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

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Manfred Weber

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

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

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0391)¹,
 - having regard to Article 251(2) and Article 63(3)(b) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0266/2005),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs and the Committee on Development (A6-0339/2007),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Citation 1 a (new)

Having regard to the 20 guidelines on forced return adopted by the Council of Europe Committee of Ministers on 4 May 2005 (CM(2005)40),

Amendment 2
Recital -1 (new)

(-1) The Tampere European Council of 15 and 16 October 1999 established a coherent approach in the field of

¹ Not yet published in OJ.

immigration and asylum, dealing together with the creation of a common asylum system, a legal immigration policy and the fight against illegal immigration.

Amendment 3
Recital -1 a (new)

(-1a) In order to facilitate the return process, the need for bilateral and multilateral readmission agreements between the EU and third countries is underlined.

Amendment 4
Recital 1 a (new)

(1a) It is recognised that it is legitimate for States to return people. The pre-requisite for this assumption is that fair and efficient asylum systems are in place, which fully respect the principle of non-refoulement.

Amendment 5
Recital 1 b (new)

(1b) According to Article 33 of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, Member States shall not expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened. The principle of non-refoulement also applies to persons placed in transit zones.

Amendment 6
Recital 2 a (new)

(2a) International cooperation with countries of origin at all stages of the return process is a prerequisite to achieving sustainable return.

Amendment 7
Recital 2 b (new)

(2b) Cooperation between the institutions

involved at all levels in the return process and the exchange and promotion of best practices should accompany the implementation of this Directive and provide European added value.

Amendment 8
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 *of third-country nationals in the EU* is carried out through a fair and transparent procedure; *according to general principles of EU law, decisions taken under this Directive should be taken on a case-by-case basis and should take individual and objective criteria into account.*

Amendment 9
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) *Voluntary* return should be preferred over forced return and a period for voluntary departure should be granted.

Justification

The text is unclear and should mainly foresee voluntary return.

Amendment 10
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 *detention* should be limited and bound to the principle of proportionality. *Detention* should only be used if necessary to prevent the risk of absconding and if the application of less coercive measures would not be sufficient. *(This change applies throughout the text.)*

Justification

'Temporary custody' should be changed to 'detention' because that is what it in fact is, given the deprivation of freedom it entails and its duration, up to six months, which is far from

temporary. This change of terminology also applies to the whole of Chapter IV.

Amendment 11
Recital 11 a (new)

(11a) All possibilities for giving prospects or a useful occupation to a third-country national who is in temporary custody should be considered.

Justification

It is considered in the best interest of the returnee to have the possibility to use the time in temporary custody for education, useful occupation or any other kind of activity. This provision is also important in order to decrease the level of aggression and to enhance the chance of a successful return.

Amendment 12
Article 1

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

This Directive sets out common standards and procedures to be applied in Member States for returning ***third-country nationals who do not fulfil, or who no longer fulfil, the conditions of legal stay***, in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations.

Amendment 13
Article 2, paragraph 1, point (b)

(b) who ***are otherwise illegally staying*** in the territory of a Member State.

(b) who ***for other reasons do not fulfil, or no longer fulfil, the conditions of legal stay*** in the territory of a Member State.

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.

2. Member States may decide not to apply this Directive to third-country nationals who have been refused entry ***at a border or*** in a transit zone of a Member State ***in accordance with Article 35 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and***

*withdrawing refugee status*¹. 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 *of this Directive*.

¹ *OJ L 326, 13.12.2005, p. 13.*

Amendment 15
Article 2, paragraph 3 a (new)

3a. Re-entry bans which have been issued prior to its entry into force shall not be affected by this Directive.

Amendment 16
Article 3, point (a a) (new)

(aa) 'transit zone' means a clearly designated and limited area located in an airport, in a port or at the external land borders on the territory of a Member State, where a third-country national, who has not crossed a border control and has not yet passed a checkpoint, is temporarily placed until a decision concerning the entry or the refusal of entry into the territory of the Member State in question is taken by the competent authorities of that State;

Amendment 17
Article 3, point (b)

(b) 'illegal stay' means the presence on the territory of a Member State, of ***a*** third-country ***national*** who ***does*** not fulfil, or no longer ***fulfils*** the conditions for stay ***or residence*** in that Member State;

(b) 'illegal stay' means the presence on the territory of a Member State of third-country ***nationals*** who ***do*** not fulfil, or ***who*** no longer ***fulfil***, the conditions for ***legal*** stay in that Member State;

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 the process of going back to one's country of origin ***or to a country of transit in which the third-country national has solid established ties;***

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

(ga) 'risk of absconding' means the existence of serious reasons, defined by individual and objective criteria, to believe that a third-country national who is already subject to a return decision or a removal order might abscond; the risk of absconding shall not automatically be deduced from the mere fact that a third-country national is illegally resident on the territory of a Member State;

Amendment 20
Article 3, point (g b) (new)

(gb) 'temporary custody facilities' means specialised facilities where third-country nationals who are or will be the subject of a return decision or a removal order are kept in temporary custody with the objective of preventing them from absconding during the preparation of their removal;

Amendment 21
Article 3, point (g c) (new)

(gc) '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.

