



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 15 February 2008**

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from: Presidency

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to: Permanent Representative Committee/Mixed Committee

on: 20 February 2008

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No. Cion doc: 12125/05 MIGR 41 CODEC 750 COMIX 579 - SEC(2005) 1057

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Subject: 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

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Delegations will find attached a revised text of the above-mentioned proposal as it stands following discussions between JHA Counsellors on 7 February 2008. New compromise texts submitted by the Presidency are in bold.

*CURRENT STATE OF PLAY AT COUNCIL*<sup>1</sup>

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(b) thereof,

Having regard to the proposal from the Commission<sup>2</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas<sup>3</sup>:

- (1) The Tampere European Council of 15 and 16 October 1999 established a coherent approach in the field of immigration and asylum, dealing together with the creation of a common asylum system, a legal immigration policy and the fight against illegal immigration.<sup>4</sup>

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<sup>1</sup> **DE** entered linguistic reservations on editorial changes made to Articles 3(e), 3(g), 3(h), 6a(1), 7(1), 7(2), 9(3), 12(2), 13(2), 13a(1), 15(1) and 15(3). **CH, IS, NO, and AT** maintained scrutiny reservations on the Presidency compromise suggestions, which were discussed during the JHA Counsellors meeting on 7 February 2008.

<sup>2</sup> OJ C [...], p. [...].

<sup>3</sup> **FI** and **SE** suggested adding the following recital to the Preamble: *A third country-national who has applied for asylum in a Member State should not be regarded as staying illegally on the territory of the Member State until a negative decision on the application has entered into force.*

<sup>4</sup> Source: EP-LIBE Committee Amendment 2.

- (1a) The Brussels European Council of 4 and 5 November 2004 called for the establishment of an effective removal and repatriation policy, based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity.
- (1b) The Council of Europe Committee of Ministers adopted on 4 May 2005 "20 guidelines on forced return" (CM(2005)40).<sup>5</sup>
- (2) Clear, transparent and fair rules need to be fixed to provide for an effective return policy as a necessary element of a well managed migration policy.
- (3) This Directive should establish a horizontal set of rules, applicable to all third-country nationals who do not or who no longer fulfil the conditions for entry, stay or residence in a Member State.
- (4) Member States should ensure that the ending of illegal stay of third-country nationals is carried out through a fair and transparent procedure. According to general principles of EU law, decisions taken under this Directive should be adopted on a case-by-case basis and based on objective criteria.<sup>6</sup>
- (5) The need for EC and bilateral readmission agreements with third countries to facilitate the return process is underlined.<sup>7</sup> International cooperation with countries of origin at all stages of the return process is a prerequisite to achieving sustainable return.<sup>8</sup>
- (5a) It is recognised that it is legitimate for Member States to return illegally staying third-country nationals. The pre-requisite for this assumption is that fair and efficient asylum systems are in place, which fully respect the principle of non-refoulement.<sup>9</sup>

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<sup>5</sup> Source: EP-LIBE Committee Amendment 1 (technically adapted).

<sup>6</sup> Source: EP-LIBE Committee Amendment 8 (technically adapted).

<sup>7</sup> Source: EP-LIBE Committee Amendment 3 (technically adapted).

<sup>8</sup> Source: EP-LIBE Committee Amendment 6.

**FR** entered a reservation to this recital.

<sup>9</sup> Source: EP-LIBE Committee Amendment 4 (technically adapted).

- (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. **In order to promote voluntary return, Member States should provide for enhanced return assistance and counselling and make best use of the relevant funding possibilities offered under the European Return Fund.**
- (7) A common minimum set of legal safeguards on decisions related to return should be established to guarantee effective protection of the interests of the individuals concerned
- (8) The situation of persons who are staying illegally but who cannot (yet) be removed should be addressed and standards of living capable of ensuring their basic subsistence should be provided.<sup>10</sup>
- (9) The use of coercive measures should be expressly bound to the principle of proportionality and minimum safeguards for the conduct of forced return should be established, taking into account Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subject of individual removal orders<sup>11</sup> **and the 20 guidelines on forced return adopted by the Council of Europe Committee of Ministers on 4 May 2005.**

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<sup>10</sup> *Source: Article 13(1), 2<sup>nd</sup> indent of the then Presidency compromise text (doc 13658/07).*  
**FR** entered a reservation on this recital, suggesting its deletion or alternatively the following wording:

*The situation of third-country nationals who are staying illegally but cannot be removed should be addressed regarding their basic conditions of subsistence according to national legislation.*

<sup>11</sup> OJ L 261, 6.8.2004. p. 28.

**FR** entered a reservation to this recital.

(10) The effects of national return measures should be given a European dimension by establishing an entry ban preventing entry into and stay in the territory of all the Member States.

The length of the 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" deleted) threat to public policy or public security, Member States should be allowed to impose a longer-entry ban<sup>12</sup>.

(11) The use of detention should be limited and bound to the principle of proportionality.

Detention should only be used if necessary to prepare return or carry out the removal and if the application of less coercive measures would not be sufficient<sup>13</sup>.

(11a) Third-country nationals under detention should be treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law.<sup>14</sup>

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(15) Member States should have rapid access to information on entry bans issued by other Member States. This information sharing should take place in accordance with Regulation (EC) No 1987/2006 of the European Parliament and of the Council on the establishment, operation and use of the Second Generation Schengen Information System (SIS II)]<sup>15</sup>

(15a) 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.<sup>16</sup>

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<sup>12</sup> **DE** and **NO** entered reservations on this recital.

<sup>13</sup> **FR** entered a reservation on this recital.

<sup>14</sup> *Source: first sentence of Article 15(1) of Cion proposal.*

<sup>15</sup> OJ L 381, 28.12.2006, p. 4.

