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Committee on Development

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OPINION

of the Committee on Development

for the Committee on Civil Liberties, Justice and Home Affairs

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
(COM(2005)0391 – C6-0266/2005 – 2005/0167(COD))

Draftswoman: Marie-Arlette Carlotti

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SHORT JUSTIFICATION

In this directive, the Commission proposes the gradual implementation of a common return policy for illegally staying third-country nationals. The European Union must effectively contribute to the creation of a balanced and fair return policy, as there is a need for common return standards which ensure the safe and dignified return of illegally staying third-country nationals. A gradually harmonised return policy must therefore be based on clear, transparent and fair rules that are compatible with the fundamental freedoms of the persons concerned and with human rights. Although the Commission recognises this, certain provisions of the proposal for a directive do not appear to be fully in line with the principle of proportionality and respect for fundamental rights.

Moreover, a return policy of this type must be flanked with measures facilitating migrants' access to legal residence. The combating of illegal immigration must by necessity be supplemented by the opening of legal migration channels, and the positive role of migrants for the host country must be recognised and highlighted. Above all, the rights of migrants must be upheld, since freedom of movement is a fundamental freedom. Among those rights, participation in the life of the host society and a genuine chance of integration must effectively be taken into account and promoted.

It is also essential to recognise and promote the role of migrants in the combating of poverty and in development. That is why migration must be factored into national and international strategies for the eradication of poverty with a view to achievement of the Millennium Goals. That entails tackling the underlying causes of migration, based on a principle of solidarity and close cooperation with third countries and regional organisations. Assistance to developing countries must not be tied to respect for re-entry clauses or the effective management of migratory flows. Responsibility for migration cannot be placed solely on the countries of origin and transit, especially in the case of developing countries.

The European Union must adopt a suitable joint response to migration that includes flanking measures and measures for the integration of migrants. More specifically, with regard to return, it is essential not to overlook the psychological effects of migration and expulsion.

To ensure that such return is dignified, there is a need, *inter alia*, to:

- award priority to voluntary return – by allowing migrants a reasonable time to plan a smooth return, which involves providing a number of guarantees over that period – and avoid removal measures;

- provide third-country nationals with accurate, transparent, up-to-date and accessible information;

- establish effective procedural safeguards that enable migrants to reveal their personal circumstances and the authorities to adopt an individual-level approach; the officials and judges responsible must be provided with training in this area;

- only use detention measures in the last resort and ensure that periods of detention are short, objectively justified and subject to judicial controls; ensure dignified

detention conditions and respect for migrants' rights;

- promote the integration of migrants into the country of origin and support their plans for return;

- assess the impact European return policy has in developing countries.

The European Union ought to have a return policy that is based on the principle of solidarity and shared responsibility with developing countries. It must be mindful of the effects of its policy in developing countries and of the risk of refoulement, and adopt a cohesive and horizontal migration policy in which development aspects are taken into account in all areas of activity. It must also ensure that migrants who return do so within the framework of a tenable scheme that will enable them to reintegrate into their country of origin and participate in society there.

AMENDMENTS

The Committee on Development calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission[1]	Amendments by Parliament
Amendment 1 Title	
Proposal for a Directive of the European Parliament and the Council on common standards and procedures in Member States for returning ***illegally*** staying third country nationals	Proposal for a Directive of the European Parliament and the Council on common standards and procedures in Member States for returning ***irregularly*** staying third country nationals *If adopted, this amendment shall apply throughout the text and to all language versions, which use the word 'illegal' or an equivalent word.*

Justification

The aim of this amendment is to replace the word 'illegal' in the text of the proposed directive with the word 'irregular'.

[1] Not yet published in OJ.

Amendment 2
Citation 1a (new)

.	***- having regard to the Council of Europe guidelines on forced return (CM(2005)0040),***

Amendment 3
Recital 4

(4) Member States should ensure that the ending of illegal stay is carried out through a fair and transparent procedure.	(4) Member States should ensure that the ending of illegal stay is carried out through a fair and transparent procedure***; however, action should first be taken at source to prevent entry from being gained illegally as a matter of necessity (in the absence of legal channels of entry).***

Justification

Regularisation is only an ad hoc measure taken in response to emergency situations as part of national immigration policies. It is not a long-term solution to a broader problem, namely that of migration policies viewed from a European perspective. The above addition stems from the need to identify more clearly the realities of the Member States' current approach to immigration.