Justification

A definition of what is meant by 'vulnerable persons' should be added to the provisions of this proposal. The definition is taken from Article 17(1) of Council Directive 2003/9/CE laying down minimum standards for the reception of asylum seekers.

Amendment 22
Article 5, title

Family relationships and best interest of the child

Non-refoulement, family relationships, best interest of the child and state of health

Amendment 23
Article 5

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 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.*

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

(a) the principle of non-refoulement;
(b) family relationships, in accordance with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as concerns the nature and solidity of the third-country national's family relationship and the existence of family ties with his/her country of origin and the duration of his/her stay in the Member State; families accompanied by one or more minors should not be subject of any coercive measure and alternatives to temporary custody shall be given priority;
(c) the best interest of the child: the interest of the child shall be safeguarded by the appropriate social services department or an advocate appointed no later than at the time of the issuing of the temporary custody or removal order; unaccompanied minors should not be removed or detained; this point shall not apply to convicted criminals;
(d) the state of health: Member States shall grant a person suffering from a serious illness an autonomous residence permit or another authorisation conferring a right to stay so as to have adequate access to healthcare, unless it can be proved that the person in question can receive appropriate treatment and medical care in his/her country of origin.

Amendment 24
Article 6, paragraph 1

1. Member States shall issue a return decision to any third-country national staying illegally on their territory.

1. *Without prejudice to the exceptions provided for in paragraphs 1a, 4 and 5,* Member States shall issue a return decision to any third-country national staying illegally on their territory.

Amendment 25
Article 6, paragraph 1 a (new)

1a. Third-country nationals staying illegally in the territory of a Member State and holding a valid residence permit or another authorisation offering a right to stay issued by another Member State shall be required to go to the territory of that Member State immediately. In such a case Member States may refrain from issuing a return decision.

Amendment 26
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. ***As a matter of principle, the*** return decision shall provide for an appropriate period for voluntary departure of ***at least*** four weeks, unless ***a competent administrative or judicial body has objective*** reasons to believe that the person concerned might abscond during such a period ***or that such a person poses a threat to public order, public security or national security.***

Member States may extend the period for voluntary departure for an appropriate period or refrain from setting any time limit, taking into account the specific circumstances of the individual case. 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. ***To guarantee effective return, Member States should provide material assistance and counselling following a decision taken***

under national law on a case-by-case basis.

Amendment 27
Article 6, paragraph 2 a (new)

2a. Persons benefiting from Directive 2003/9/EC prior to a return decision should be able to continue benefiting from all the reception conditions to which they are entitled under that Directive.

Justification

This amendment is similar to Amendments 112 and 113, aimed at facilitating voluntary return.

Amendment 28
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-refoulement, 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. 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. Member States should communicate any such withdrawal through the mutual information mechanism provided for in Council Decision 2006/688/EC of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration¹.

¹ OJ L 283, 14.10.2006, p. 40.

Amendment 29
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-

5. If a third-country national staying illegally in its territory is the subject of a pending procedure for renewing his residence permit or any other permit offering the right to stay, a Member State

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.

shall refrain from issuing a return decision until the pending procedure is concluded.

Amendment 30

Article 6, paragraph 5, subparagraph 1 a (new)

If a Member State grants a permit to a third-country national it shall be valid on the territory of that Member State only.

Amendment 31

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.

deleted

Amendment 32

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.

Justification

It would seem normal - and common sense - not to take a return decision so long as consideration of an application for residence or asylum has not been completed. This should not constitute an option for the state concerned, but an obligation.

Amendment 33

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*

1. Member States shall issue a removal order concerning a third-country national who is subject of a return decision, if *no period for*

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).

voluntary departure has been granted because the person concerned might abscond or poses a threat to public order, public security or national security or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 6(2).

Amendment 34
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. *A Member State may issue, together with the return decision, a removal order concerning a third-country national who is subject of a return decision. If the Member State has granted a period for voluntary departure in accordance with Article 6(2) the removal order may be enforced only after the period has ended.*

Amendment 35
Article 7, paragraph 3

3. *The removal order shall be issued* as a separate act or decision *or together with the return decision.*

3. *A Member State which does not follow the procedure specified in paragraph 2 shall issue a removal order as a separate act or decision.*

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

(a) inability of the third-country national to travel or to be transported to the country of return due to his or her physical state or mental capacity;

(a) inability of the third-country national to travel or to be transported to the country of return due to his or her physical state or mental capacity, *following a medical report*;

Justification

Only an authorised doctor should be authorised to establish the inability of a third-country national to travel or be transported owing to his or her physical or mental condition. Such a decision cannot be purely administrative.