<sup>16</sup> *Source: EP-LIBE Committee Amendment 7.*

- (16) Since the objective of this Directive, namely to establish common rules concerning return, removal, use of coercive measures, detention and entry bans, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (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.
- (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. **[deleted]**
- (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.
- (20) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

- (21) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application. Given that this Directive builds - to the extent that it applies to third country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Schengen Borders Code<sup>17</sup> - upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of the said Protocol, decide, within a period of six months after the adoption of this Directive, whether it will implement it in its national law.
- (22) This Directive constitutes - to the extent that it applies to third country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Schengen Borders Code - a development of provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point C of Council Decision 1999/437/EC<sup>18</sup> on certain arrangements for the application of that Agreement.
- (23) This Directive constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 4(1) of Council Decision 2004/860/EC<sup>19</sup> on the provisional application of certain provisions of that Agreement.

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<sup>17</sup> OJ L 105, 13.4.2006, p. 1,.

<sup>18</sup> OJ L 176, 10.7.1999, p. 31.

<sup>19</sup> OJ L 370, 17.12.2004, p. 78.

This Directive constitutes - to the extent that it applies to third country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Convention Implementing the Schengen Agreement - an act building on the Schengen acquis or otherwise related to it within the meaning of Article 3(2) of the Act of Accession,

HAVE ADOPTED THIS DIRECTIVE:

## **Chapter I**

### **GENERAL PROVISIONS**

#### **Article 1**

##### **Subject matter**

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.

#### **Article 2**

##### **Scope**

1. This Directive applies to third-country nationals staying illegally in the territory of a Member State.
  - (a) deleted (moved to Article 3b)
  - (b) deleted (moved to Article 3b)
  
2. Member States may decide not to apply this Directive to third-country nationals who:

- (a) are subject to a refusal of entry, in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent **[deleted]** authorities in connection with the irregular crossing by land, sea or air of the **external** border of a Member State **[deleted]**<sup>20</sup> unless they have subsequently obtained an authorisation to stay in that Member State<sup>21</sup>.
  - (b) are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law or who are subject to extradition procedures.
3. This Directive shall not apply to persons enjoying the Community right of free movement.
- (a) deleted
  - (b) deleted

### **Article 3**

#### **Definitions**

For the purpose of this Directive the following definitions shall apply:

- (a) ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of the Schengen Borders Code.
- (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 of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry , stay or residence in that Member State;

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<sup>20</sup> Definition based on Article 8 of the Eurodac Regulation.

<sup>21</sup> **DE** and **AT** entered a reservation on the new wording of Article 2(a), preferring the previous Presidency compromise suggestion as reflected in doc. 15566/07. **CZ**, **RO** and **SK** expressed concerns on the impact of this provision to procedures under bilateral or EU readmission agreements.

- (c) 'return decision' means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return;
- (d) **'return' means the process of going back to one's country of origin, transit or another third country, in which the third-country national concerned will be accepted, whether in voluntary compliance with an obligation to return, or enforced;**
- (e) 'removal' means the enforcement of the obligation to return, namely the physical transportation out of the country;
- (f) deleted [addressed in Article 7(3)]
- (g) "entry ban" means an administrative or judicial decision or act prohibiting entry into and stay in the territory of the Member States for a specified period, accompanying a return decision.
- (h) "risk of absconding" means the existence of reasons in an individual case which are based on objective criteria<sup>22</sup> defined in national law<sup>23</sup> to believe that a third-country national who is subject to return procedures will abscond<sup>24</sup>.
- (i) "voluntary departure" means compliance with the obligation to return within the time-limit fixed for that purpose in the return decision.<sup>25</sup>

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<sup>22</sup> *Based on Amendment 19 of the EP LIBE Committee Report.*

<sup>23</sup> **AT** (which entered a scrutiny reservation on the definition) suggested deleting the wording *based on objective criteria defined in national law*.

<sup>24</sup> **BE, ES, FR, MT** (which entered a scrutiny reservation on the definition) and **PL** expressed concerns about the new compromise suggestion, especially in regard with the deletion of the examples of risk of absconding set out in doc. 15566/07. **AT** suggested referring to certain examples in the Preamble.

<sup>25</sup> **NL** suggested extending the scope of this definition to cases where the third-country national leaves the Member State, with its authorization, after the expiry of the time-limit, without the extra decision (needed in accordance with this Directive) for the extension of the voluntary departure time pursuant Article 6a(2)..

- (j) "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.<sup>26</sup>

#### Article 4

##### More favorable provisions

1. This Directive shall be without prejudice to more favorable provisions of:
  - (a) bilateral or multilateral agreements between the Community or the Community and its Member States and one or more third countries;
  - (b) bilateral or multilateral agreements between one or more Member States and one or more third countries.
  
2. This Directive shall be without prejudice to any provision which may be more favorable for the third country national laid down in Community acquis relating to immigration and asylum.
  - (a) deleted
  - (b) deleted
  - (c) deleted
  - (e) deleted
  - (f) deleted

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<sup>26</sup> **DE** and **FR** suggested maintaining in the end of this definition the wording *found to have special needs after an individual evaluation of their situation*. **Cion** pointed out that is wording is superfluous and that the current compromise is in line with the definition included in Article 17 of the Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers.

3. This Directive shall be without prejudice to the right of the Member States to adopt or maintain provisions that are more favourable to persons to whom it applies provided that such provisions are compatible with this Directive.

<sup>27</sup>4 With regard to third-country nationals excluded from the scope of this Directive in accordance with Article 2 paragraph 2(a) Member States shall:

- ensure that the treatment and the level of protection is not less favourable than set out in Article 7 paragraphs 4 and 5 (limitations on use of coercive measures), Article 8 paragraph 2, **first indent** (postponement of removal)<sup>28</sup>, Article 13 second and fourth indent (emergency health care and taking into account needs of vulnerable persons) and Articles 15 and 15a<sup>29</sup> (detention conditions) and
- respect the principle of non-refoulement.