Amendment 4
Recital 5

(5) As a general principle, a harmonised two-step procedure should be applied, involving a return decision as a first step and, where necessary, the issuing of a removal order as a second step. However, in order to avoid possible procedural delays, Member States should be allowed to issue both a return decision and a removal order ***within a single act or decision***.	(5) As a general principle, a harmonised two-step procedure should be applied, involving a return decision as a first step and, where necessary, the issuing of a removal order as a second step. However, in order to avoid possible procedural delays, Member States should be allowed to issue both a return decision and a removal order ***simultaneously, but*** in the form of ***two separate acts or decisions, the implementation of the act or decision concerning removal being subject to the expiry of the deadline for voluntary return.***

Justification

While it is understandable that for practical reasons the act/decision concerning removal should be taken at the same time as the act/decision concerning return, it is essential to stress the difference between them, and the subsidiary nature of removal in relation to voluntary return. An easy and workable way of making that separation is to have, at least formally, two acts/decisions, one of which is subject to a contingent condition - i.e. expiry of the deadline for voluntary return.

Amendment 5
Recital 6

(6) ***Where there are no reasons to believe that this would undermine the purpose of a return procedure,*** voluntary return should be preferred over forced return and a period for voluntary departure should be granted.	(6) ***V***oluntary return should be preferred over forced return and a period for voluntary departure should be granted.

Justification

The first part of the recital is very vague, and emphasis should be placed on the fact that voluntary return is indeed the priority.

Amendment 6
Recital 10

(10) The effects of national return measures should be given a European dimension by establishing a re-entry ban ***preventing re-entry into the territory of all the Member States***.	(10) The effects of national return measures should be given a European dimension by establishing a re-entry ban.
The length of the re-entry ban should be determined with due regard to all relevant circumstances of an individual case and should not normally exceed 5 years. In cases of serious threat to public policy or public security, Member States ***should be allowed*** to impose a ***longer re-entry ban***.	***(deletion)*** In cases of serious threat to public policy or public security, Member States ***may*** impose a re-entry ban.

Justification

The return decision and subsidiary removal order are a sufficient penalty in response to

irregularly-staying third-country nationals. Apart from exceptional cases, supplementing that decision with a re-entry ban would seem to be out of proportion.

Amendment 7
Recital 11

(11) The use of temporary custody should be limited and bound to the principle of proportionality. Temporary custody should only be used if necessary to prevent ***the*** risk of absconding and if the application of less coercive measures would not be sufficient.	(11) The use of temporary custody should be limited and bound to the principle of proportionality. Temporary custody should only be used if necessary to prevent ***a serious*** risk of absconding and if the application of less coercive measures would not be sufficient.

Amendment 8
Recital 15

(15) Member States should have rapid access to information on return decisions, removal orders and re-entry bans issued by other Member States. This information sharing should take place in accordance with [Decision/Regulation … on the establishment, operation and use of the Second Generation Schengen Information System (SIS II)].	15) Member States should have rapid access to information on return decisions, removal orders and re-entry bans issued by other Member States. This information sharing***, based on strict respect for the right to privacy and the protection of personal data,*** should take place in accordance with [Decision/Regulation … on the establishment, operation and use of the Second Generation Schengen Information System (SIS II)]. ***Access to and use of such information should be subject to authorisation from the judicial authorities and limited to the purposes of this Directive***.

Amendment 9
Recital 17

(17) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic	(17) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic

features, language, religion or belief, political or any other opinions, membership of a national minority, property, birth, disability, age or sexual orientation.	features, language, religion or belief, political or any other opinions, membership of a national minority, property, birth, disability, age or sexual orientation***, in full compliance with international conventions and avoiding inhuman and degrading treatment and in a manner reflecting the specific characteristics and needs of each individual.***

Justification

Greater clarity is required as to the protection of human rights under this directive.

