed, including as part of an appeal.

Amendment 103

Proposal for a directive

Article 16 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

Where no relevant new elements or findings have arisen or have been presented by the third-country national concerned which significantly modify the specific circumstances of the individual case, the first and the second subparagraphs of this paragraph shall not apply where:

deleted

(a) the reason for temporary suspension referred thereto was assessed in the context of a procedure carried out in application of Regulation (EU) .../... [Asylum Procedure Regulation] and was subject to an effective judicial review in accordance with Article 53 of that Regulation;

(b) the return decision is the consequence of the decision on ending the legal stay that has been taken following such procedures.

Or. en

Justification

Your Rapporteur stresses that an appeal against a return decision should always have a suspensive effect or otherwise the applicant would lack an effective remedy. It is also too burdensome on judicial systems to require an additional procedure to treat the question of suspensive effect, as it is required in all cases that the risk of refoulement is assessed, including as part of an appeal.

Amendment 104

Proposal for a directive

Article 16 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

Member States shall grant a period not exceeding five days to lodge an appeal against a return decision when such a decision is the consequence of a final decision rejecting an application for international protection taken in accordance with Regulation (EU) .../... [Asylum Procedure Regulation].

deleted

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. In Diouf the CJEU ruled that the period allowed to lodge an appeal must be sufficient in practical terms to enable the applicant to prepare and bring an effective action. It considered anything above fifteen days to be generally sufficient in this respect, while leaving the assessment of the efficiency of the time limit finally to the national court.

Amendment 105

Proposal for a directive

Article 16 – paragraph 6

Text proposed by the Commission

Amendment

6. Member States shall ensure that ***the necessary*** legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation or rules regarding legal aid, ***and may provide that such free legal assistance and/or representation is subject to conditions as set out in Article 15(3) to (6) of Directive 2005/85/EC.***

6. Member States shall ensure that legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation or rules regarding 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. Your Rapporteur stresses that access to legal aid is one of the essential elements of an efficient and sustainable return policy. Furthermore, the reference to Directive 2005/85/EC is obsolete and should be deleted.

Amendment 106

Proposal for a directive

Article 18 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when:

Amendment

Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may **only** keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process when:

Or. en

Justification

This amendment is needed as inextricably linked to other amendments tabled to this Article 18 on detention and to recitals 27 and 28. Your Rapporteur reiterates, in line with human rights law, that deprivation of liberty should be a measure of last resort. States should always first explore the possibility of using less restrictive options and develop alternatives to detention such as case-management systems, open reception centres, centres for special support to vulnerable migrants and community-based alternatives.

Amendment 107

Proposal for a directive

Article 18 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) there is a risk of absconding
determined in accordance with Article 6;

Amendment

(a) there is a risk of absconding;

Or. en

Justification

This amendment is coherent with the deletion of article 6 as proposed by the Rapporteur.

Amendment 108

Proposal for a directive

Article 18 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

(c) *the third-country national concerned poses a risk to public policy, public security or national security.* ***deleted***

Or. en

Justification

In line with the Opinion of the EU Fundamental Rights Agency on this recast, your Rapporteur is concerned about the inclusion of this new ground for detention. According to the CJEU, the scope of the “national security and public order” as well as “public policy” exceptions in the context of EU asylum and immigration legislation must be interpreted narrowly. The detention of third-country nationals who pose such a risk should be addressed by using already available criminal law, criminal administrative law and legislation covering the ending of legal stay for public order reasons.

Amendment 109

Proposal for a directive

Article 18 – paragraph 3

Text proposed by the Commission

Amendment

3. In every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or ex officio. ***In the case of prolonged detention periods,*** reviews shall be subject to the supervision of a judicial authority.

3. In every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or ex officio. Reviews shall be subject to the supervision of a judicial authority.

Or. en

Justification

This amendment is needed as it is inextricably linked to other amendments tabled to this Article and to recitals 27 and 28. Your Rapporteur stresses that review of deprivation of liberty is essential to ensure that it remains necessary and proportionate in the individual circumstances, and that detention is used as an exceptional measure, “for as a short a period as possible, and only maintained for as long as removal arrangements are in progress and executed with due diligence”, as intended by the Return Directive.

Amendment 110

Proposal for a directive Article 18 – paragraph 5

Text proposed by the Commission

5. Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. Each Member State shall set a **maximum** period of detention **of not less than** three months **and not more than six months**.