#### Article 5

#### **Non-refoulement, family life and best interest of the child<sup>30</sup>**

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

- (a) the best interest of the child,

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<sup>27</sup> **DE** entered a reservation on this paragraph because although these third-country nationals are to be exempted from the scope of the Directive certain Articles would be explicitly applicable to them.

<sup>28</sup> **FR** queried the coherence of this provision because third-country nationals are refused entry and on the other hand their removal (which presupposes illegal entry) is postponed. **Cion** recalled that it is the level of protection which is required to be ensured in this Article and not the contents of the referred provisions such as Article 8(2)(a).

<sup>29</sup> **CZ** entered a reservation on the reference to Articles 15 and 15a because it maintains reservations on these provisions too.

<sup>30</sup> **ES** suggested converting Article 5 into a recital because of the problems it causes on implementation. **DE** entered a reservation on the reinsertion of this Article in the body of the text. **PT** pointed out that this Article creates no new obligation as it is already covered by international instruments. **Cion** commented that the reinsertion of this Article in the operative part of the text has been a strong point for the EP and would facilitate the negotiations with it.

(b) family life

(c) the state of health of the third country national concerned

and respect the principle of non refoulement.

## Chapter II

### TERMINATION OF ILLEGAL STAY

#### Article 6

##### Return decision

1. Member States shall issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in paragraphs 2, 3 and 4 of this Article.

Deleted (new Article 6a)

2. 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<sup>31</sup> to go to the territory of that Member State immediately. In case of non-compliance by the third-country national concerned with this requirement,<sup>32</sup> or where the third country national's immediate departure is required for reasons of national security or public policy, paragraph 1 shall apply.

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<sup>31</sup> **LT** suggested that the Member State in which the third-country national was staying illegally should issue a return decision in order to send him/her to the other Member State where he/she holds an authorisation to stay. It suggested the following wording to this effect: *If the third-country national is 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, a return decision shall be issued to such person obliging him/her to go to the territory of that Member State.*

<sup>32</sup> **DE** and **SK** suggested reinserting in the text the wording *or where it may be* (**SK** add: *reasonably*) assumed that the third-country national will not comply with the requirement

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3. Member States may, at any moment decide to grant an autonomous residence permit or another authorization 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. Where a return decision has already been issued, it shall be withdrawn **or suspended for the duration of validity of the residence permit or other authorization of legal right of stay.**

Deleted [replaced by Art. 6(2)]

4. 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, that Member State shall<sup>33</sup> consider refraining from issuing a return decision, until the pending procedure is finished.<sup>34</sup>

Deleted

5. The present Directive does not prevent Member States from adopting a decision on the ending of legal stay together with a return decision and/or a decision on removal within one administrative or judicial act as provided for in their national legislation, without prejudice to the procedural safeguards available under Chapter III of this Directive and under other relevant provisions of Community and national law.

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<sup>33</sup> IT suggested replacing *shall* with *may*. BE opposed to this suggestion.

<sup>34</sup> NL expressed concern on the possible extra administrative burden created by this provision. Pres pointed out that the administration of a Member State shall refrain from acting, therefore no extra work is foreseen.

## Article 6a<sup>35</sup>

### Voluntary departure

1. The return decision shall<sup>36</sup> provide for an appropriate period for voluntary departure ranging between **one** week<sup>37</sup> and one month, without prejudice to the exceptions referred to in paragraphs 2 and 4. Member States may provide in their national legislation that such period shall only be granted following an application of the third-country national concerned. In this case, Member States shall inform the third-country nationals concerned about the possibility of submitting such an application.
2. Member States may extend the period for voluntary departure for an appropriate period, taking into account the specific circumstances of the individual case,<sup>38</sup> such as the length of stay, the existence of children attending school and the existence of other family and social links.
3. Certain obligations aimed at avoiding the risk of absconding, such as regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or the obligation to stay at a certain place may be imposed for the duration of that period.

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<sup>35</sup> **MT** maintained its scrutiny reservation on the Article as a whole.

<sup>36</sup> **IS, MT** and **SE** suggested replacing *shall* with *may*.

<sup>37</sup> **DE** (which entered a reservation on this paragraph) **ES**, and **SE** preferred the previous draft compromise without a minimum time period. **FR** also expressed concerns on the consequences of such a provision in the return procedure. **NL** pointed out that due to the new wording flexibility might be reduced in cases where e.g. the passport of a returnee expires before the end or soon after the minimum departure time. **Pres**, argued that a minimum departure time for returnees with long and strong ties (such as many under this draft Directive) would be necessary and that is a strong point for the European Parliament. It also added that in such rare cases **NL** referred to it would be up to the returnee to prolong his/her travel document.

<sup>38</sup> **CZ, DE** (which entered a reservation on this paragraph) and **IT** suggested deleting the rest of the paragraph, thus returning to the previous draft compromise. **ES** and **NL** also questioned the added value of setting these examples. **Pres** pointed out that the addition of the examples was made in the context of the negotiation with the Parliament and the wording of the paragraph is such that it would not cause any specific obligation to Member States.

4. If there is a risk of absconding, as defined in Article 3 (h) **or if an application for a resident permit has been found to be manifestly unfounded or based on fraud** or if the person concerned poses a risk to public security, public order or national security Member States may<sup>39</sup> refrain from granting a period of voluntary departure.<sup>40</sup>

## Article 7

### Removal

1. Member States shall enforce<sup>41</sup> the return decision if no period for voluntary departure has been granted in accordance with Article 6a or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 6a.
2. If the Member State has granted a period of voluntary departure in accordance with Article 6a the return decision can be enforced only after the period has ended, unless during this period, a risk, as defined in Article 6a, paragraph 4<sup>42</sup>, arises.
3. Member States may adopt a separate administrative or judicial decision or act ordering the removal.
4. Where Member States use – as a last resort - 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 as provided for in national legislation in accordance with fundamental rights and with due respect for the dignity and physical integrity of the third-country national concerned. [deleted]

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<sup>39</sup> **BE, ES, IT** suggested replacing *may* with *shall*.