Amendment 10
Recital 18

(18) In line with the 1989 United Nations Convention on the Rights of the Child, the "best interests of the child" should be a primary consideration of Member States when implementing this Directive. In line with the European Convention on Human Rights, respect for family life should be a primary consideration of Member States when implementing this Directive.	(18) In line with the 1989 United Nations Convention on the Rights of the Child, the "best interests of the child" should be a primary consideration of Member States when implementing this Directive. ***Accordingly, minors may never, in the European Union or in places funded by the European Union and/or by any Member State, be held in detention facilities or under conditions in which their freedom is restricted.*** In line with the European Convention on Human Rights, respect for family life should be a primary consideration of Member States when implementing this Directive.

Amendment 11
Recital 19

(19) 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.	(19) 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. ***Accordingly, any form of coercive detention of refugees, third-country nationals covered by humanitarian protection***

	arrangements and asylum seekers is prohibited.

Justification

In accordance with current international provisions, the above needs to be specified.

Amendment 12
Recital 20a (new)

.	***(20a) This directive sets out to define a policy on the return of illegally staying third-country nationals based on solidarity and responsibility-sharing with the countries of origin***.

Amendment 13
Article 2, paragraph 1

1. This Directive applies to third-country nationals staying illegally in the territory of a Member State***, i.e.***	1. This Directive applies to third-country nationals staying illegally in the territory of a Member State who do not fulfil the conditions of entry as set out in Article 5 of the Convention Implementing the Schengen Agreement**.**
(a) who do not fulfil ***or who no longer fulfil*** the conditions of entry as set out in Article 5 of the Convention Implementing the Schengen Agreement***, or*** ***(b) who are otherwise illegally staying in the territory of a Member State.***	

Justification

With a view to implementing common standards in connection with returns policies, separate provisions need to be introduced for persons entering EU territory for the first time and persons to whom a Member State has in the past granted a residence permit or some form of humanitarian protection. To this end, provision should be made for a separate directive for third-country nationals who have in the past been granted a residence permit or received some form of humanitarian protection

Amendment 14
Article 2, paragraph 2

2. Member States may decide not to apply this Directive to third-country nationals who have been refused entry in a transit zone of a Member State. However, they shall ensure that the treatment and the level of protection of such third-country nationals is not less favourable than set out in Articles 8, 10, 13 and 15.	***Deleted***

Justification

The Directive must apply even if the third-country national does not enter a transit zone, since all risk of refoulement should be averted.

Amendment 15
Article 2, paragraph 3, point (b a) (new)

	(ba) who have initiated regularisation procedures;

Justification

Given the special conditions applying to such persons, they should be excluded from the directive's scope

Amendment 16
Article 2, paragraph 3, point (b b) (new)

	(bb) who are minors;

Justification

Given the special conditions applying to such persons, they should be excluded from the directive's scope.

Amendment 17
Article 2, paragraph 3, point (b c) (new)

	(b c) who, despite not having reached the age of majority, need to prolong their stay on the territory of a Member State for study purposes.

Justification

Given the special conditions applying to such persons, they should be excluded from the directive's scope.

Amendment 18
Article 3, point (c)

(c) 'return' means the process of going back to one's country of origin***, transit or another third country, whether voluntary or enforced***;	(c) 'return' means ***exclusively*** the process of going back to one's country of origin;

Justification

The proper acceptance of the term 'return', as borne out by authoritative sources in the relevant sector, means exclusively return to the country of origin. Any distortion of this meaning is at odds with the original definition of 'return'.

Amendment 19
Article 3, point f a) (new)

	f a) 'serious risk of absconding' means the existence of serious grounds, to be defined on an individual and objective basis and assessed by the courts, that enables it to be established that the addressees of a return decision are very likely to abscond;

Justification

The mere fact that a third-county national is staying irregularly in a Member State cannot constitute a risk of absconding. The Member State must demonstrate - and provide solid proof of - the existence of a serious risk of absconding.