Amendment

5. Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. Each Member State shall set a **limited** period of detention, **which shall not exceed** three months.

Or. en

Justification

Lengthy detention is counterproductive to government objectives of achieving compliance with return decisions and effecting returns. Available data does not support that lengthy periods of detention would be necessary to stimulate effective returns, as there does not seem to be a clear correlation between the maximum period of detention established under national law and the effectiveness of return from individual Member States. Studies from Italy for example (Italian Senate, Human Rights Committee "Rapporto Sui Centri Di Identificazione ed Espulsione in Italia" of July 2014), show that there was no increase in the return rate when people were kept in detention having not returned within 30-60 days of detention. In France too it has been noted that the vast majority of people are returned in the first few days, meaning that extensions from 32 to 45, and now from 45 to 90 days, will have little impact on return, while having other negative impact (La Cimade, Décryptage du projet de loi asile et immigration, June 2017).

Amendment 111

Proposal for a directive Article 18 – paragraph 6 – introductory part

Text proposed by the Commission

Amendment

6. Member States may not extend the period referred to in paragraph 5 except for a limited period not exceeding a further **twelve** months in accordance with national law in cases where regardless of all their reasonable efforts the removal operation is likely to last longer owing to:

6. Member States may not extend the period referred to in paragraph 5 except for a limited period not exceeding a further **six** months in accordance with national law in cases where regardless of all their reasonable efforts the removal operation is likely to last longer owing to:

Or. en

Justification

This amendment is needed as it is inextricably linked to other amendments tabled to this Article and to recitals 27 and 28. Lengthy detention is counterproductive to government objectives of achieving compliance with return decisions and effecting returns. Available data does not support that lengthy periods of detention would be necessary to stimulate effective returns, as there does not seem to be a clear correlation between the maximum period of detention established under national law and the effectiveness of return from individual Member States.

Amendment 112

**Proposal for a directive
Article 19 – paragraph 3**

Text proposed by the Commission

Amendment

3. Particular attention shall be paid to the situation of vulnerable **persons**. Emergency health care and essential treatment of illness shall be provided.

3. Particular attention shall be paid to the situation of **persons in a vulnerable situation**. Emergency health care and essential treatment of illness shall be provided.

Or. en

Justification

This amendment is needed as 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. Your Rapporteur proposes 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. The paper introduces a definition of vulnerability that moves away from the categories of persons, but rather looks at a multitude of factors (individual, community, household, structural as well as situational) that can influence a person's vulnerability. This definition requires a thorough individual assessment of the factors that both increase vulnerability and contribute to protection. That is, it is the interplay of factors at the individual, household, community, and structural levels, as well as any situational factors that arise, that either increases or decreases the vulnerability of individuals, households, communities, and groups to violence, exploitation, abuse, and rights violations.

Amendment 113

Proposal for a directive Article 20 – title

Text proposed by the Commission

Amendment

Detention of minors and families

Prohibition of detention of minors and families

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recitals 28 and 40. Detention of minors is never in their best interests, including when family units are available. A ban on detention of children should therefore be imposed to protect minors. The application of the concept of 'best interests of the child' moreover entails that parents or legal or customary primary caregivers should never be detained either. See e.g. ECtHR-Abdullahi Elmi and Aweys Abubakar v. Malta, Application No. 25794/13 and 28151/13, 22 February 2017.

Amendment 114

Proposal for a directive Article 20 – paragraph 1

Text proposed by the Commission

Amendment

1. ***Unaccompanied*** minors and families with minors shall ***only*** be detained ***as a measure of last resort and for the shortest appropriate period of time.***

1. Minors and families with minors shall ***not*** be detained.

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recitals 28 and 40 and Article 18. Detention of minors is never in their best interests, including when family units are available. A ban on detention of children should therefore be imposed to protect minors. The application of the concept of 'best interests of the child' moreover entails that parents or legal or customary primary caregivers should never be detained either. See e.g. ECtHR- Abdullahi Elmi and Aweys Abubakar v. Malta, Application No. 25794/13 and 28151/13, 22 February 2017.

Amendment 115

Proposal for a directive Article 20 – paragraph 2

Text proposed by the Commission

2. ***Families detained*** pending removal shall be provided with ***separate*** accommodation ***guaranteeing adequate privacy***.