Amendment 37
Article 8, paragraph 2, point (c a) (new)

(ca) existence of serious reasons to believe that removal would lead to a collective

expulsion, in contravention of Article 4 of Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits collective expulsion of aliens.

Justification

This amendment seeks to prevent any violation of human rights, as defined in the ECHR, in the case of joint removals. As the European Court of Human Rights stipulated in its ruling of 5 February 2002 on the Conka case, the fact that the person's circumstances were considered individually is not sufficient. The manner in which the removal is organised (publicity, large number of persons of the same nationality, stereotyped decisions, etc.) should be taken into account in order to be sure that the removal will not lead to a collective expulsion. If any doubts remain, the removal should be postponed.

Amendment 38

Article 9, paragraph 1, subparagraph 1

1. Removal orders ***shall*** include a re-entry ban of a maximum of 5 years.

1. Removal orders ***may*** include a re-entry ban of a maximum of 5 years.

Amendment 39

Article 9, paragraph 2, subparagraph 1, point (d) and subparagraph 2

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

(d) constitutes a ***proven*** threat to public *order*, public security or *national security*.
The re-entry ban may be issued for a period exceeding 5 years where the third-country national concerned constitutes a ***proven*** serious threat to public *order*, public security or *national security*.

Amendment 40

Article 9, paragraph 3, introductory part

3. The re-entry ban may be withdrawn, in particular in cases in which the third-country national concerned:

3. The re-entry ban may be withdrawn ***at any time***, in particular in cases in which the third-country national concerned:

Amendment 41

Article 9, paragraph 3, point (ba) (new)

(ba) has his or her life threatened owing to changes in his or her country of return entailing a risk of persecution; a withdrawal decision taken by a Member State shall be effective throughout the

Union.

Justification

Explicitly linking the withdrawal of the re-entry ban to reimbursement of costs of the return procedure could lead to unjustified positive discrimination in favour of more well-to-do persons, or even well-off smugglers' networks.

It should be possible to request withdrawal of the re-entry ban at border posts and in consulates abroad and to take account of developments in the person's circumstances in his or her country of return.

Amendment 42

Article 9, paragraph 3, point (c)

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

deleted

Amendment 43

Article 9, paragraph 3, subparagraph 1a (new)

A re-entry ban may also be withdrawn where there are other positive reasons for its withdrawal.

Amendment 44

Article 9, paragraph 4

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

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

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.

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

Amendment 46

Article 9, paragraph 5 a (new)

5a. In the event of a human disaster, the re-entry ban may be withdrawn for a group of persons or a region pursuant to a Council decision to that effect.

Justification

In case of a human disaster it is clear that the application of a withdrawal of the re-entry ban takes too long and is not feasible. Therefore if it is stated by the Council that it is the case of a human disaster, the re-entry ban is automatically withdrawn.

Amendment 47
Article 10, paragraph 1

1. Where Member States use coercive measures to carry out the removal of a third-country national who resists removal, such measures shall be proportional and shall not exceed reasonable force. **They** shall be implemented in accordance with fundamental rights and with due respect for the dignity of the third-country national concerned.

1. Where Member States ***are obliged, as a last resort, to*** use coercive measures to carry out the removal of a third-country national who resists removal, such measures shall be proportional and shall not exceed reasonable force. ***In the best interests of a third-country national who is the subject of a removal procedure and in those of the security agents carrying out the removal, such coercive measures*** shall be implemented in accordance with fundamental rights and with due respect for the dignity of the third-country national concerned ***and the 20 guidelines on forced return adopted by the Council of Europe Committee of Ministers on 4 May 2005. They should be open to independent scrutiny. Coercive measures should be avoided when removing vulnerable persons.***

Amendment 48
Article 10, paragraph 2 a (new)

2a. Member States shall ensure that relevant international and non-governmental organisations are involved during removal procedures in order to guarantee compliance with proper legal procedure.

Justification

It is necessary to involve non-governmental organisations in the whole process of the return procedure. In order to guarantee a proper procedure and for the best interest of the returnee.

Amendment 49
Article 11, paragraph 1, subparagraph 2

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 ***in a language the third-country national understands or is reasonably presumed to understand.***

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 or oral translation of the main elements of the return decision and/or removal order in a language the third-country national ***understands or is*** reasonably ***presumed*** to understand.

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 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, removal order, ***temporary custody order or re-entry ban.***

Justification

Any person held in detention should be authorised to lodge an appeal, on the basis of which a court should determine whether his or her detention is legal and order his or her release if it is illegal. Similarly, it should be possible to appeal against a re-entry ban in view of the dramatic implications it can have.

Amendment 52
Article 12, paragraph 3

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.***

3. Member States shall ensure that the third-country national concerned has the possibility to obtain legal advice, representation and linguistic assistance. Legal aid shall be available to those who lack sufficient resources ***in accordance with Article 3 of Council Directive 2003/8/EC of 27 January 2003 to improve***

*access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes*¹.