Amendment 20
Article 5

Family relationships and best interest of the child When implementing this Directive, Member States shall take due account of the nature and solidity of the third country national's family relationships, the duration of his stay in the Member State and of the existence of	***Social and family ties*** and best interest of the child When implementing this Directive, Member States shall take due account of the nature and solidity of the third country national's family relationships, ***his ties with the host country, any steps taken to regularise his***

family, cultural and social ties with his country of origin. They shall also take account of the best interests of the child in accordance with the 1989 United Nations Convention on the Rights of the Child.	***stay,*** the duration of his stay in the Member State and of the existence of family, cultural and social ties with his country of origin. They shall also take account of the best interests of the child in accordance with the 1989 United Nations Convention on the Rights of the Child. ***Unaccompanied minors may not be removed or detained. Families accompanied by one or more minors should not as a matter of principle be placed in temporary custody, and priority should be given to alternatives to temporary custody.***

Amendment 21
Article 6, paragraph 1

1. Member States ***shall issue*** a return decision to any third-country national staying illegally on their territory.	1. Member States ***may issue*** a return decision to any third-country national staying illegally on their territory***, with the exception of unaccompanied minors***.

Justification

Return decisions must remain optional for the Member States. They must allow for a period for return of at least six weeks: prioritising voluntary return also makes it possible to plan for a return. The best interests of the child dictate that the expulsion of unaccompanied minors be prohibited.

Amendment 22
Article 6, paragraph 2

2. The return decision shall provide for an appropriate period for voluntary departure of ***up to four weeks, unless there are reasons to believe that the person concerned might abscond during such a period***. Certain obligations aimed at avoiding ***the*** risk of absconding, such as regular reporting to the authorities, deposit of a financial guarantee, submission of documents or the obligation to stay at a certain place may be imposed for the duration of that period.	2. The return decision shall provide for an appropriate period for voluntary departure of ***six*** weeks ***at the minimum***. Certain obligations aimed at avoiding ***a serious*** risk of absconding, such as regular reporting to the authorities, deposit of a financial guarantee, submission of documents or the obligation to stay at a certain place may be imposed for the duration of that period.

Justification

See Amendment 21.

Amendment 23
Article 6, paragraph 3

3. The return decision shall be issued as ***a separate*** act or decision ***or together with*** a removal order.	3. The return decision shall be issued as ***an*** act or decision ***separate from*** a removal order. ***The removal order, while being separate in form, may be issued simultaneously with the return decision, but shall only be valid if the conditions set out in Article 7(1) are satisfied. Cancellation of the return decision shall result in automatic cancellation of the removal order.***

Justification

See Amendment 21.

Amendment 24
Article 6, paragraph 4

4. Where Member States are subject to obligations derived from fundamental rights as resulting, in particular, from the European Convention on Human Rights, such as the right to non-refoulment, the right to education and the right to family unity, no return decision shall be issued. Where a return decision has already been issued, it shall be withdrawn.	4. Where Member States are subject to obligations derived from fundamental rights as resulting, in particular, from the European Convention on Human Rights, ***the Geneva Convention on the Status of Refugees, the UN Convention against Torture and the 1989 UN Convention on the Rights of the Child,*** such as the right to non-refoulment, the right to education***, the right to treatment in the event of serious illness*** and the right to family unity, no return decision shall be issued. Where a return decision has already been issued, it shall be withdrawn***.***

Justification

To ensure that all the necessary references are included.

Amendment 25
Article 6, paragraph 5

5. Member States may, at any moment decide to grant an autonomous residence permit or another authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory. In this event no return decision shall be issued or where a return decision has already been issued, it shall be withdrawn.	5. Member States may, at any moment decide to grant an autonomous residence permit or another authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory***, incorporating in their immigration policies a high level of protection for the health of third-country nationals*** In this event no return decision shall be issued or where a return decision has already been issued, it shall be withdrawn**.**

Justification

Member States should provide healthcare for illegal immigrants, extending their immigration policies through the addition of appropriate financial resources for that purpose. Usually, illegal immigrants enter the Member States and live in squalid conditions which have serious effects on their health.

Amendment 26
Article 6, paragraph 6

6. Where a third-country national staying illegally in the territory of a Member State holds a valid residence permit issued by another Member State, the first Member State shall refrain from issuing a return decision where that person goes back voluntarily to the territory of the Member State which issued the residence permit.	6. Where a third-country national staying illegally in the territory of a Member State holds a valid residence permit issued by another Member State, the first Member State shall refrain from issuing a return decision where that person goes back voluntarily to the territory of the Member State which issued the residence permit. ***This provision shall apply until such time as all the procedures for the mutual recognition at European level of residence permits are introduced.***

Justification

Before a European returns policy is adopted, the Union needs to introduce a legislative framework governing legal channels of entry to European territory.

