



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL HOME AFFAIRS

Directorate C: Migration and Protection  
**Unit C.1: Irregular Migration and Return Policy**

MIGRAPOL  
CG Return Dir 79

**CONTACT GROUP “Return Directive” (2008/115/EC)**

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**Subject:** Minutes of the 23<sup>rd</sup> meeting of the Contact Group Return Directive

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**Minutes of the of the 23<sup>rd</sup> meeting of the Contact Group Return Directive (E02232)**  
**Brussels, 1-2 June 2017**

**1. Approval of the agenda and of the minutes of previous meeting**

The draft agenda was approved without changes. The minutes of the previous meeting of 3 May 2017 had already been approved in written procedure.

**2. Nature of the meeting**

The meeting of the Contact Group Return Directive is a non-public one, with the participation of Member States experts, Schengen Associated countries, other European Union institutions and bodies. Certain UN agencies and bodies and non-governmental organisations were invited to attend a thematic session on 1 June 2017. Unit HOME C.1 chairs the meeting.

**3. List of points discussed**

***3.1 Revision of the Return Handbook (point 2 and 5 of the agenda)***

Participants discussed the draft text of the revised Handbook submitted by the Commission ahead of the meeting. The main purpose of the second round of discussion was to address all possible changes to the Handbook other than those already discussed during the 22<sup>nd</sup> meeting of the Contact Group. A last meeting is scheduled in July to finalise the revision exercise.

The revised text was discussed chapter by chapter during the meeting, as follows:

Introduction: the elements of the Commission recommendation of 7 March that are not related to specific provisions of the Directive would be included in a general introductory text.

Section 1: it was discussed to: introduce a clearer reference to current Article 6 (former article 5) of the Schengen Borders Code; clarify that the Directive applies to persons intercepted while crossing the internal borders without permit; not to explicitly refer to "return decisions" in relation to the determination of the country of removal, as this may be done also in other ways; consider adding two new circumstances indicating the existence of a risk of absconding, while adding a reference to right to effective remedy / to be heard.

Section 2: it was discussed to: make a more precise reference to the content of the *Affum* judgment in relation to temporary reintroduction of internal border checks; break down in three parts the cases covered by Article 2(2)(b) of the Directive (criminal law cases).

Section 3: no comments on the revised text.

Section 4: it was discussed to consider adding a reference to repeated refusal of embarking on a plane as a situation indicating a disruptive behaviour.

Section 5: it was discussed to: maintain the line that the introduction of internal border checks does not affect the allocation of responsibilities between Member States under the Return Directive; provide additional examples of good practices in relation to apprehension of irregular migrants; further discuss and consider the matter of setting up systems for issuing return decisions and entry bans at exit; clarify that the existence of a valid residence permit of a Member State constitutes an assumption that this Member State agrees to take back the migrant apprehended in an irregular situation in another Member State.

Section 6: it was discuss to: further consider the text concerning the granting of voluntary departure upon request and of the duration of such period; further consider the text concerning the prolongation of voluntary departure period in relation to minors attending school; clarify that a period of less than 7 days should be granted to those posing a risk of absconding only if this does not affect return effectiveness; add a reference to Annex 39 as a system for checking voluntary compliance with an obligation to return and clarify that a sheet for signalling departure can be attached also to the travel document of the migrant (not only to the decision).

Section 7: it was discussed to: consider either moving to section 6 the text explaining that removal is not possible during a period for voluntary departure, or amending the text; specify that is primarily a duty of the third-country national to ask for a travel document to the authorities of its country of origin; further analyse the issuing of fit-to-fly declarations under Article 8(5) of the Directive; improve clarity of text related to "collecting" return operations organised by the EBCG Agency.

Section 8: it was discussed to add a specific reference to Article 8(6) of the Directive in the section related to the monitoring obligations under the EBCG Regulation.

Section 9: no comments on the revised text.

Section 10: it was discussed to: better clarify the modalities of minors' hearing, including through a reference to the Convention on the rights of the child; better clarify the modalities of assessing if return is in the best interest of the minor concerned.

Section 11: it was discussed to: delete the reference to the issuing of entry bans in case of mutual recognition of return decisions; further explore the rules concerning the moment in which the entry ban starts being applicable; clarify that the humanitarian or other reasons justifying withdrawal / shortening of entry bans are to be determined at national level.

Section 12: it was discussed to: further clarify the text related to the hearing of minors, including with a reference to the relevant article of the Convention on the rights of the child; add reference to the need to issue individualised return decisions to minors members of a family (possibly in section 5); clarify the text on the modalities of issuing of return decisions following discontinuation of illegal stay.