<sup>40</sup> **LT** suggested to add a new paragraph 5, which would read as follows: *An unaccompanied third-country national, who is a minor, shall be returned only provided that he/she will be duly taken care of in the third country to which the minor is to be returned, having regard to his/her needs, age and level of independence.*

<sup>41</sup> **NL** suggested amending the phrase as follows: *Member States shall as a rule enforce...* in order to cover cases where return is not possible at a given time. **BE** entered a scrutiny reservation and suggested replacing *shall* with *may*. **NL** could live with this suggestion.

<sup>42</sup> **EE** suggested referring in this point to Article 6a paragraph 3 as well.

5. In carrying out removals by air, Member States shall take into account the common Guidelines on security provisions for joint removal by air, attached to Decision 2004/573/EC. [deleted]

## **Article 8**

### **Postponement of removal<sup>43</sup>**

1. Member States shall postpone removal
  - when this would violate the principle of non-refoulement or
  - as long as suspensive effect is granted in accordance with Article 12 paragraph 2<sup>44</sup>.
2. Member States may postpone removal for an appropriate period taking into account the specific circumstances of the individual case. Member States shall<sup>45</sup> in particular take into account:
  - the person's physical state or mental capacity;
  - technical reasons, such as lack of transport capacity or failure of the removal due to lack of identification.<sup>46</sup>
3. If a removal is postponed as provided for in paragraphs 1 and 2, the obligations foreseen in Article 6a paragraph 3 may be imposed on the third country national concerned.

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<sup>43</sup> CZ entered a scrutiny reservation on the Article as a whole.

<sup>44</sup> Based on Amendment 53 of the EP LIBE Committee Report.

<sup>45</sup> DE suggested replacin *shall* with *may*.

<sup>46</sup> BE suggested adding an additional ground related to special needs of vulnerable persons.

**Article 8a**  
**Return and removal of unaccompanied minors**

1. Before deciding to issue a return decision in respect of an unaccompanied minor, appropriate assistance **[deleted]** shall be granted with due consideration given to the best interest of the child.
2. Before removing an unaccompanied minor from its territory, the authorities of the Member State shall be satisfied that he/she will be returned to a member of his/her family, a nominated guardian or adequate reception facilities in the state of return.<sup>47</sup>

**Article 9**  
**Entry ban**

1. Return decisions shall be accompanied by an entry ban.<sup>48</sup>
  - if no period for voluntary departure<sup>49</sup> has been granted or,
  - if the obligation to return has not been complied with within the period granted in accordance with Article 6a.<sup>50</sup>

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<sup>47</sup> **DE** entered a reservation (due to the additional administrative burden this provision would create) and **CZ** entered a scrutiny reservation on this paragraph. **DK** suggested adding the *competent officials of the country of return* as it was the wording in the original **Cion** proposal in Article 8. **Cion** recalled that the new wording draws on the CoE Guideline 2(5).

<sup>48</sup> **DE** maintained a reservation and **BE CZ, ES, IS, NL** and **AT** scrutiny reservations on the Article as a whole. **NL** suggested differentiating between forced return cases where an entry ban shall be imposed and voluntary departure cases where an entry ban may not be imposed. In order to accommodate concerns of **NL** in regard to the registration of an entry ban into SIS II and the ensuing link of this draft Directive with SIS II, **Cion** suggested issuing a unilateral declaration whereby it would be stated that the review of the SIS II (envisaged under the review clause of Article 24 para 5 of the relevant Regulation), will be an opportunity to propose an obligation to register in the SIS entry bans issued under this draft Directive.

<sup>49</sup> **IT** suggested limiting this indent only to *assisted voluntary return*.

<sup>50</sup> *Compromise suggestion between the general "may" proposed by EP (EP LIBE Committee Amendment 38) and the general "shall" in the previous state-of-play at Council.*

**BE** suggested reformulating the grounds for imposing an entry ban on a returned third-country national as follows: - *constitutes a threat to public policy or public security*, - *has already been the subject of more than one removal order*, - *has not fulfilled his obligation to return voluntarily*.

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

2. The length of the entry ban shall be determined with due regard to all relevant circumstances of the individual case and shall not in principle exceed five years<sup>51</sup>. It may exceed five years if the third-country national represents a threat<sup>52</sup> to public policy or public security or to national security.
3. Third-country nationals who are victims of trafficking in human beings pursuant to Council Directive 2004/81/EC<sup>53</sup> and who are co-operating within a police or judicial investigation shall not be subject of an entry ban without prejudice to paragraph 1, first subparagraph, second indent and provided that the third-country national concerned does not represent a threat to public policy, public security or national security.<sup>54</sup>

Member States may withdraw or suspend an entry ban in individual cases for humanitarian or other reasons.

Member States may withdraw or suspend an entry ban where a third-country national who is the subject of an entry ban issued in accordance with paragraph 1 second subparagraph leaves the territory of a Member State in full compliance with a return decision.<sup>55</sup>

4. Where a Member State considers issuing a residence permit or another authorisation offering a right to stay to a third-country national who is subject of an entry ban issued by another Member State, it shall first consult the Member State having issued the entry ban and shall take account of its interests in accordance with the provisions of Article 25 of the Convention Implementing the Schengen Agreement.

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<sup>51</sup> **DE**, supported by **IS**, maintained a reservation on the maximum limit of five years suggesting a lifelong ban as a principle, which could be shortened.