Amendment 27
Article 6, paragraph 8

8. If a third-country national staying illegally in its territory is the subject of a pending procedure for granting his residence permit or any other permit offering the right to stay, that Member State ***may refrain*** from issuing a return decision, until the pending procedure is finished.	8. If a third-country national staying illegally in its territory is the subject of a pending procedure for granting his residence permit or any other permit offering the right to stay, that Member State ***shall refrain*** from issuing a return decision, until the pending procedure is finished.

Amendment 28
Article 6, paragraph 8a (new)

	8a. At the time of notification of the return decision, Member States are invited to furnish information and propose flanking measures aimed at promoting the reintegration of third-country nationals into their country of origin and their contribution to the development of that country.

Amendment 29
Article 7, paragraph 1

1. Member States shall issue a removal order concerning a third-country national who is subject of a return decision, ***if there is a risk of absconding or*** if the obligation to return has not been complied with within the period of voluntary departure granted in accordance with Article 6(2).	1. Member States shall issue a***n individual*** removal order concerning a third-country national who is *the* subject of a return decision, if the obligation to return has not been complied with within the period of voluntary departure granted in accordance with Article 6(2)***, or if there is a serious risk of absconding***.

Amendment 30
Article 7, paragraph 2

2. The removal order shall specify the delay within which the removal will be enforced and the country of return.	2. The removal order shall specify the delay within which the removal will be enforced and the country of return***, which should be the country of origin of third-country nationals.***

Justification

Third-country nationals should be returned to their country of origin and not to any country indiscriminately. If third-country nationals are sent back to a neighbouring country close to the European Union's external borders, there is a greater likelihood that those individuals will re-enter illegally, thus rendering Community measures ineffective.

Amendment 31
Article 7, paragraph 3

3. The removal order shall be issued as ***a separate*** act or decision ***or together with*** the return decision.	3 The removal order shall be issued as ***an*** act or decision ***separate from*** the return decision. ***The removal order, while being separate in form, may be issued simultaneously with the return decision, but shall only be valid if the conditions set out in paragraph 1 are satisfied.***

Amendment 32
Article 8, Title and paragraph 1

Postponement	Postponement ***or cancellation***
1. Member States may postpone the enforcement of a return decision for an appropriate period, taking into account the specific circumstances of the individual case.	1. Member States may postpone the enforcement of a return decision for an appropriate period, taking into account the specific circumstances of the individual case***, or cancel the return decision. In the event of postponement or cancellation, the Member State shall ensure that the third-country national enjoys dignified conditions of stay.***

Justification

There must be no return of third-country nationals if they are facing danger or their plans for return are impossible. There must be no expulsion of unaccompanied minors.

Amendment 33
Article 8, paragraph 2, introduction

2. Member States shall postpone the execution of a removal order in the following circumstances, for as long as those	2. Member States shall postpone the execution of a removal order ***or cancel that order*** in the following circumstances, for as

circumstances prevail:	long as those circumstances prevail:

Justification

See Amendment 32.

Amendment 34
Article 8, paragraph 2, point -a) (new)

	- a) physical or psychological danger for the third-country national in the event of a return to his country of origin;

Justification

See Amendment 32.

Amendment 35
Article 8, paragraph 2, point c)

c) lack of assurance that unaccompanied minors can be handed over at the point of departure or upon arrival to a family member, an equivalent representative, a guardian of the minor or a competent official of the country of return, following an assessment of the conditions to which the minor will be returned.	***Deleted***

Justification

See Amendment 32.

Amendment 36
Article 8, paragraph 2, point c a (new)

	ca) if there are serious reasons to believe that removal would lead to a collective expulsion, in violation of Article 4 of Protocol No 4 to the European Convention on Human Rights, which prohibits collective expulsions.

Amendment 37
Article 8, paragraph 3

3. If enforcement of a return decision or execution of a removal order is postponed as provided for in paragraphs 1 and 2, certain obligations may be imposed on the third country national concerned, with a view to avoiding ***the*** risk of absconding, such as regular reporting to the authorities, deposit of a financial guarantee, ***submission of documents*** or the obligation to stay at a certain place.	3. If enforcement of a return decision or execution of a removal order is postponed as provided for in paragraphs 1 and 2, certain obligations may be imposed on the third country national concerned, with a view to avoiding ***a serious*** risk of absconding, such as regular reporting to the authorities, deposit of a financial guarantee or the obligation to stay at a certain place.

