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# Focus

## Immigration: MEPs and the "return" directive in depth

The adoption by European Union governments and MEPs of the "return directive" on immigration is an important step. Agreed on 18 June the directive sets out rules and procedures that would cover all 27 members of the bloc. One of its proposals is that illegal immigrants could be held in custody for a maximum of six months before repatriation. After passing this first reading legislative phase we gather together a series of articles that look at immigration in the EU.

Read here about the debate and plenary vote on the return directive and about a visit to detention centres in Poland by a delegation from the Civil Liberties Committee in April. It is one of a series of visits to see the conditions of illegal immigrants living in centres around Europe and to compare practices in different countries.

The return directive is the first step towards a European immigration policy which will also cover measures to promote legal immigration by skilled workers (the Blue Card directive) and proposals to punish employers of illegal immigrants and discourage clandestine working, currently being examined by MEPs.

## Parliament adopts directive on return of illegal immigrants

The compromise reached between Parliament negotiators and the Council on the directive on the return of illegal immigrants was approved at first reading by the full Parliament on Wednesday 18 June. This legislation, which is a step towards a European immigration policy, will encourage the voluntary return of illegal immigrants but otherwise lay down minimum standards for their treatment.

The draft directive was adopted by Parliament under the co-decision procedure by 369 votes to 197, with 106 abstentions. The House approved the compromise amendments tabled by the EPP-ED group. Other amendments, by the PES, Greens/EFA and GUE/NGL groups, seeking to make the legislation more favourable to individuals who are the subject of an expulsion order, were thrown out, as was a proposal to reject the directive outright, which was tabled by the last two groups.

The purpose of the legislation is to lay down EU-wide rules and procedures on the return of illegal immigrants. It covers periods of custody as well as re-entry bans but also includes a number of legal safeguards. Member States will be banned from applying harsher rules to illegal immigrants but allowed to keep or adopt more generous rules. In any case, this EU legislation applies only after a decision has been taken by the national authorities to deport an illegal immigrant: each Member State retains the power to decide in the first place whether it wishes to regularise or deport the immigrant.

### Six-month detention period, with possible 12-month extension

Under the legislative text as adopted today, where a decision is taken to deport an individual, a two-step approach follows. First, the deportation decision is immediately followed by a **voluntary departure period**, limited to between seven and thirty days.

Then, if the deportee does not leave, a **removal order** will be issued. If the removal order is issued by a judicial authority which believes the individual in question might abscond, the person can be placed in custody. At present detainees can be held indefinitely in some Member States, including the UK (Ireland has a maximum of 8 weeks), but the directive lays down a **maximum period of custody** of six months, which can be extended by a further 12 months in certain cases. An amendment by the PES group, seeking to reduce this to three months plus a further three months, was rejected.

If a person is placed in custody following an administrative decision, this decision must be approved by the courts "as speedily as possible". The original draft legislation required a court order within 72 hours, while the EP Civil Liberties Committee wanted 48 hours. A PES amendment seeking to restore the deadline of 72 hours was rejected.

A **re-entry ban** would apply for five years maximum if the person is deported after the voluntary return period has expired, or longer if the individual represents a serious threat to public safety. However, Member States retain the right to waive, cancel or suspend such bans.

### UK and Ireland have not opted-in

The UK and Ireland are not affected by the directive because they have not opted into this area of Community law.

The UK government argues that a strong returns regime in the EU is in everyone's interest, including the UK. But it is not persuaded that this Directive delivers the strong returns regime that the EU needs and that's why the UK government has chosen to exercise its right not to participate in this proposal.

Several Member States, argues the UK government, have made the point in the discussions that the Directive makes returning illegally staying third country nationals actually more difficult and more bureaucratic - by introducing restrictions on detention, obligations to provide legal aid to irregular migrants, and increasing the possibilities for challenging the return decision - over and above the strong protections already in place in EU law for refugees and asylum seekers.

## **Children and families to be detained only as a last resort**

The directive also states that **children and families** must not be subject to coercive measures and can only be held in custody as a last resort. Unaccompanied minors may only be deported if they can be returned to their family or to "adequate reception facilities" in the state to which they are sent.