Section 13: no comments on the revised text.

Section 14: it was discussed to: consider adding a reference to family units as a good practice of alternative to detention; clarify the need for an additional reference to the *G & R* judgment; clarify that the actual duration of detention may also be determined by administrative authorities (under judicial supervision if requested), not by judicial authorities only, in

accordance of Article 15(2)(b) of the Directive; further clarify that detention is justified only as long as there is a prospect of removal.

Section 15: no comments on the revised text.

Section 16: it was discussed to: provide examples of best practices in the use of alternatives to detention and on the use of detention for minors / families with minors; make reference to the involvement of child protection authorities when it comes to minors' detention.

Sections 17, 18, 19: no comments on the revised text.

The Commission asked Member States' representatives to provide possible written comments on the text by Friday 23 June.

### ***3.2 Workshop on detention and alternatives to detention with representatives of the civil society (point 3 of the agenda)***

Several representatives of UN Agencies and civil society organisations were invited to take part to a dedicated session with the members of the Contact Group to discuss about the use of alternatives to detention.

The discussion indicated support to the idea that there is scope for expanding the use of alternatives to detention as well as for increasing their effectiveness.

UN Agencies and civil society organisations stressed the high rate of success of alternatives in ensuring case resolution (including returns) and preventing absconding, as well as the fact that they are normally less costly than detention. They also highlighted the need to establish a constructive cooperation with irregular migrants in return procedures to build confidence and establish trust in the system, which will in turn facilitate the return process for both public authorities and the returnees, for instance by providing tailor-made case management during the whole procedure (e.g. by prolonging counselling provided during asylum procedures) and in general by expanding the range of tools available to resolve cases in the community so that detention is truly used as a last resort.

Member States stressed that the establishment of such engagement-based system could require very significant investments, also because they go beyond just providing for alternatives to detention, but a different way of managing the entire return process in the Member States.

UN Agencies and civil society organisations suggested that Member States could test models through small scale pilot projects for limited categories of migrants, with support from the Commission. Approaches could be adjusted based on learning and qualitative and quantitative evaluation of pilot projects. By involving and partnering with civil society in these projects, Member States could draw on existing expertise in case management and build trust with individuals.

UN Agencies and civil society organisations also stressed the harmfulness of detention for returnees, in particular for minors, and stressed the need to further finance alternatives to detention models instead of detention centres. The need to ensure sustainability of return as an element for increasing effectiveness (e.g. promotion of reintegration packages) was also

mentioned, as it was the fact that detention for the purpose of protection of minors is not an adequate and sustainable solution for the objective to be achieved.

The limits of the use of alternatives to detention in relation to returnees who are not willing to cooperate with authorities were discussed. Some Member States stressed that, to have effective return, the possibility to use detention is a necessary condition. Participants generally agreed on the need to find the right "mix" of alternatives to achieve good results.

### ***3.3 FRA report on the immigration detention of children***

A representative of the Fundamental Rights Agency presented the preliminary findings and the expected content of the study on the use of immigration detention of minors.

FRA presented the comparative nature of the study, its general structure and line of content. The study covers detention of minors in both asylum and return procedures, and covers both unaccompanied and accompanied minors.

The study therefore looks at the existing practices in the EU, looking at the application of the protecting provision of EU and international law, and identifies good / promising practices to be replicated.

FRA also mentioned that the study is expected to be published in the second half of June (tentatively 22 June) and that a workshop will take place in Vienna at the end of the month (tentatively 29 June).

The Commission informed that, once the report adopted, it will look at whether it is possible to include certain elements of the study in the revised Handbook already during this revision round.

### ***3.4 Any other business***

No specific point to be discussed.

A short exchange of views on the future of EU policy and legislation on return took place among participants.

## **4. Conclusions and next steps**

The Commission will update the Handbook in the light of the results of the meeting. The revised text will then be distributed to participants in view of the next meeting in July, during which the remaining pending issues will be addressed.

## **5. Next meeting**

The next meeting of the Contact Group is scheduled on 14 July 2017 in Brussels.

## **6. List of participants**

- EU Member States, except UK, IE, EL, CY, HR, MT
- Schengen Associated Countries, except LI

- European Border and Coast Guard Agency
- European Union Agency for Fundamental Rights (FRA)
- UNCHR, UNICEF, UN OHCHR, PICUM, Save the Children, Detention Action, International Detention Coalition, ECRE (only for agenda point 3)