Justification

See Amendment 32.

Amendment 38
Article 9, paragraph 1

1**.** Removal orders ***shall include a*** re-entry ban of a maximum of ***5 years***.	1. ***In cases of severe threat to public policy or public security, Member States may supplement*** removal orders ***with a*** re-entry ban of a maximum of ***six months***.
Return decisions may include such a re-entry ban.	

Justification

The return decision and subsidiary removal order are a sufficient penalty in response to irregularly-staying third-country nationals. Apart from exceptional cases, supplementing that decision with a re-entry ban would seem to be out of proportion.

Amendment 39
Article 9, paragraph 2, point c

(c) entered the Member State during a re-entry ban;	***Deleted***

Justification

See Amendment 38.

Amendment 40
Article 9, paragraph 2, point d

(d) constitutes a threat to public policy or public security	***Deleted***

Justification

See Amendment 38.

Amendment 41
Article 9, paragraph 2, last subparagraph

The re-entry ban may be issued for a period exceeding 5 years where the third-country national concerned constitutes a serious threat to public policy or public security.	***Deleted***

Justification

See Amendment 38.

Amendment 42
Article 9, paragraph 2 a (new)

	2a. Appeals may be lodged against decisions on re-entry bans, which may subsequently be reassessed at the request of the person concerned.

Justification

See Amendment 38.

Amendment 43
Article 9, paragraph 3

3. The re-entry ban ***may be*** withdrawn***, in particular*** in cases in which the third-country national concerned :	3. The re-entry ban ***shall be*** withdrawn in cases in which the third-country national concerned ***no longer constitutes a serious threat to the public policy or public security of a Member State. That cancellation shall produce effects in all the Member States.***

a) the subject of a return decision or a removal order for the first time;

b) has reported back to a consular post of a Member State;

c) has reimbursed all costs of his previous return procedure.

Justification

See Amendment 38.

Amendment 44
Article 9, paragraph 4

4. The re-entry ban may be suspended on an exceptional and temporary basis in appropriate individual cases.	***Deleted***

Justification

See Amendment 38.

Amendment 45
Article 9, paragraph 5

5. Paragraphs 1 to ***4*** apply without prejudice to the right to seek asylum in one of the Member States.	***4.*** Paragraphs 1 to ***3*** apply without prejudice to the right to seek asylum in one of the Member States.

Amendment 46
Article 10, paragraph 1a (new)

	1a. Member States shall ensure that NGOs are present during the return process, and in particular during removal operations.

Amendment 47
Article 10, paragraph 2

2. In carrying out removals, Member States shall take into account the common	2. In carrying out removals, Member States shall take into account the common

Guidelines on security provisions for joint removal by air, attached to Decision 2004/573/EC.	Guidelines on security provisions for joint removal by air, attached to Decision 2004/573/EC***, and shall reject collective removals and procedures that are ostensibly for the removal of individuals but are applied to a group of individuals.***

Justification

Wording more in keeping with the aims of the directive.

Amendment 48
Article 10, paragraph 2a (new)

	2a. Where a return decision is taken, with a view to ensuring and monitoring the returnee's social and economic reintegration in the country of origin, the Commission shall draw up an ad hoc cooperation plan agreed with each third country, guaranteeing due respect for the fundamental rights of the returnee.

Justification

To complete EU returns policy.

Amendment 49
Article 11, paragraph 1, indent 2

1. Return decisions and removal orders shall be issued in writing.	1. Return decisions and removal orders shall be issued in writing.
Member States shall ensure that the reasons in fact and in law are stated in the decision and/or order and that the third-country national concerned is informed about the available legal remedies in writing.	Member States shall ensure that the reasons in fact and in law are stated in the decision and/or order and that the third-country national concerned is informed about the available legal remedies in writing ***and as promptly as possible***.

Justification

It is very important for the person concerned to have immediate, reliable and accessible information in order to make good use of the time available to settle procedural matters.

Amendment 50
Article 11, paragraph 2

2. Member States shall provide***, upon request,*** a written ***or oral*** translation ***of the main elements*** of the return decision and/or removal order in a language ***the third-country national may reasonably be supposed to*** understand.	2. Member States shall provide a written translation of the return decision and/or removal order in a language ***which the person concerned*** understand***s***.