¹*OJ L 26, 31.1.2003, p. 41.*

Amendment 53
Article 13, paragraph 1

1. Member States shall ensure that the conditions of stay of third-country nationals for whom the enforcement of a return decision has been postponed or who cannot be removed for the reasons referred to in Article 8 of this Directive are not less favourable than those set out in Articles 7 to 10, Article 15 and Articles 17 to 20 of Directive 2003/9/EC.

1. Member States shall ensure that the conditions of stay of third-country nationals for whom the enforcement of a return decision has been postponed or who cannot be removed for the reasons referred to in Article 8 of this Directive are not less favourable than those set out in Articles 7 to 10, Article 15 and Articles 17 to 20 of Directive 2003/9/EC. ***The same conditions shall be granted to third-country nationals during the period for voluntary departure and to third-country nationals awaiting the outcome of appeal proceedings.***

Amendment 54
Article 13, paragraph 2

2. Member States shall provide the persons referred to in paragraph 1 with a written confirmation that the enforcement of the return decision has been postponed for a specified period or that the removal order will temporarily not be executed.

2. Member States shall provide the persons referred to in paragraph 1 with a written confirmation ***in a language they understand or are reasonably presumed to understand*** that the enforcement of the return decision has been postponed for a specified period or that the removal order will temporarily not be executed.

Amendment 55
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

1. Where ***a judicial authority or competent body has*** serious grounds to believe that there is a risk of absconding, ***a proven threat to public order, public security or national security*** 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

subject of a **removal order** or a **return decision**,

prevent that risk, Member States **may** keep under temporary custody a third-country national, who is or will be subject of a **return decision** or a **removal order**.

Amendment 56
Article 14, paragraph 2

2. Temporary custody orders shall be issued by judicial authorities. **In urgent cases they may be** issued by administrative authorities, **in which case the** temporary custody **order** shall be **confirmed** by judicial authorities within **72 hours** from the beginning of the temporary custody.

2. Temporary custody orders shall be issued by **administrative or** judicial authorities. **If they have been** issued by administrative authorities temporary custody **orders** shall be **subject to review** by judicial authorities within **48 hours** from the beginning of the temporary custody.

Amendment 57
Article 14, paragraph 2 a (new)

2a. Temporary custody orders shall state the reasons in fact and law and be issued as an act separate from the return and removal decision.

Justification

This is a general standard in public administrative law and it prevents arbitrary orders and automatic issuing.

Amendment 58
Article 14, paragraph 4

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

deleted

Amendment 59
Article 14, paragraph 4 a (new)

4a. Temporary custody shall be maintained for as long a period as necessary to ensure successful removal. Temporary custody shall be justified only for as long as removal arrangements are in progress. When it appears that removal within a reasonable period is unrealistic for legal or other considerations, temporary custody shall cease to be justified.

Amendment 60
Article 14, paragraph 4 b (new)

4b. Member States shall provide for a period of three months after which temporary custody shall cease to be justified. Member States may shorten this period or extend this period up to 18 months in cases in which in spite of all reasonable efforts the removal operation is likely to last longer due to a lack of co-operation on the part of the third-country national concerned or due to delays in obtaining the necessary documentation from third countries or if the person concerned represents a proven threat to public order, public security or national security.

Amendment 61
Article 14, paragraph 4 c (new)

4c. Temporary custody shall cease in the event of removal becoming impossible. This paragraph shall not apply to convicted criminals.

Amendment 62
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. ***On arrival in temporary custody facilities***, they shall be ***informed that they may*** without delay establish contact with legal representatives, family members and competent consular authorities as well as with relevant international and non-governmental organisations. ***The conditions of temporary custody shall be supervised by the judicial authorities.***

Amendment 63
Article 15, paragraph 1 a (new)

1a. Member States shall ensure that the conditions of stay of third-country nationals in temporary custody are not less favourable than those set out in Articles 8 to 10, 15 and 17 to 20 of Directive 2003/9/EC.

Justification

This is an additional safeguard providing besides others the right of family unity. The right to medical assistance is guaranteed, as well as the right to education for children. The right to schooling and education is granted and enumerated in detail in the directive referred to. Safeguards for vulnerable persons are granted and elaborated on in this directive. The Rapporteur considers it necessary to add these detailed guarantees in order to ensure and provide clear safeguards and rights to the third country national who is to be returned. It is also included that victims of torture are cared for and treated properly. In order to make sure that the best interest of the returnee is considered and guaranteed the Rapporteur considers it necessary to enumerate these articles in detail.

Amendment 64
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. **Detention** shall be carried out in specialised **detention** facilities. Where a Member State cannot provide accommodation in a specialised **detention** facility and has to resort to prison accommodation, it shall ensure that third-country nationals under **detention** are permanently physically separated from ordinary prisoners.

Justification

If prison accommodation is used, it is essential for the detained persons to be kept strictly separated from ordinary prisoners.