Amendment

2. Pending removal, ***unaccompanied and separated minors and children with their families*** shall be provided with ***adequate alternatives to detention. Minors shall not be separated from their parents during the procedure, through the detention or removal of a parent. Families shall be kept together unless the child's safety would be at risk. This includes implementing alternatives to detention for the whole family and protecting parents from removal while the procedure is ongoing. Where needed, appropriate care and accommodation arrangements that enable children and families to live together in communities shall be implemented.***

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recitals 28 and 40 and Article 18. Detention of minors is never in their best interests, including when family units are available. A ban on detention of children should therefore be imposed to protect minors. The application of the concept of 'best interests of the child' moreover entails that parents or legal or customary primary caregivers should never be detained either. See e.g. ECtHR- Abdullahi Elmi and Aweys Abubakar v. Malta, Application No. 25794/13 and 28151/13, 22 February 2017.

Amendment 116

Proposal for a directive Article 20 – paragraph 3

Text proposed by the Commission

Amendment

3. Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education. **deleted**

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recitals 28 and 40. Detention of minors is never in their best interests, including when family units are available. A ban on detention of children should therefore be imposed to protect minors. The application of the concept of 'best interests of the child' moreover entails that parents or legal or customary primary caregivers should never be detained either. See e.g. ECtHR-Abdullahi Elmi and Aweys Abubakar v. Malta, Application No. 25794/13 and 28151/13, 22 February 2017.

Amendment 117

Proposal for a directive Article 20 – paragraph 4

Text proposed by the Commission

Amendment

4. Unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age. **deleted**

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recitals 28 and 40. Detention of minors is never in their best interests, including when family units are available. A ban on detention of children should therefore be imposed to protect minors. The

application of the concept of 'best interests of the child' moreover entails that parents or legal or customary primary caregivers should never be detained either. See e.g. ECtHR-Abdullahi Elmi and Aweys Abubakar v. Malta, Application No. 25794/13 and 28151/13, 22 February 2017.

Amendment 118

Proposal for a directive Article 20 – paragraph 5

Text proposed by the Commission

Amendment

5. The best interests of the child shall be a primary consideration in the context of the detention of minors pending removal. **deleted**

Or. en

Justification

This amendment is needed as it is inextricably linked to amendments tabled to recitals 28 and 40. Detention of minors is never in their best interests, including when family units are available. A ban on detention of children should therefore be imposed to protect minors. The application of the concept of 'best interests of the child' moreover entails that parents or legal or customary primary caregivers should never be detained either. See e.g. ECtHR-Abdullahi Elmi and Aweys Abubakar v. Malta, Application No. 25794/13 and 28151/13, 22 February 2017.

Amendment 119

Proposal for a directive Article 22

Text proposed by the Commission

Amendment

[...] **deleted**

Or. en

Justification

As it is unclear what the outcome of the negotiations on the Asylum Procedures Regulation will be in terms of procedural safeguards, it is impossible to fully assess the fundamental rights implications of the proposed return border procedure for this specific category of third country nationals. The merging of the two regimes results in excessive detention periods and

significantly reduced procedural safeguards undermining effective access to an effective remedy. Your Rapporteur considers that the proposed maximum time limit of 48 hours to lodge an appeal is unacceptable in light of the precarious situation of third country nationals subject to a return decision in border procedures and in detention. In such locations access to legal assistance and interpretation, key elements of an effective remedy, is often compromised whereas such access is indispensable in light of the complexity of Court proceedings. The adverse implications on the third country national's judicial protection is further exacerbated by the proposed issuance of return decisions by means of a standard form. Furthermore, the additional conditions required for automatic suspensive effect are not compatible with Article 47 EU Charter and the jurisprudence of the ECtHR and CJEU. Your Rapporteur opposes the proposed extension of the maximum duration of detention to 22 months under the directive for third country nationals whose asylum application has been rejected at the border and are subject to the return border procedure. It has not been demonstrated that such long period of detention is necessary to ensure or contributes to effective return. On the contrary, research on detention practices suggests that chances of effective return decrease significantly after 30 or 60 days of detention, due to inter alia the lack of cooperation of the authorities of the country of return.

Amendment 120

Proposal for a directive

Article 25 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles **6 to 10, Articles 13 and 14(3)**, Article 16, **Article 18 and Article 22** by [six months after the day of entry into force] and with Article 14(1) **and (2)** by [one year after the day of entry into force]. They shall immediately communicate the text of those measures to the Commission.