<sup>52</sup> **BE** suggested adding *serious* before *threat*.

<sup>53</sup> Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been subject of an action to facilitate illegal immigration, who co-operate with the competent authorities

<sup>54</sup> **ES**, **FR** ( both delegations in particular for the term *other reasons* in second subparagraph), as well as **BE**, **IT** and **SE** entered scrutiny reservations on the new Presidency compromise wording of this paragraph.

<sup>55</sup> *Covers substance of EP LIBE Committee Amendments 40, 43, 44 and 46.*

5. Paragraphs 1 to 4 apply without prejudice to the right to international protection, as defined in Article 2 (a) of Directive 2004/83/EC, in the Member States.<sup>56</sup>

#### Article 10

#### Removal - moved to article 7

Deleted [moved to Article 7(4)]

Deleted[moved to Article 7(5)]

### Chapter III

## PROCEDURAL SAFEGUARDS

#### Article 11

#### Form

1. Return decisions and – if issued - entry-ban decisions and decisions on removal, shall be issued in writing<sup>57</sup> and give reasons in fact and in law as well as information about available legal remedies.

The information on reasons in fact may be limited where national law allows for the right of information to be restricted, in particular in order to safeguard national security, defense, public security and the prevention, investigation, detention and prosecution of criminal offences.<sup>58</sup>

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<sup>56</sup> *Explanation with regard to EP LIBE Committee Amendment 45: according to Article 2a of Directive 2004/83, the term international protection covers both refugee status and subsidiary protection status.*

<sup>57</sup> **NL**, supported by **CH**, maintained its reservation on the provision against the obligation to provide the return decision in writing, which (as **NL** maintains) contradicts the definition of the return decision in Article 3c). **Cion** clarified that a return decision could be taken orally but a written version thereof would be necessary for the exercise of possible remedies. **Pres** recalled that the provision is in compliance with Guideline 4 of the CoE. **NL** suggested replacing *shall* with *may* in this paragraph, or alternatively, adding reference to paragraph 1 in new paragraph 3.

<sup>58</sup> **CZ** entered a reservation on this paragraph.

2. Member States shall provide, upon request, a written or oral translation of the main elements of decisions related to return as defined in paragraph 1, including information on the available legal remedies<sup>59</sup> in a language the third-country national understands<sup>60</sup> or may reasonably be supposed to understand.
- <sup>61</sup>3. With regard to persons who have illegally entered the territory of a Member State and who have not subsequently obtained an authorisation to stay in that Member State<sup>62</sup> paragraph 2<sup>63</sup> does not apply.

In those cases decisions related to return, as defined in paragraph 1, shall be given by means of a standard form as set out in Annex I<sup>64</sup>.

Member States shall make available generalised information sheets explaining the main elements of the standard form in at least five<sup>65</sup> of those languages, which are most frequently used or understood by illegal migrants entering the Member State concerned.<sup>66</sup>

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<sup>59</sup> *Based on Amendment 49 of the EP LIBE Committee Report.*

<sup>60</sup> *Based on Amendment 50 of the EP LIBE Committee Report.*

<sup>61</sup> **CZ AT** and **SK** entered reservations on this paragraph as a whole, highlighting their preference to the deleted Article 13a for the accelerated procedure as set out in doc. 15566./07

<sup>62</sup> *Wording taken from Article 3(h) first indent of the latest Council text (doc. 15566/07).*

<sup>63</sup> **NL** suggested adding *paragraphs 1 and 2 do not apply.*

<sup>64</sup> *Wording taken from former Article 13a(2).* **CZ** entered a reservation on this paragraph.

<sup>65</sup> **CZ** and **EE** questioned the added value of this obligation to provide this information in five languages.

<sup>66</sup> *Wording taken from former Article 13a(2).* **CH** entered a reservation on this point.

**Article 12**  
**Remedies<sup>67</sup>**

1. The third-country national concerned shall be afforded an effective remedy<sup>68</sup> to appeal against or seek review of decisions related to return, as defined in Article 11(1)<sup>69</sup> before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.<sup>70</sup>
2. The above mentioned authority or body shall have the power to review<sup>71</sup> decisions related to return, as defined in Article 11(1) including the possibility of temporarily suspending its execution, **unless temporary suspension is already applicable under national legislation.**
3. The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance.
4. If the third-country national concerned does not have sufficient means to pay for necessary legal assistance, he/she shall be given it free of charge,<sup>72</sup> in accordance with **the relevant national rules regarding legal aid.**

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<sup>67</sup> DE and SE maintained their scrutiny reservations on the text as a whole.

<sup>68</sup> NL pointed out that a single remedy for all cases related to return decision would be preferable as a clearer legal framework and suggested the following wording: *shall be afforded, when possible, one effective remedy.*

<sup>69</sup> Based on Amendment 51 of the EP LIBE Committee Report.

<sup>70</sup> NO maintained a scrutiny reservation on paragraph 1, suggesting making clear that the reference to *safeguards of independence* applies only to the *competent bodies*.

<sup>71</sup> BE entered a scrutiny reservation on the term *review* and suggested the following recital to be added in the Preamble: *According to this Directive, third-country nationals subject to a return decision should be afforded an effective remedy before a competent judicial or administrative authority that shall have the power to review the decision. It should be for the Member States to decide if this review covers a merits review or should be limited to the review of the legality of the decision.*

<sup>72</sup> Wording taken from CoE GL 5(2) 2<sup>nd</sup> indent in order to address EP LIBE Committee Amendment 52. EL, PT, EE, LV (the last two delegations preferred the previous Council draft compromise and reference to national law) entered reservations on the obligation to provide legal aid **free of charge**. DE suggested providing in this Article for a pre-scrutiny to confirm if the case is justified, before granting the legal aid.