Amendment 65
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 **relevant national**, international and non-governmental organisations **such as the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) are granted access** to visit temporary custody facilities in order to

assess the adequacy of the temporary custody conditions *and assist persons kept in temporary custody, in accordance with international and national rules.*

Amendment 66
Article 15, paragraph 4 a (new)

4a. Member States shall define and publish minimum standards at national level for a common code of practice concerning procedures in temporary custody facilities.

Amendment 67
Article 15 a (new)

Article 15a

Conditions of temporary custody for children and families

- 1. Children with families shall be kept in temporary custody only as a measure of last resort and for the shortest appropriate period of time.*
- 2. Children with families kept in temporary custody pending removal shall be provided with separate accommodation guaranteeing adequate privacy.*
- 3. Children, whether in temporary custody facilities or not, shall have a right to education and a right to leisure, including a right to engage in play and recreational activities appropriate to their age. The provision of education should be subject to the length of their stay.*
- 4. Unaccompanied children should be provided with accommodation in institutions equipped with the personnel and facilities which take into account the needs of persons of their age.*
- 5. The best interest of the child shall be a primary consideration in the context of the keeping in temporary custody of children pending removal.*

Amendment 68
Chapter V a, title (new)

Chapter Va

**EUROPEAN PARLIAMENT
OMBUDSMAN FOR RETURN**

Amendment 69
Article 16 a (new)

Article 16a

***Establishment of a European Parliament
Ombudsman for Return***

***1. In order to secure efficient return with
full respect for human rights, a European
Parliament Ombudsman for Return shall
be established.***

***2. The European Parliament Ombudsman
for Return shall have the following rights
and tasks:***

***(a) to conduct unannounced inspections at
any time;***

***(b) to collect information and reports on
joint removals and where appropriate to
make recommendations;***

***(c) to ask Member States at any time for
information or clarification on the return
process.***

Amendment 70
Article 17, subparagraph 2

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 ***two years*** after the date referred to in
Article 18(1) at the latest, ***and thereafter at
two-yearly intervals.***

Justification

*Given the significance of this directive and its impact on a large number of people, it is
important for assessments to be made more regularly.*

Amendment 71
Article 17, subparagraph 2 a (new)

***The European Agency for Fundamental
Rights should pay special attention to
compliance with the provisions of this
Directive when implemented by Member
States.***

Justification

Compliance with human rights and several international conventions is an issue of major importance in connection with this directive and should therefore be given the full attention of the future European Agency for Fundamental Rights.

Amendment 72

Article 17, subparagraph 2 b (new)

For the purposes of evaluating the impact of the return policy on the persons concerned as well as on the country or society to which they are returned, all returns shall be registered and monitored with a view to drawing up statistics in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection¹.

¹ *OJ L 199, 31.7.2007, p. 23..*

Amendment 73

Article 18, paragraph 1, subparagraph 1

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by, (**24 months** from the date of publication in the Official Journal of the European Union) at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by, (**18 months** from the date of publication in the Official Journal of the European Union) at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

EXPLANATORY STATEMENT

The Commission has submitted to the EP a proposal on common European procedures for the return of third-country national staying in the EU illegally. This is the first time that the codecision procedure has applied to Parliament's consideration of a draft common return procedure directive. Your rapporteur is fully aware of the sensitive nature of this issue and the difficulty of finding a common legal framework for the return of illegal immigrants.

It is a fact that millions of illegal immigrants are living in Europe. Life as an illegal is a modern form of slavery and must therefore be abolished. Illegal immigrants have no access to health services and cannot enforce their rights in the courts, as an illustration, they have to put up with working conditions that are not decent. Illegal immigrants are tacitly tolerated because they are needed on the labour market, but they are not entitled to any pension at the end of their working lives which, on the one hand, is inhuman for the individuals concerned and, on the other, can represent a major financial challenge to the relevant Member State. European policy-makers have to decide either to grant illegal immigrants residence permits or send them back to their home countries. It is primarily in the interests of illegal immigrants themselves that their illegal status should be resolved.

The directive makes it clear that illegal immigrants have to leave Europe. It is not the task of this directive to establish illegality but merely to ensure a transparent return procedure. On the other hand, the return procedure is linked for the first time to minimum standards in order to ensure humane treatment. Cooperation at all levels of the return procedure between the national authorities and between Member States is improved. Among other things, a European added value is created. The proposal introduces a ban on re-entry which is valid throughout Europe. This adds value to a strong Europe acting with one voice. However, the key focus is on voluntary return. Member States must establish structures to support voluntary town.

One of the objectives of the amendments tabled by your rapporteur is to strengthen Parliament's role as a champion of human rights and humanity. An effort has therefore been made to shape the return procedure in a humanitarian way, but going beyond the standards set in the Commission's proposal. In his amendments, your rapporteur therefore proposes a definition of transit zones; this should prevent any arbitrary definitions creating areas with a legal vacuum.