Amendment

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles **2 to 4, Articles 7 to 13, Article 14(3), Articles 15 and 16 and Articles 18 to 20** by ...[six months after the day of entry into force] and with Article 14(1) by ...[one year after the day of entry into force]. They shall immediately communicate the text of those measures to the Commission.

Or. en

Justification

This amendment ensures coherence with other amendments tabled by the Rapporteur.

EXPLANATORY STATEMENT

The Return Directive adopted in 2008 provides common standards and procedures to return irregularly-staying third country nationals, with a view of promoting an effective return policy. It lays down common rules related to the issuing of return decisions and enforcement of removals, the use of pre-removal detention as well as procedural safeguards stemming from international and EU law, including access to effective remedies, the principle of non-refoulement, the best interests of the child, the primacy of voluntary departure over forced returns, the right to family life, and the use of detention as a measure of last resort.

The European Commission, in its 2014 first evaluation report on the application of the Return Directive, highlighted that the directive had positively influenced the situation regarding voluntary departure and effective forced return monitoring, and contributed to achieving more convergence on detention practices, including the overall reduction of pre-removal detention periods with a wider implementation of alternatives to detention across the EU. Since the adoption of the European Agenda on Migration in May 2015, the objective of increasing the EU return policy's effectiveness has been gaining prominence. However, the effectiveness of returns is measured primarily with the absolute number of return decisions enforced by Member States. Disaggregated data on the number of forced returns and voluntary returns is often not available and qualitative data on the sustainability of returns, including access to reintegration programmes upon return to a third country, is often not collected.

In 2016 the Commission published a Communication on establishing a new Partnership Framework with third countries under the European Agenda on Migration. Recognising that cooperation with third countries is an essential element in ensuring the effectiveness and sustainability of returns, the Commission argues that such cooperation should not necessarily be based on formal readmission agreements. Since the adoption of the Partnership Framework Communication, several informal arrangements have been concluded with third countries, including Gambia, Bangladesh, Turkey, Ethiopia, Afghanistan, Guinea and Ivory Coast.

The Rapporteur regrets that such informal deals are concluded in the complete absence of a duly parliamentary scrutiny and democratic oversight that the conclusion of formal readmission agreements with third countries would warrant, in accordance with the Treaties. As cooperation with third countries is an essential element of achieving a sustainable, dignified and effective return policy, formal agreements, allowing for appropriate democratic oversight should constitute the basis of such cooperation. This would ensure appropriate monitoring through the establishment of legally binding frameworks for cooperation, which can be challenged before courts.

In 2017 the Commission adopted a Recommendation including a set of measures for Member States to make returns more effective and revised the Return Handbook. The Recommendation urged Member States to harmonise their approaches, including through increasing detention and reducing safeguards. There has been no published evaluation of how these recent policies and recommendations have affected the return rate or the fundamental rights of returnees. Nor has there been an impact assessment to examine whether there is a need for additional EU action in the field of return, despite the Commission's commitment, as part of its 2017 Recommendation, to table legislative amendments to the directive only after a thorough evaluation of its implementation.

The Rapporteur regrets the absence of an impact assessment. In light of the above, the Rapporteur has requested that an Impact Assessment is commissioned by the European Parliament in order to ensure informed policy-making. The targeted impact assessment aims at evaluating the expected impacts of the Commission proposal and in particular whether the proposal addresses the challenges identified by the Commission and achieves its objective of an effective and fair return policy; respects the principles of subsidiarity and proportionality; safeguards social rights and human rights guaranteed by international public law and EU law. The Rapporteur also requested opinions from the Fundamental Rights Agency and the European Data Protection Supervisor, who were not consulted previously by the European Commission.

Challenges in ensuring dignified, humane, fair and effective return procedures, while applying the fundamental rights standards enshrined in the Return Directive persist. In light of this, the Rapporteur argues that a comprehensive reform of the return *acquis* should only pursue the goal of increased effectiveness if it can, at the same time, ensure that the steps taken in that direction are accompanied by unambiguous and enforceable fundamental rights safeguards.