## **Emergency situations**

An article inserted by the Council provides for greater flexibility for the authorities in "emergency situations". If an "exceptionally large number" of third-country nationals places "an unforeseen heavy burden" on the administrative or judicial capacity of a Member State, that state may decide to allow longer periods for judicial review as well as less favourable conditions of detention.

Member States must also take account of the situation of the individual's country of origin, under the principle of *non-refoulement* (which states that no state may send a refugee to a country where his/her life or liberty may be endangered). Following a recent ruling by the Court of Justice, the European Parliament will in future decide jointly with the Council (under co-decision) which countries are deemed "safe".

## **Legal aid subject to the terms of the "procedure" directive**

The directive provides for **legal aid** to be granted to illegal immigrants who have no resources, albeit "in accordance with relevant national legislation or rules regarding legal aid" and with the "procedure directive" of 2005 on aid to asylum seekers.

The Community **return fund**, set up for the period 2008-13 with funding of €676 million, may also be used to finance legal aid.

Once the directive is adopted, Member States will have 24 months to bring it into effect. First of all, ministers have to approve the agreement officially at a Council meeting in July

## Return Directive debate: political groups hold different positions ahead of vote

17 June, Strasbourg; MEPs debated the text on the Return directive as negotiated between the EP rapporteur Manfred WEBER (EPP-ED, DE) and the Council in Strasbourg. The groups in favour of the text stress the importance of moving forward with a European policy on migratory flows, while those opposing it underline that the rapporteur has given too much to the Council and the Parliament must amend the text.

Most speakers supported the need for a directive, but while the EPP-ED, ALDE and UEN groups support the compromise text, the PES want some changes to boost immigrants' rights, and the Greens/EFA, GUE/NGL and IND/DEM will vote against the directive.

### Council

The debate was opened by Slovenian Interior Minister Dragutin **MATE**, speaking for the Council Presidency-in-Office, who highlighted the fact that the return directive was the first EP-Council legislative act on migration. One of the problematic areas in the negotiations in Council had been the maximum period of detention, but the six month period laid down in the directive would now apply in all Member States.

However, the biggest difficulty had been legal aid, particularly as the Member States had differing experiences, depending on whether they were near to or far from migratory flows. The minister also stressed that the directive protected vulnerable groups such as children. On all these points he argued that the compromise embodied in the directive "represents progress" and he urged the EP to approve the text.

### Commission

Commissioner Jacques **BARROT**, who is expected to take over the justice, freedom and security portfolio at the Commission this week, said the Commission advocated "an integrated approach to immigration". If nothing was done, there was a danger of a "vicious circle" in migration policy. He emphasised that "the directive is in line with the European Convention on Human Rights", it "gives priority to voluntary returns" and "it protects the rights of children and families". The Commission would monitor implementation of the legislation to ensure that the standards of the European Convention and the UN Declaration on Human Rights were observed.

Parliament's rapporteur, Manfred **WEBER** (EPP-ED, DE), stressed that this was "a complex topic" but that in the Civil Liberties Committee a large majority had come out in favour of the compromise. He stressed that the directive dealt not with asylum but with immigration and he challenged some of the legislation's critics, since he saw it as a way to ensure that "slavery in the EU comes to an end". The directive includes protection for "children and unaccompanied minors, access to health and education systems and the use of detention only when necessary". So "why the mud-slinging?", for example from NGOs. Moreover, all the Council of Europe's guidelines were included in the directive, so why was that body being critical? In conclusion, Mr Weber said that what he wanted to see was "a strong, humanitarian Europe".

### Political group speakers

On behalf of the EPP-ED group, Agustín de Mera **GARCIA CONSUEGRA** (ES) described the directive as "a firm and decisive step" towards regulating legal immigration. A key objective was to encourage voluntary returns. "Forced return will only be used as a last resort" and there would be "protection of fundamental rights, access to language services and a right of appeal". At present there were places in the EU where immigrants could be held in custody indefinitely but the directive would change that. He also stressed the clear distinction between immigration and asylum legislation and the fact that the Court of Justice would

have jurisdiction.