**Article 13**  
**Safeguards pending return**<sup>73</sup>

1. Member States shall **without prejudice to Article 15 and 15 a** ensure that the following principles are taken into account as far as possible in relation to third-country nationals during the period of voluntary departure granted in accordance with Article 6a and during periods for which removal has been postponed in accordance with Article 8:<sup>74</sup>
  - ... Family unity with family members present in their territory is maintained
  - ...Emergency health care and essential treatment of illness is provided;
  - ... Minors are granted access to the basic education system subject to the length of their stay;
  - ... Special needs of vulnerable persons are taken into account..
  
2. Member States shall provide the persons referred to in paragraph 1 with a written<sup>75</sup> confirmation in accordance with national legislation that the period for voluntary departure has been extended in accordance with Article 6a or that the return decision will temporarily not be enforced.

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<sup>73</sup> **CY, NL, AT** and **SE** suggested deleting the Article as redundant or moving its contents, (or a large part thereof, or a generally-worded relevant principle) to the Preamble. **NL** maintained its proposal to add in the text of this Article *unless the postponement of the removal is due to lack of co-operation by the third-country national subject to removal*. **Pres** and **Cion** argued for maintaining the Article in the operative part of the Directive. **Cion** also pointed out that if the returnees are not given these basic standards, they will be encouraged to apply for asylum in order to possibly benefit from the rights under Directive 2003/9/EC.

**FR** stressed that the it should be clarified that these safeguards are not applicable per se in the Article 15 *Detention conditions*.

<sup>74</sup> **FI** suggested reinserting the indent "Basic standards of living capable of ensuring their basic subsistence are provided" in the operative text of the draft Directive.

<sup>75</sup> **ES, NL, NO** and **SE** suggested deleting the word *written*. **NL** suggested alternatively to replace *shall* with *may*.

**Article 13a**  
**Accelerated procedure following illegal entry**

**Deleted**

**Chapter IV**  
**DETENTION FOR THE PURPOSE OF REMOVAL**

**Article 14**  
**Detention<sup>76</sup>**

1. Unless other sufficient but less coercive measures can be applied in the concrete case, Member States shall<sup>77</sup> keep in detention a third-country national, who is subject of return procedures, **[deleted] in order** to prepare return and<sup>78</sup>/or carry out the removal process **when**
  - there [deleted] is a risk of absconding<sup>79</sup> or

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<sup>76</sup> **CH** and **MT** maintained their reservations on the Article as a whole. **MT** suggested putting the contents of the Article *in accordance with national legislation*. **DE** and **IT** maintained general scrutiny reservations on the Article as a whole. **SE** suggested adding a new paragraph whereby it would be provided that Member States are not obliged to detain minors.

<sup>77</sup> **BE, DE, FI, FR** (suggesting also turning the two indents into simple illustrative examples), **PT** and **SE** suggested replacing *shall* with *may*. **Cion** stressed that an optional character would deprive the provision of its added value and Member States would not be obliged to achieve any harmonised approach in the detention policy.

<sup>78</sup> **IT** suggested deleting the word *or*. **SE** suggested maintaining the previous wording ...*where this is necessary to prepare return and/or carry out the removal process....* **PT** could live with the current compromise wording, provided that the Article becomes optional (see also footnote 77).

<sup>79</sup> *Source: EP-LIBE Committee Amendment 55.* **PL** suggested linking clearly the risk of absconding with the illegal crossing of external borders of a Member State. **Cion** recalled that the risk of absconding is essentially linked with national law [see Article 3(h)].

- the third country national concerned avoids or hampers the preparation of return or the removal process.<sup>80</sup>

Any detention shall be for as short a period as possible<sup>81</sup> and only maintained as long as removal arrangements are in progress and executed with due diligence<sup>82</sup>.

2. Detention shall be ordered by administrative or judicial authorities.<sup>83 84</sup>

When detention has been ordered by administrative authorities, Member States shall

- either provide for a judicial review of the lawfulness of detention to be decided on within **five working days** from the beginning of detention<sup>85</sup>,

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<sup>80</sup> **ES** and **FR** suggested deleting the second indent, entering a reservation on this paragraph, stressing that they would oppose additional conditions for detention. **NL** pointed out that third-country nationals who pose a threat to public order, public security and national security shall also be detained. **Pres** and **Cion** emphasised that this concern could be covered through the risk of absconding provision. **NL** suggested adding in the end of the indent the following *or no period of voluntary return has been granted in accordance with Article 6a(4)*. **RO** suggested clarifying that this indent applies without prejudice to paragraph 5 of this Article.

<sup>81</sup> *Source: CoE Guideline 8(1) and "spirit" of EP-LIBE Committee Amendment 59 and 60.* **PL** suggested deleting the wording *...for as short a period as possible and only...*

<sup>82</sup> *Source: CoE Guideline 7.*

<sup>83</sup> **AT** entered a reservation on this paragraph, preferring the previous Council draft compromise. In the same vein, **CZ**, **EL**, **LV** and **SE** suggested reverting to the previous draft Council compromise wording in which no specific deadlines for ordering and reviewing detention were provided (considering as sufficient the wording in that compromise *speedy judicial review*). **CZ**, **LV** and **SE**, alternatively, suggested referring to national legislation on these deadlines. **LT** suggested maintaining reference to the 48-hour limit (within 48 hours). **Cion** recalled that through the two alternative approaches in this paragraph, Member States have a great amount of discretion in terms of meeting its requirements.