Justification

Access to justice can only be considered a genuine right if the person concerned understands the decisions handed down.

Amendment 51
Article 12, paragraph 1

1. Member States shall ensure that ***the*** third-country ***national*** concerned ***has*** the right to an effective judicial remedy before a court or tribunal to appeal against or to seek review of a return decision and/or removal order	1. Member States shall ensure that ***all*** third-country ***nationals*** concerned ***have*** the right to an effective judicial remedy before a court or tribunal to appeal against or to seek review of a return decision and/or removal order

Justification

Improved wording.

Amendment 52
Article 12, paragraph 2

2. The judicial remedy shall ***either*** have suspensive effect ***or comprise the right of the third country national to apply for the suspension of the enforcement of the return decision or removal order in which case the return decision or removal order shall be postponed until it is confirmed or is no longer subject to a remedy which has suspensive effects***	2. The judicial remedy shall have suspensive effect.

Amendment 53
Article 12, paragraph 4

3. Member States shall ensure that the third-	3. Member States shall ensure that the third-

country national concerned has the possibility to obtain legal advice, representation and, where necessary, linguistic assistance. Legal aid shall be made available to those who lack sufficient resources ***insofar as such aid is necessary*** to ensure effective access to justice.	country national concerned has the possibility to obtain legal advice, representation and, where necessary, linguistic assistance. Legal aid shall be made available to those who lack sufficient resources to ensure effective access to justice.

Amendment 54
Article 14, paragraph 1

1. Where there are serious grounds to believe that there is a risk of absconding and where it would not be sufficient to apply less coercive measures, such as regular reporting to the authorities, the deposit of a financial guarantee, ***the handing over of documents,*** an obligation to stay at a designated place or other measures to prevent that risk, Member States shall keep under temporary custody a third-country national, who is ***or will*** be subject of a removal order ***or a return*** decision.	1. Where there are serious grounds to believe that there is a ***serious*** risk of absconding and where it would not be sufficient to apply less coercive measures, such as regular reporting to the authorities, the deposit of a financial guarantee, the handing over of documents, an obligation to stay at a designated place or other measures to prevent that risk, Member States shall keep under temporary custody a third-country national who is *the* subject of a removal order.

Justification

An insignificant risk of absconding cannot justify temporary custody with a view to removal. It must be stressed that the temporary safeguard measures should be exceptional in nature, based on a serious risk of absconding as assessed by the courts, and only apply for the time it takes to arrange the removal.

Amendment 55
Article 14, paragraph 1a (new)

	Temporary custody shall be justified only for the length of time needed to arrange removal where there is a serious risk of absconding. It shall cease to be justified if, despite all the objective efforts made to obtain the requisite passes, the authorities in the country of return do not respond within the time limits established.

Amendment 56

Article 14, paragraph 3

4. Temporary custody may be extended by judicial authorities to a maximum of ***six*** months.	4. Temporary custody may be extended by judicial authorities to a maximum of ***three*** months.

Justification

See Amendment 54.

Amendment 57
Article 15, paragraph 1

1. Member States shall ensure that third-country nationals under temporary custody are treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law. ***Upon request they shall be allowed*** without delay to establish contact with legal representatives, family members and competent consular authorities as well as with relevant international and non-governmental organisations.	1. Member States shall ensure that third-country nationals under temporary custody are treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law. ***They shall also have the right*** without delay to establish contact with legal representatives, family members and competent consular authorities as well as with relevant international and non-governmental organisations.

Justification

Being held in custody without the right to communicate either with their families or legal representatives is considered to be a violation of detainees' fundamental rights.

Amendment 58
Article 15, paragraph 2

2. Temporary custody shall be carried out in specialised temporary custody facilities. Where a Member State cannot provide accommodation in a specialised temporary custody facility and ***has*** to resort to prison accommodation, it shall ensure that third-country nationals under temporary custody are permanently physically separated from ordinary prisoners.	2. Temporary custody shall be carried out in specialised temporary custody facilities. Where a Member State cannot provide accommodation in a specialised temporary custody facility and ***is obliged*** to resort to prison accommodation ***owing to the absence of places in specialised temporary custody facilities,*** it shall ensure that third-country nationals under temporary custody are permanently physically separated from ordinary prisoners***, even during periods of recreation***.