Martine **ROURE** (PES, FR) said that her Group would not accept the compromise put forward, not because Socialists are against a returns policy, but because the compromise does not provide adequate protection of fundamental rights.

She said it was wrong to say that the directive would allow people to come out of an illegal situation or that it would give people the right to stay. The rights established in the directive are not binding, she said, and would not allow for an improvement in detention in EU.

She said that MEPs should apply all their powers through co-decision to improve the fate of detainees.

Jeanine **HENNIS-PLASSCHAERT** (ALDE, NL), argued that the compromise package made it clear that Member States should maintain more favourable standards if they already have them. Indeed, she said, the Council agreed to a political statement in the agreement on the directive stressing that the directive cannot be used to lower standards.

"Do we want a directive or not?" she asked. "Many Member States would be happy if this directive died through lack of agreement, so the irony is that if we don't agree this compromise package, we would be supporting those Member States" At present no EU legislation exists - with this package we would have infringement procedures, Commission report, European Parliament monitoring.

Jean **LAMBERT** (Greens/EFA, GB) said that her group could not accept the negotiated text. The text simply does not meet the standards that were set out at the beginning, she said. On the length of detention, Ms Lambert was concerned about what long periods of detention can do to the mental health of the people detained. Family life is put at risk. Ms Lambert stated that her group was concerned about where would be returned to citing concerns about handshakes between Prime Minister Berlusconi and Colonel Gadhafi.

Andrzej Tomasz **ZAPĄŁOWSKI** (UEN, PL), argued that, before we speak about legal protection for families from outside the EU, we should be hearing something about saving our own culture on families, which has been a model for the rest of the world..

Giusto **CATANIA** (GUE/NGL, IT) said that "the directive is a disgrace, an insult which aims at ruling out thousands of years of welcoming people, of openness in Europe. It seeks to limit free circulation. We are talking about 18 months not 6 months detention without having committed any crime. Detained in degrading and humiliating conditions as the Committee has seen in various detention centres. This directive is being forced upon us by Governments. We are being dictated to by the Council "Accept it or go away" It is not co-decision. What are people outside the Parliament saying about this directive? Amnesty International, Council of Europe .. all saying do not approve it. There is a need to consult wider. People are dying to get into the EU, 12,000 have died over recent years. The Mediterranean is becoming a cemetery. We should not approve this directive.

Hélène **GOUDIN** (IND/DEM, SE) said that "If all doors are closed people may well try getting in through the back door. The EU is becoming a Fortress Europe. We see every day pictures of people paying with their lives. Many human rights organisations have criticised this directive: Caritas and Amnesty International for example. There is no European Added Value in creating this inhuman and expensive situation. The result of this ban or return will lead to an increase in illegal immigration, more human trafficking and a hatred for the system we are setting up in our western world. Human rights organisations have warned us. We need an international effort for Human Rights."

Frank **VANHECKE** (NI, BE) said that it is clear there is currently a total lack of co-ordination in tackling this problem. That it is difficult to deal with is evidenced by the many different reactions to the directive. Directive offers choice between deportation or legalisation. I want a genuine directive to stem the tide but this directive does not move even one step in the right direction.

## Responses of Council, Commission and EP rapporteur

Replying to the debate **for the Council, Mr Mate** made or re-emphasised a number of points. He said the return directive dealt with immigration, not asylum (which is governed by a separate directive in force since 2003). It was wrong to say that the standard maximum period for detention is 18 months: the normal maximum is six months, to be extended to 18 only in special circumstances. No Member State will be allowed to adopt rules on detention that worsen the current situation. Children will have greater protection than at present (a point that had been difficult to negotiate with the Member States).

For many Member States the compromise was barely acceptable and they would prefer to deal with these matters at national level. If there was no first-reading agreement, some states would seek to introduce tougher measures at second reading. Overall the text was a compromise that avoided extremes and did not represent the position of any single country. Ultimately, he pointed out, "all of us are accountable to our electorates".