<sup>84</sup> **NL** suggested amending the following of the paragraph, as well as the first part of the third paragraph, as follows: *The third-country national may enter at all times an appeal against the detention decision to the competent judicial authority. If the third-country national does not avail himself of this possibility, the detention shall be reviewed by a judicial authority within a reasonable time limit laid down in the national legislation.*

<sup>85</sup> **MT**, which entered a reservation on the whole paragraph, pointed out that judicial review in all cases would be problematic due to lack of resources and it recalled that it has administrative tribunals which could review detention, in order to be able to comply with the time-limits set out in this Article. In this sense, **MT** suggested the following wording for case 1: *Either provide for a speedy review before a judicial or administrative authority or a competent body of members who are impartial and who enjoy the safeguards of independence of the lawfulness of detention.*

- or grant the third-country national concerned the right to take proceedings by which the lawfulness of detention shall be subject to a speedy judicial review to be decided on within **five working days** from the launch of the relevant proceedings; in this case Member States shall immediately inform the third-country national concerned about the possibility of submitting such an application.<sup>86</sup>

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The third country national concerned shall be released immediately if the detention is not lawful<sup>87</sup>.

3. In every case, detention shall be reviewed at reasonable intervals of time<sup>88</sup>. In the case of prolonged detention periods<sup>89</sup>, reviews shall be subject to the supervision of a judicial authority<sup>90</sup>.

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<sup>86</sup> In the same line with its footnote to the first indent of this paragraph, **MT** suggested ... *before a judicial or administrative authority or a competent body of members who are impartial and who enjoy the safeguards of independence.*

<sup>87</sup> *Source: CoE Guideline 9(1) and "spirit" of EP-LIBE Committee Amendment 56.* **ES** suggested deleting this phrase as redundant.

<sup>88</sup> **AT** (which suggested referring the paragraph to national legislation) and **SE** entered scrutiny reservations on the paragraph. **SE** supported by **DE** and **PL**, suggested the following wording to replace the current paragraph 3: *In every case detention shall be reviewed at reasonable intervals of time. In the case of prolonged detention periods a third-country national shall be entitled to take proceedings by which the lawfulness of his/her detention shall be subject to the supervision of a judicial authority.* In this context, **SE** highlighted its concern for the ex officio review provided for in this paragraph.

**FI** suggested providing for a regular review of the detention once a month. **PL** suggested that the judicial review should be initiated on the demand of the detainee. **FR** suggested putting this paragraph *in accordance with national legislation.*

*Source: CoE Guideline 8(2)(1).*

<sup>89</sup> **CZ** suggested amending the first part of this sentence along the following lines: *In the case of prolonged detention periods, exceeding the maximum of six months, reviews undertaken*

<sup>90</sup> *Source: CoE Guideline 8(2)(2)) and old third sentence of paragraph 4.* **MT** entered a reservation on this paragraph and suggested the following after the word *judicial*: *... or administrative authority or a competent body composed of members who are impartial and who enjoy the safeguards of independence.* **DE** suggested an alternative wording for this paragraph, along the following lines: *The lawfulness of the detention of a third-country national shall be subject to a speedy review in accordance with national law.*

4. Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. The maximum period of detention, subject to paragraph 5, may not exceed a period of **six** months.<sup>91</sup>
  
5. Member States may **[deleted] without prejudice to paragraph 6** extend this period up to **eighteen** months<sup>92</sup> in cases where regardless of all their reasonable efforts the removal operation is likely to last longer
  - due to a lack of co-operation by the third country national concerned or
  - due to delays in obtaining necessary documentation from third countries, or
  - due to pending appeal procedures.
  
6. When it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down in paragraph 1 no longer exist, detention ceases to be justified and the person concerned shall be released immediately<sup>93</sup>.

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<sup>91</sup> **CY** and **LT** suggested replacing *six* with *twelve* months. **FR** highlighted that it considered the six-month period as a general upper ceiling and it should be left to each Member State to determine its own maximum detention time within the six-month period. **MT** entered a reservation on this paragraph, because each Member State has its own specific concerns and suggested that the maximum period of detention should be determined in accordance with national legislation. **DE** entered a scrutiny reservation on the paragraph.

<sup>92</sup> **MT** entered a reservation on this paragraph, because each Member State has its own specific concerns and suggested that the maximum period of detention should be determined in accordance with national legislation. **DE** entered a scrutiny reservation on the paragraph. **CH**, **EE**, **NO** and **SE** suggested opting for a detention without maximum period for exceptional cases. In the same line, **DK** would not favour an absolute upper limit as counterproductive where the returnee tries to prolong the return procedure beyond that maximum time in order to be released. **RO** suggested replacing *eighteen months* with *nine*. **Pres** underscored that it would be possible to apply **any** maximum time period up to eighteen months.

<sup>93</sup> Source: *EP-LIBE Committee Amendment 59 and 61; inspired by CoE Guideline 7.*

**Article 15**  
**Conditions of detention**<sup>94</sup>

A part of the Article was moved to recital 11a

1. Detention shall be carried out as a rule in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and has to resort to prison accommodation, the third-country nationals under detention shall<sup>95</sup> be separated from ordinary prisoners.<sup>96</sup>
2. Third-country nationals under detention shall<sup>97</sup> be allowed – upon request - to establish in due time contact with legal representatives, family members and competent consular authorities.<sup>98</sup>  
**[deleted]**
3. Particular attention shall be paid to the situation of vulnerable persons. Emergency health care and essential treatment of illness shall be provided.<sup>99</sup>
4. Relevant<sup>100</sup> national, international and non-governmental organisations and bodies shall<sup>101</sup> have the possibility to visit detention facilities in order to assess the adequacy of the detention conditions. Such visits may be subject to authorisation.

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<sup>94</sup> **CZ, ES and FR** maintained reservations on the Article as a whole.

<sup>95</sup> *Based on Amendment 64 of the EP LIBE Committee Report. BE and DE suggested replacing shall with may.*

<sup>96</sup> **SE**, supported by **BE** suggested the following wording for paragraph 1: *A third-country national being held in detention may also be placed in prison accommodation if the third-country national cannot for security reasons be kept in specialized detention facilities or there are some other exceptional circumstances.*

<sup>97</sup> **EL, ES, FR and AT** suggested replacing *shall* with *may*.