The maximum period of temporary custody is restricted to 12 months. However, Member States can apply shorter periods. In dealing with illegal immigrants, in the case of both temporary custody and return, Member States must establish the mandatory minimum standards of a humanitarian code of conduct. This is in the interests of both the individuals to be returned and at the same time provides legal certainty for the officials involved, thus removing the lack of legal certainty for both sides in the Commission's text.

The monitoring role of non-governmental organisations has also been stepped up. They are seen as partners in the return process and appropriately involved. Their position is strengthened significantly compared with the Commission's proposal. In the event of a humanitarian disaster, the re-entry ban can be lifted for certain regions or groups.

Illegal immigrants who are not responsible for any failed return measures, for example if their country of origin does not cooperate, should not be detained.

The conditions for removal have been improved significantly. Removal centres are clearly distinguished from traditional prisons.

A further important point for the rapporteur was to rule out collective removal measures. It is stipulated clearly that removal measures must always be conducted on an individual basis.

A European Parliament Ombudsman for return has been established. His duties are clearly defined and he is given powers making him a full partner in the return process.

In order to achieve the objectives of the draft directive, practical implementation must remain a matter for the national authorities. The rapporteur therefore considers the following amendments to be a substantial improvement on the existing situation.

The risk of absconding, which gives rise to temporary custody, has been clearly defined. If there is a threat to public security, there must be the possibility of temporary custody. The European re-entry ban can be extended if the threat to public security continues to exist. A European re-entry ban only makes sense if the authorities concerned are aware of it. Consequently, it must be recorded in the SIS and VIS. This not only provides mutual information for Member States but also eases the workload and is a practical improvement for the authorities involved.

The objective and title of the Directive is the return of illegal residents. Consequently, it is proposed that existing border procedures should be excluded from the directive. Border procedures involve establishing whether or not a person may enter and the outcome of a negative decision is non-admission, which has nothing to do with return policy.

For the reasons outlined above, and because the rapporteur feels that a common harmonised return process provides added value to Europe as a whole and for all those involved, he supports the Commission proposal for the introduction of the directive. It is sensible to create a common legal framework in order to achieve the proposed objectives.

12.9.2007

MINORITY OPINION

pursuant to Rule 48(3) of the Rules of Procedure
Giusto Catania

We reject Mr Weber's report because the third-country nationals, as communitarian citizens, shouldn't undergo a privation of their personal freedom or a prison punishment because of an administrative breach.

The third-country nationals might undergo a temporary custody only if they go through a judicial process for crimes committed within the borders of the European Union and, in any case, with the same judicial and procedural guaranties provided to the EU citizens.

Furthermore, we believe that 18 months of detention for migrants are useless, excessive and strongly affect the right to personal freedom, defended in the European Convention of Human Rights. 18 months of detention for people who have not committed a crime means, *de facto*, the legitimation of a legal paradox.

A prolonged unjustified detention of people in terrible conditions such as those in some EU detention centres, visited by LIBE itself, should never been authorized by our EU legislation. Moreover, we consider extremely urgent a deep evaluation of the utility and the consequences of the detention of migrants in those centres.

28.4.2006

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS

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))

Draftsman: Panagiotis Beglitis

SHORT JUSTIFICATION

The European Parliament has consistently and vigorously supported the full respect of human rights in all aspects of EU affairs. It therefore expects the present proposal to be in line with the established principles and guidelines applying to EU legislation. The main focus of the present Opinion is to examine its provisions in this light and where necessary to propose amendments which will strengthen the defence of human rights.

The stated objective of the proposal at hand is "to provide for clear, transparent and fair common rules concerning return, removal, use of coercive measures, temporary custody and re-entry, which take into full account the respect for human rights and fundamental freedoms of the persons concerned."

As the Commission's Communication sets out, the proposal is based on extensive preparatory work over some years. However, the Communication gives no indication whatsoever of the dimensions of the issue. It is important to put this measure in its proper context, by giving relevant statistics on the numbers returned in 2005 and on trends in recent years.

In view of the European Parliament's longstanding support of international human rights norms, the integration of human rights and humanitarian considerations in the proposal is welcome. It is particularly gratifying that special attention is given to the situation of children, and that the crucial legal principle of the best interest of the child is explicitly mentioned (Recital 18; Art. 5). The provision for a prior assessment of the conditions to which a child is likely to be returned is also an important innovation. The proposal is further commended for providing that States may exercise discretion not to proceed with a forced return. The reference to the principle of non discrimination (Recital 17) is also welcome.

The established position of the Parliament is also to support the principle that no one is to be returned to situation of danger. The principle of *non-refoulement* is indeed codified in

international human rights law, and is a binding requirement on the EU and its Member States. It is important that the present proposal does not allow a forced return to a country where there is a credible possibility that the individual's life or physical integrity is at risk (Art. 6 & 7).

It is important to bear in mind the wider political context. Our foreign policy relations should incorporate strategies which reduce the incentive for illegal migration into the EU.