Amendment 59
Article 15, paragraph 3

Particular attention shall be paid to the situation of vulnerable persons. Member States shall ensure that minors are not kept in temporary custody ***in common prison accommodation. Unaccompanied minors shall be separated from adults unless it is considered in the child's best interest not to do so***.	Particular attention shall be paid to the situation of vulnerable persons. Member States shall ensure that minors are not kept in temporary custody ***but provided with schooling and looked after in child welfare establishments with due regard for their ties with their families and the best interests of the child. Unaccompanied minors shall not be detained.***

Justification

It is out of all proportion to subject minors to temporary custody.

Amendment 60
Article 15, paragraph 4

4. Member States shall ensure that international and non-governmental organisations have the possibility to visit temporary custody facilities in order to assess the adequacy of the temporary custody conditions. ***Such visits may be subject to authorisation.***	4. Member States shall ensure that international and non-governmental organisations have the possibility to visit temporary custody facilities in order to assess the adequacy of the temporary custody conditions.

Justification

See Amendment 59.

Amendment 61
Article 16, point a

a) recognise the return decision or removal order issued by the first Member State and carry out the removal, in which case Member States shall compensate each other for any financial imbalance which may caused, applying Council Decision 2004/191/EC mutatis mutandis;	a) recognise the return decision or removal order issued by the first Member State and carry out the removal, in which case Member States shall compensate each other for any financial imbalance which may caused, applying Council Decision 2004/191/EC mutatis mutandis***; in such cases, irregularly staying third-country nationals shall enjoy the rights laid down in Article 12 of this Directive;***

Justification

Third-country nationals must in all circumstances have a genuine right to lodge an appeal before the courts against the return decision (or removal order). Therefore, the other Member States must also guarantee them access to justice to dispute a decision taken at first instance in the first Member State.

Amendment 62
Article 16, point c

(c) launch the return procedure under its national legislation;	(c) launch the return procedure under its national legislation ***and the Community acquis;***

Justification

In order for the second Member State to enforce the return procedure, appropriate measures must be taken under the national legislation of the Member State concerned and under the Community acquis, subject to the principles of subsidiarity and proportionality.

Amendment 63
Article 17

The Commission shall periodically report to the European Parliament and the Council on the application of this Directive in the Member States and, if appropriate, propose amendments.	The Commission shall periodically report to the European Parliament and the Council on the application of this Directive in the Member States and, if appropriate, propose amendments.
	Member States shall be required to assess the impact of their return policy on third-country nationals' countries of origin, and to ensure that it is compatible with a cohesive policy on development and cooperation with countries of origin and transit.
The Commission shall report for the first time four years after the date referred to in Article 18(1) at the latest.	The Commission shall report for the first time four years after the date referred to in Article 18(1) at the latest.

Justification

The return of third-country nationals must be planned for and cannot be divorced from a

cohesive and effective development policy. The solidarity principle requires that Member States begin to monitor these measures.

PROCEDURE

Title	Common standards and procedures for the return of third-country nationals residing illegally
References	COM(2005)0391 - C6-0266/2005 - 2005/0167(COD)
Committee responsible	LIBE
Opinion by Date announced in plenary	DEVE 29.9.2005
Drafts(wo)man Date appointed	Marie-Arlette Carlotti 27.3.2007
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Result of final vote	+: 22 –: 0 0: 3
Members present for the final vote	Margrete Auken, Josep Borrell Fontelles, Danutė Budreikaitė, Corina Crețu, Nirj Deva, Alexandra Dobolyi, Fernando Fernández Martín, Filip Kaczmarek, Glenys Kinnock, Maria Martens, Luisa Morgantini, Miguel Portas, Toomas Savi, Frithjof Schmidt, Jürgen Schröder, Feleknas Uca, Margrietus van den Berg, Johan Van Hecke, Luis Yañez-Barnuevo García
Substitute(s) present for the final vote	Jan Jerzy Kułakowski, Miguel Angel Martínez Martínez, Manolis Mavrommatis, Pasqualina Napoletano, Anne Van Lancker, Ralf Walter