"Return" directive: first reading vote in the European Parliament

Parliament will put a draft directive establishing common EU rules on the deportation of illegal immigrants to a first-reading plenary vote in Strasbourg on 18 June. This draft legislation (known as the "return" directive) lays down a maximum period of custody and a ban on re-entry into the EU by deportees. Parliament has been working on the directive on an equal footing with the Council under the co-decision procedure.

The European Union could soon have a common immigration policy covering the following complementary areas: the fight against illegal immigration (the "return" directive); measures to promote legal immigration by skilled workers (the Blue Card directive); and a third directive, currently being examined by MEPs, that would punish employers of illegal immigrants and thus discourage clandestine working. MEPs have meanwhile visited several detention centres for illegal immigrants around Europe to compare practices in different countries.

A policy several years in the making

The idea of a common European policy on immigration was first mooted at the Seville European Council in 2002. The Amsterdam Treaty, in force since 1999, already provided the legal basis for a common policy. At Seville heads of state or government of the EU "15" recognised that immigration and asylum questions could not be solved purely at national level.

MEPs visit detention centres

In parallel to their legislative work, members of the Committee on Civil Liberties, Justice and Internal Affairs (LIBE) have visited several detention centres to see the real conditions in which illegal immigrants live. Delegations of MEPs have visited Italy, Spain, France, Malta, Greece, Belgium, the UK, Poland, Denmark and lastly Cyprus in late May. The aim was check whether existing Community law is being observed in the Member States. A report will be presented in the autumn by Martine Roure (PES, FR).

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Background

Encouraging immigrants to return voluntarily

The "return" directive, laying down rules on the deportation of illegal immigrants, is the first of the three directives to reach the plenary stage at Parliament.

The Commission's original text seeks to combat illegal immigration through a two-step approach: a decision to expel an immigrant will be immediately followed by a "voluntary departure" period; if the deportee does not leave, a removal order will then be issued. If the removal order is issued by a judicial authority, which believes the individual in question might abscond, that person can be placed in detention. The directive lays down a maximum custody period - at present detainees can be held indefinitely in some Member States - as well as guaranteed basic living conditions, including the right to health care and to education for children.

The Commission text also limits the use of coercive measures and provides for a number of legal guarantees and appeals for deportees, to prevent arbitrary or mass expulsions.

A "re-entry ban" may be imposed on a deportee and that person may not re-enter EU territory again during the period of the ban.
Background

**Negotiations with the Council**

At the European Parliament, the Civil Liberties Committee decided its position in September 2007, when it adopted a report drafted by Manfred Weber (EPP-ED, DE). In this report, MEPs reduced the maximum period of custody before deportation to three months (as against six in the Commission proposal), but they also decided it could be extended to 18 months if the individual concerned did not co-operate or was convicted by the courts.

At the Council, the delegations representing Member States on the Committee of Permanent Representatives (COREPER) have also been examining the Commission proposal. Regular “trialogues” between the Council presidency, the Commission and the EP rapporteur brought the different sides closer together.

After discussion, a text was approved by the Council on Thursday 5 June. In Parliament, it is backed by several groups. It will be put to a plenary vote on 18 June, in the form of amendments to the Weber report.
Background

Controversy over custody period and re-entry ban

According to this text, the “voluntary return” period would be limited to between seven and thirty days. The period of custody would be six months maximum, but could be extended to 18 in the cases described above and if the administration of the third country concerned was excessively slow. The re-entry ban would apply for five years, or longer if the individual represents a serious threat to public safety. Lastly, the text takes account of MEPs’ demands regarding children and families: they must not be subject to coercive measures and alternatives to custody must be proposed for them. Unaccompanied minors may only be deported if they can be returned to their family or to “adequate reception facilities” in their state of return.

Member States must also take account of the situation of the individual’s country of origin, under the principle of non-refoulement (which says 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: Parliament’s red line

The main stumbling block between Parliament and Council is the granting of legal aid to illegal immigrants who have no resources. Under the original proposal this was to be mandatory but the Council wanted to make it optional, given the financial burden it would impose on the Member States. The compromise proposed to MEPs makes it mandatory to provide such aid, 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, could also be used to finance legal assistance.

Current maximum custody periods in the Member States

France 32 days
Cyprus 32 days
Italy 40 days
Spain 40 days
Ireland 8 weeks
Portugal 60 days
Luxembourg 3 months
Greece 3 months
Slovenia 6 months
Slovakia 6 months
Czech Republic 6 months
Hungary 6 months
Romania 6 months
Belgium 8 months
Austria 10 months
Poland 12 months
Malta 18 months
Germany 18 months
Latvia 20 months

Unlimited duration: Denmark, Estonia, Finland, Lithuania, Netherlands, United Kingdom, Sweden.