Each individual forced returns entails contacts with the third country concerned; care must be taken to ensure that each case is handled in a cooperative spirit.

The fact that this proposal affects the Schengen Agreement also means that the views of the states which are parties to Schengen but are not EU members should be duly taken into account.

A number of aspects of the present proposal are relevant to internal policies rather than foreign policy; these include the provisions about judicial appeals procedures (Art. 9); the question of release and re-arrest as a way to evade term limits (cf. Art. 14); and the question of appeal procedures for a re-entry ban.

The frequency of reporting back to the European Parliament is left open; there is a case for including a specific frequency, such as two or three years (Art. 17).

Arrangements for consular and legal assistance and for translation facilities also merit close attention.

Finally, consideration should be given to enhancing the existing references in the proposal to international legal standards.

AMENDMENTS

The Committee on Foreign Affairs 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 Commission¹

Amendments by Parliament

Amendment 1
Recital -1 (new)

(-1) The Charter of Fundamental Rights of

¹ Not yet published in OJ.

the European Union, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1951 United Nations Convention relating to the Status of Refugees, as amended by the 1967 Protocol, and the 1989 United Nations Convention on the Rights of the Child all emphasise the fundamental importance of international human rights standards.

Justification

These references are added in order to emphasise the fundamental importance of international human rights standards.

Amendment 2
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” **must** be a primary consideration of Member States when implementing this Directive. In line with the European Convention on Human Rights, respect for family life **must** be a primary consideration of Member States when implementing this Directive.

Justification

This is intended to emphasise the importance of the best interests of the child.

Amendment 3
Article 1

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

This Directive sets out common standards and procedures to be applied in Member States for returning **third-country nationals who do not fulfil, or who no longer fulfil, the conditions of legal stay**, in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations.

Amendment 4
Article 2, paragraph 1, point (b)

(b) who *are otherwise illegally staying* in the territory of a Member State.

(b) who *for other reasons do not fulfil, or no longer fulfil, the conditions of legal stay* in the territory of a Member State.

Amendment 5
Article 3, point (b)

(b) ‘illegal stay’ means the presence on the territory of a Member State, of *a* third-country *national* who *does* not fulfil, or no longer *fulfils* the conditions for stay *or residence* in that Member State;

(b) ‘illegal stay’ means the presence on the territory of a Member State of third-country *nationals* who *do* not fulfil, or *who* no longer *fulfil*, the conditions for *legal* stay in that Member State;

Amendment 6
Article 5

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 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.*

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 family, cultural and social ties with his country of origin. *In accordance with the 1989 United Nations Convention on the Rights of the Child, the best interests of the child shall be a primary consideration.*

Justification

This is intended to emphasise the importance of the best interests of the child.

Amendment 7
Article 8, paragraph 2, point (c a) (new)

(ca) refusal by the country to which the third-country national is to be transported to receive him.

Amendment 8
Article 11, paragraph 2

Member States shall provide, upon request, a written or oral translation of the main

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**.

elements of the return decision and/or removal order in a language the third-country national **understands**.

Justification

This is intended to ensure that relevant information and decisions are communicated in a language that the individual concerned understands.

Amendment 9

Article 15, paragraph 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.

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 be advised of their entitlements as regards** contact with legal representatives, family members and competent consular authorities, **and upon request shall be allowed without delay to establish contact with those persons**, as well as with relevant international and non-governmental organisations.

Justification

The requirement to advise individuals of entitlements to consular and legal assistance should be specified.

Amendment 10

Article 15, paragraph 3

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.

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. **Detention shall be a measure of last resort only and shall be for the shortest time possible.**

Justification

This is to emphasise an important legal principle. In keeping with the recognition of the best interests of the child, the principle should be underlined that children should not be held in detention unless there are compelling reasons to do so.

Amendment 11
Article 17, paragraph 1

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. ***Such reports shall include details of the numbers and nationalities of people who have been the subject of forced returns.***

Justification

Detailed statistical information on both the current dimensions of the problem and the trends seen in recent years is necessary to allow assessment of the effectiveness of policy measures in this area, and can also be used towards cost-benefit analyses.