<sup>98</sup> **ES and FR** suggested differentiating between an obligation to accept contact with legal representatives, family members and competent consular authorities on the one hand (for which a *shall* provision should be formulated) and contact with international organisations and specified NGOs (**ES** expressed concerns in particular for the NGOs) for which contact would be at the discretion of the competent authorities (and a *may* provision). **ES** also expressed concerns about the competence of certain international organisations to render these visits.

**CZ** suggested adding at the end of this paragraph the following wording: *with regard to available capacity and possibility of the Member States.*

<sup>99</sup> *Based on Amendment 63 of the EP LIBE Committee Report.*

<sup>100</sup> **NL** suggested adding ... *and competent ...*

<sup>101</sup> **DE, ES and FR** suggested replacing *shall* with *may*.

5. Third-country nationals kept in detention shall be systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations.<sup>102</sup>  
**This includes the information on their entitlement to contact organizations and bodies referred to in paragraph 4.**

### Article 15a

#### Detention of minors and families<sup>103</sup>

1. **Unaccompanied minors and families with minors** shall only be detained as a measure of last resort and for the shortest appropriate period of time.
2. Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy.<sup>104</sup>
3. Minors in detention shall have the possibility to engage in leisure-activities, including play- and recreational activities appropriate to their age, and shall have -depending on the length of their stay<sup>105</sup> - access to education.
4. Unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.
5. The best interest of the child shall be a primary consideration in the context of the detention of minors pending removal.

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<sup>102</sup> Source CoE GL 10/7, covers *Amendment 62 of the EP LIBE Committee Report*.

<sup>103</sup> **CZ, DE, EL** and **SK** entered scrutiny reservations on the Article.

<sup>104</sup> **FR** pointed out that it is not always possible to detain families in a separate accommodation

<sup>105</sup> **FR** suggested to depend the whole paragraph on the length of stay.

**Article 15 b**  
**Emergency situations**

**In cases of unforeseen sudden arrival of large numbers of illegal entrants which place exceptional and urgent demands on the competent authorities and facilities of a Member State, Member States may exceptionally, temporarily and within the strict limits of proportionality, derogate from the obligations set out in articles 14, paragraph 2 and 15, paragraph 1.**

**Chapter V**  
**APPREHENSION IN OTHER MEMBER STATES**

**Article 16**  
**Apprehension in other Member States**

Deleted

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## **Chapter VI**

### **FINAL PROVISIONS**

#### **Article 17**

##### **Reporting**

The Commission shall report every three years 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 report for the first time three years after the date referred to in Article 18(1) at the latest and focus at this occasion in particular on the application of Articles 9 and 14 in Member States.

#### **Article 18**

##### **Transposition**

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.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

**Article 19**  
**Relationship with Schengen Convention**

This Directive replaces the provisions of Articles 23 and 24 of the Convention implementing the Schengen Agreement

**Article 20**  
**Repeal**

Deleted

**Article 21**  
**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

**Article 22**  
**Addressees**

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, [...]

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

**Standard form for return decision in cases of apprehension within  
seven days after illegal entry**

*(in accordance with Article 11 of Directive 2008/xxx/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals)*

**Name of State**

**LOGO OF STATE (Name of Office)**

\_\_\_\_\_

**RETURN DECISION**

**On** \_\_\_\_\_ **at (time)** \_\_\_\_\_ **at (place)** \_\_\_\_\_

**We, the undersigned,** \_\_\_\_\_ **have before us:**

**Surname** \_\_\_\_\_

**First name** \_\_\_\_\_

**Date of birth** \_\_\_\_\_

**Place of birth** \_\_\_\_\_ **Sex:** \_\_\_\_\_

**Nationality** \_\_\_\_\_

**Resident in** \_\_\_\_\_

**Type of identity document** \_\_\_\_\_

**number** \_\_\_\_\_

**Issued in** \_\_\_\_\_

**on** \_\_\_\_\_

**Apprehended following illegal entry coming from** \_\_\_\_\_

**on** \_\_\_\_\_ *(a maximum period of 1 week may have elapsed between illegal entry and the issuing of this decision)*

**by means of** \_\_\_\_\_

**(indicate circumstances of illegal entry).**

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<sup>106</sup> The content of the standard form has still to be discussed at technical level in order to align it to the final wording of the corresponding provisions.

He/she is hereby informed that he/she does not fulfil the conditions for entry, stay or residence in \_\_\_\_\_ pursuant to \_\_\_\_\_ (*indicate references to the national legislation in force*), for the following reasons:

- (A) Has no valid travel document(s)
- (B) Has a false/counterfeit/forged travel document
- (C) Has no valid visa
- (D) Has a false/counterfeit/forged visa
- (E) Has no appropriate documentation justifying the purpose and conditions of stay
- (F) Does not have sufficient means of subsistence in relation to the period and form of stay, or the means to return to the country of origin or transit
- (G) Is a person for whom an alert has been issued for the purposes of refusing entry
  - in the SIS
  - in the national register

and is therefore obliged to return.

Taking into account the fact the he/she entered illegally and did not subsequently obtain an authorisation to stay, this return decision is enforceable immediately and he/she is hereby placed under detention for the purpose of removal.

Entry-ban: In accordance with Article 9 of Directive 2008/xxx/EC he/she is not allowed to enter into and stay in the territory of the Member States for a period of \_\_\_\_\_ (*normally five years*).

#### Comments

The person concerned may appeal against the decision as provided for in national law. The person concerned receives a copy of this document (*each State must indicate the possibilities under national legislation to appeal*).

Person concerned

Officer responsible