**For the Commission, Jacques Barrot** said the return directive would not exist in isolation but was part of a planned package on immigration and asylum. One benefit of the directive was that it created a Community-based legal framework, allowing scrutiny by the Court of Justice and the European Parliament. The EP had achieved progress, notably in the provisions protecting child immigrants. He pointed out that the EU had a fund of around €700 million to help with the costs of legal aid and health care. Lastly, he would ensure that in the implementation of the directive human rights were fully respected.

Winding up the debate, **EP rapporteur Manfred Weber** rejected the accusation that the EU was "guilty of mass graves in the Mediterranean". He saw the directive as the best available compromise, predicting that even the NGOs and MEPs who were critical of it "will use the provisions of this directive to go to the Court of Justice to gain benefits for immigrants". Concluding, he said "tomorrow's vote is not on whether this directive is ideal, but on whether it represents progress for the EU. The answer is Yes.



## Return of illegal immigrants debated as MEPs weigh up "return directive"

The first attempt to set common standards and procedures for the return of illegal immigrants currently in the European Union will be debated Tuesday. The issue is an emotive one and agreement on this draft directive would be a step towards a unified approach towards immigration. At present there is cooperation but no single policy between EU members. Here we look ahead at the debate on Tuesday and vote on Wednesday and ask after 3 years of negotiation, is an agreement finally in reach?

At the start of June European Union Ministers reached an agreement that is broadly backed by several of parliament's political groups. This slightly amends a report drafted by German Christian Democrat MEP Manfred Weber and approved by the Civil Liberties Committee in September last year.

### 6 months of detention envisaged

One of the main issues is the amount of time that a person can be held in detention before being sent back to their country of origin, a transit country or another country.

At present it varies from 32 days in France to 20 months in Latvia and unlimited duration in 7 countries. In the text approved by EU Ministers a maximum 6 months maximum period is envisaged, extendable by a further 12 months. Another issue is that a deportee may be banned from re-entering EU territory for a maximum period of 5 years. Included in the text is a voluntary departure period before a removal order was eventually issued.

### Where do the political groups stand?

The largest group in the Parliament, the centre-right EPP-ED group supports the current compromise as they believe it is stepping up the EU's effort to fight illegal immigration. For the Liberal ALDE group the compromise is a step in the right direction, whilst the Union of Europe of the Nations (UEN) also supports the compromise on the return directive.

However, for the Greens/EFA and the left-wing GUE/NGL the current text is not acceptable. The Socialist PES group (the second largest in the Parliament) also say they will table amendments to reinforce respect for human dignity in the text.

### If approved what happens next?

If the directive is approved then EU members have 24 months to bring it into effect except for the clause on legal aid which is 36 months. If agreement is not found then it will be put to a 2nd reading unless Ministers agree with the changes MEPs have adopted through amendments. However, should it be enacted there is one country - the United Kingdom - that will not be affected as the country has not opted in to this part of community law.

You can read more about this issue through the press releases and background documents found below. You can also read about a visit by a delegation of MEPs from the Civil Liberties Committee to detention centres in Denmark this April - one in a series of visits to see the real conditions for illegal immigrants living in centres around Europe.

(Update 18 June 2008 ) The Parliament on Wednesday backed the compromise negotiated between rapporteur Manfred Weber (EPP-ED, DE) and the Council on the "return directive" , adopting the resolution with 369 votes in favour, 197 against and 106 abstentions. Read more via link to press releases (debate and vote) and listen to extracts from the debate via audio files.

## Illegal immigration: journalists quiz MEPs on emerging deal

Immigration is one of the most pressing and sensitive issues the countries of the European Union have to face. In June MEPs must vote on a directive which will set out common rules and procedures for the return of illegal migrants. MEPs and EU Ministers in the Council have already changed the original 2005 proposals by the Commission. On 7 May a number of Members laid out their very different views on how Europe should proceed to journalists in a seminar organised by parliament's press service.

The June vote by the full House is necessary as under the codecision procedure parliament and the Council have equal legislative weight. A group of MEPs have been negotiating the text with the Council over the past few months to reach a compromise.