PROCEDURE

Title	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
References	COM(2005)0391 – C6-0266/2005 – 2005/0167(COD)
Committee responsible	LIBE
Opinion by Date announced in plenary	AFET 29.9.2005
Enhanced cooperation – date announced in plenary	
Draftsman Date appointed	Panagiotis Beglitis 19.10.2005
Discussed in committee	20.3.2006 25.4.2006
Date adopted	25.4.2006
Result of final vote	+: 41 –: 4 0: 3
Members present for the final vote	Panagiotis Beglitis, André Brie, Elmar Brok, Simon Coveney, Véronique De Keyser, Giorgos Dimitrakopoulos, Camiel Eurlings, Maciej Marian Giertych, Ana Maria Gomes, Alfred Gomolka, Richard Howitt, Toomas Hendrik Ilves, Ioannis Kasoulides, Joost Lagendijk, Vytautas Landsbergis, Cecilia Malmström, Francisco José Millán Mon, Pasqualina Napoletano, Annemie Neyts-Uyttebroeck, Baroness Nicholson of Winterbourne, Justas Vincas Paleckis, Alojz Peterle, Tobias Pflüger, João de Deus Pinheiro, Mirosław Mariusz Piotrowski, Hubert Pirker, Paweł Bartłomiej Piskorski, Michel Rocard, Raúl Romeva i Rueda, Libor Rouček, György Schöpflin, Gitte Seeberg, István Szent-Iványi, Konrad Szymański, Charles Tannock, Inese Vaidere, Ari Vatanen, Karl von Wogau, Luis Yañez-Barnuevo García
Substitute(s) present for the final vote	Laima Liucija Andrikiienė, Árpád Duka-Zólyomi, Glyn Ford, Milan Horáček, Tunne Kelam, Jaromír Kohlíček, Janusz Onyszkiewicz, Rihards Pīks, Aloyzas Sakalas
Substitute(s) under Rule 178(2) present for the final vote	

22.6.2007

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

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 refolement, 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:

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'.

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

¹ Not yet published in OJ.

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) Voluntary 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**.

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***.

(10) The effects of national return measures should be given a European dimension by establishing a re-entry ban.

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

(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***

[Decision/Regulation ... on the establishment, operation and use of the Second Generation Schengen Information System (SIS II)].

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 features, language, religion or belief, political or any other opinions, membership of a national minority, property, birth, disability, age or sexual orientation.

(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, ***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

(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***

primary consideration of Member States when implementing this Directive.

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 20 a (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 *deleted* 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.

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)

(bc) 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)

(fa) '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-country 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 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.

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 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

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-refoulement, 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.

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-refoulement, 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

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.

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 8 a (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

1. Member States shall issue ***an individual***

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).

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

1. Member States may postpone the enforcement of a return decision for an appropriate period, taking into account the

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

specific circumstances of the individual case.

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 circumstances prevail:

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

deleted

official of the country of return, following an assessment of the conditions to which the minor will be returned.

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 :

- 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.*

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.*

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 1 a (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 Guidelines on security provisions for joint removal by air, attached to Decision 2004/573/EC.

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, ***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 2 a (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** understands.

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**

2. The judicial remedy shall have suspensive effect.

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

Amendment 53
Article 12, paragraph 4

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.

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 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 be 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 be 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
Date adopted	5.6.2007
Result of final vote	+: 22 -: 0 0: 3
Members present for the final vote	Margrete Auken, Josep Borrell Fontelles, Danutë Budreikaitë, 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 Kulakowski, Miguel Angel Martínez Martínez, Manolis Mavrommatis, Pasqualina Napoletano, Anne Van Lancker, Ralf Walter

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)			
Date submitted to Parliament	1.9.2005			
Committee responsible Date announced in plenary	LIBE 29.9.2005			
Committee(s) asked for opinion(s) Date announced in plenary	AFET 29.9.2005	DEVE 29.9.2005	EMPL 29.9.2005	
Not delivering opinions Date of decision	EMPL 14.9.2005			
Rapporteur(s) Date appointed	Manfred Weber 14.9.2005			
Discussed in committee	24.11.2005	20.3.2006	20.6.2006	11.12.2006
	27.6.2007	12.9.2007		
Date adopted	12.9.2007			
Result of final vote	+: 47	-: 5	0: 0	
Members present for the final vote	Alexander Alvaro, Alfredo Antoniozzi, Mihael Brejc, Kathalijne Maria Buitenweg, Michael Cashman, Giuseppe Castiglione, Giusto Catania, Carlos Coelho, Fausto Correia, Esther De Lange, Agustín Díaz de Mera García Consuegra, Bárbara Dührkop Dührkop, Claudio Fava, Patrick Gaubert, Roland Gewalt, Lilli Gruber, Adeline Hazan, Jeanine Hennis-Plasschaert, Ewa Klant, Roger Knapman, Magda Kósáné Kovács, Barbara Kudrycka, Henrik Lax, Roselyne Lefrançois, Sarah Ludford, Dan Mihalache, Claude Moraes, Javier Moreno Sánchez, Martine Roure, Inger Segelström, Károly Ferenc Szabó, Søren Bo Søndergaard, Vladimir Urutchev, Manfred Weber, Tatjana Ždanoka			
Substitute(s) present for the final vote	Inés Ayala Sender, Simon Busuttil, Charlotte Cederschiöld, Gérard Deprez, Iratxe García Pérez, Ignasi Guardans Cambó, Sophia in 't Veld, Carlos José Iturgaiz Angulo, Sylvia-Yvonne Kaufmann, Metin Kazak, Jean Lambert, Antonio Masip Hidalgo, Hubert Pirker, Antonio Tajani, Rainer Wieland			
Substitute(s) under Rule 178(2) present for the final vote	Vincenzo Aita, Iles Braghetto			