The Rapporteur believes the Directive should be amended in line with the following priorities:

1. Prioritise voluntary departure and voluntary return

Voluntary return is an essential pillar of a safe and dignified return policy and as a preferred option for migrants to return in a humane and dignified manner. The Rapporteur stresses that third countries do not tend to cooperate towards the forced returns of their own citizens and that therefore the focus should lie on voluntary departure. The Rapporteur stresses that, as a rule, a period for voluntary departure of 30 days shall be granted to third-country nationals to be allowed to comply with a return decision. Voluntary returns should be allowed at any stage of the procedure and entry bans may not be applied when a person has left voluntarily the territory of the European Union.

2. Increased sustainability and effectiveness of return procedures

The Rapporteur stresses that provision of information and clarity on return procedures is essential in order to increase compliance with return decisions and cooperation between third-country nationals and the authorities responsible for return. To this end, appropriate return management programmes should be established and should include individualised case management to ensure durable solutions for returnees. This should involve appropriate and community-based alternatives to detention and a social work approach, empowering and building trust with migrants to work towards resolution of their case, thus achieving better results for both governments and the migrants involved. National programmes should also 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.

3. Increased safeguards for persons facing return procedures

Access to justice is crucial to ensure sustainable return. The Rapporteur stresses that access to legal aid and interpretation are essential elements of an efficient and sustainable return policy and that an appeal against a return decision should always have a suspensive effect otherwise the applicant lacks an effective remedy.

In line with human rights law, deprivation of liberty should be a measure of last resort, and States should always first explore the possibility of using less restrictive options and develop alternatives to detention. The Rapporteur also notes that available data does not support that lengthy periods of detention would be necessary to stimulate effective returns, as there does not seem to be a clear correlation between the maximum period of detention established under national law and the effectiveness of return from individual Member States. Increased risk of detention can in reality have an opposite effect of more potential returnees absconding.

The report introduces a definition of vulnerability, that moves away from the categories of persons, but rather looks at a multitude of factors that can influence a person's vulnerability. This definition requires a thorough individual assessment of the factors that both increase vulnerability and contribute to protection. Finally, the Rapporteur stresses that appropriate monitoring of forced return operations should be ensured and suggests Member States may have the possibility to rely on a pool of forced return monitors to be established by the European Border and Coast Guard in order to ensure compliance with the obligation to monitor all forced return operations.

3. The best interests of the child as a primary consideration

The Rapporteur introduces clearer safeguards for children facing return procedures and stresses that child rights standards apply to both cases involving unaccompanied and separated children and children within families. Any decision should follow an assessment of the best interests of the child, which should always be the primary consideration in decision-making involving children. The detention of minors is never in their best interests. The Rapporteur introduces a ban on detention for minors and stresses that family unity should never be used to justify the decision to detain accompanied minors.

4. Ensure policy coherence, necessity and proportionality

As it is unclear what the outcome of the negotiations on the Common European Asylum System, and in particular on the Asylum Procedures Regulation will be in terms of procedural safeguards, the Rapporteur considers that it is premature to fully assess the fundamental rights implications of the proposed return border procedure. In light of the above, coupled with the significantly reduced procedural safeguards undermining effective access to an effective remedy as part of the border procedure proposed by the Commission, the Rapporteur proposes a deletion of Article 22.

**ANNEX: LIST OF ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the draft report:

Entity and/or person
Amnesty International
Austrian presidency of the Council of the European Union
Belgian authorities in the context of a mission to the closed repatriation centre 127bis in Steenokkerzeel
Danish Refugee Council (DRC)
Deutscher Anwalt Verein
European Commission
European Council on Refugees and Exiles (ECRE)
European Data Protection Supervisor
European Economic and Social Committee
Academic affiliated to the European University Institute Florence
Frontex
Fundamental Rights Agency
Global Coalition on Migration
Hamerslag & Van Haren Advocaten
International Association of Refugee and Migration Judges (IARMJ)
International Commission of Jurists (ICJ)
International Detention Coalition (IDC)
International Labour Organization (ILO)
International Organization for Migration (IOM)
Jesuit Refugee Service Belgium
Mennonite Central Committee (MCC)
Organisation for Undocumented Workers (OR.C.A.)
Platform for International Cooperation on Undocumented Migrants (PICUM)
Save the Children
The Meijers Committee
The Office of the United Nations High Commissioner for Refugees (UNHCR)
UN Human Rights Office of the High Commissioner (OHCHR)
UNICEF