### What a possible compromise deal could consist of

A possible deal - which is being brokered by the Slovenian Presidency of the EU - could be along the following lines: Namely, it would establish a fixed period for voluntary departure after which an expulsion order applies. It could also say that immigrants could be held for up to 6 months with a possible extension of a further 12 months - countries that have shorter detention periods will be able to keep them. In addition it could be that those who are expelled will not be allowed to enter any of the 27 EU states for 5 years.

In terms of human rights and protecting people when they are in custody, then any deal may include measures to ensure that living accommodation should take into account those with families and children. Access to health services would also be guaranteed for those in need. Finally, NGOs are expected to play a role in returning people to their place of origin.

### MEPs differ on way forward

In the seminar MEPs set out their views to assembled journalists with clear divergences of views emerging. Parliament's rapporteur on the issue is German MEP Manfred Weber (EPP-ED). He told the seminar that "we have to free these people from their illegal situation". He said that "States have to decide what they are going to do with these illegal immigrants, either they give them legal residence permits (as some have done) and render them legal or send them back". He called the "current situation of illegality the most inhumane and degrading situation that you can imagine, so we have to put an end to it".

However, the mooted compromise met sharp opposition from Italian MEP Claudio Fava on behalf of the Socialist PES group and his fellow countryman Giusto Catania for the GUE/NGL group. They saw it as depriving immigrants of their personal freedom and applying prison punishment to them for administrative breaches. British Green MEP Jean Lambert also expressed concerns over the proposal, for example regarding transit countries and the re-entry ban.

Dutch Liberal MEP Jeanine Hennis-Plasschaert told the seminar that "the compromise is not perfect but an important step forward" stressing that there is need for common EU legislation in this field to tackle illegal immigration. Italy's Mario Borghesio for the UEN also supported the proposed compromise between the parliament and the Council.

Delicate negotiations will continue with the parliament due to debate and vote on a final agreement when it meets in Strasbourg for its June session.



## Poland's closed centres open to MEPs

In search of a better life, thousands of immigrants and asylum seekers risk their lives to try and get into the European Union each year. Many end up in detention centres around the borders of Europe - their future prospects uncertain. This week a group of MEPs from the Civil Liberties Committee were in Poland to see two centres for themselves and assess the conditions. They found conditions better than they had been led to believe although improvement is still possible.

The visits to the closed centres of Lesznowola near Warsaw and Biala Podlaska near Bialystok were part of a series of visits around Europe to assess the conditions of inmates. Such visits are a crucial part of wider preparations for a May vote by the European Parliament on a proposed Directive on the return of illegal immigrants. It proposes common standards and procedures in EU countries on the temporary custody and return of non-EU nationals. This will be a crucial vote for MEPs as they will have equal weight in the law-making process with European Union Ministers meeting in the Council. German MEPs Manfred Weber (EPP-ED) has already drafted a report on this issue for the Civil Liberties Committee.

The majority of migrants in the centres are from Poland's neighbours Ukraine and Belarus, with over 90% of asylum seekers from Chechnya. The number of people trying to enter Poland has risen since the country joined the passport-free Schengen zone last year. This means that once someone is on Polish territory they can travel freely to other EU states.

The man who headed the delegation - French EPP-ED Member Patrick Gaubert - told us that conditions in the camp were better than reported. However, for British Liberal Bill Newton Dunn the existence of the Lesznowola centre raised questions about the EU's whole approach: "it underlines we have uncontrolled immigration all over Europe, it is a big European problem and we clearly need a policy to control the amount of immigration". He also said that the experience in Poland could offer lessons as the Union tries to build an EU asylum policy.

Polish Socialist Genowefa Grabowska, also a member of the fact finding mission, confirmed that Poland is a transit country for migrants looking for better economic conditions elsewhere in Europe. She described the Lesznowola centre as having six doctors specialising in different fields, a library and a Prayer room. Despite this she said, "there is still a lot to do to keep up with the highest EU standards". German Socialist Wolfgang Kreissl-Dörfler described the conditions as "clean and well kept".