European Parliament
2019-2024

Plenary sitting

A9-0238/2020

2.12.2020

REPORT

on the implementation of the Return Directive
(2019/2208(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Tineke Strik

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EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS

This Report includes an evaluation of the implementation of the Return Directive (2008/115/EC), which aims at promoting an effective return policy in line with adequate procedural safeguards and fundamental rights. The objective of the Directive thus contains both protective and enforcement oriented elements.

Under Article 19 of the Directive, the Commission is to report on its application every three years, starting from 2013. It released its only evaluation report in 2013, based on a meta-study of return policies in 31 states. As part of its 2014 Communication on EU return policy, the Commission concluded that the Directive had contributed to more legal certainty by means of procedural safeguards and reduced the possibilities for Member States to criminalise irregular stay. The Commission concluded there was still scope for improvement in the practical implementation of the Directive, ensuring respect for fundamental rights standards and effectiveness.

The Commission highlighted that the '*main reasons for non-return relate to practical problems in the identification of returnees and in obtaining the necessary documentation from non-EU authorities*' and thus considered the external dimension of return policy a key aspect in ensuring its effectiveness. These conclusions supported the initial decision of the Commission not to initiate a new recast of the Return Directive, but instead to work on its better implementation and to intensify efforts to cooperate with countries of origin on readmission of their citizens.

In its 2017 Recommendation on making returns more effective, the Commission urged Member States to harmonise their approaches, with a focus on increasing return rates. Apart from confirming some obligations, the Commission recommended to diminish certain safeguards, such as the right to appeal and to make use of the longer detention periods. There has been no published evaluation of the effect of these recommendations.

Despite the Commission's commitment, as part of its 2014 Communication, to table legislative amendments to the 2008 Return Directive only after a thorough evaluation of its implementation, the Commission released a proposal for a recast of the Return Directive in 2018. As no impact assessment had been conducted, the European Parliament released a substitute impact assessment in March 2019.

This Report, highlighting several gaps in the implementation of the Return Directive, is not intended to substitute the still overdue fully-fledged implementation assessment of the Commission. It calls on Member States to ensure compliance with the Return Directive and on the Commission to ensure timely and proper monitoring and support for its implementation, and to enforce compliance if necessary.

The Report, based on the 2020 EPRS European Assessment providing an evaluation of the implementation of the Return Directive and of the external dimension of the Return Directive, highlights specific aspects concerning the implementation of the Directive. Your Rapporteur will table further amendments to the initial draft Report, in order to better highlight and give careful consideration to the identified implementation gaps as listed below.

Scope

The study shows that Member States make use of the possibility offered in Article 2(2)(a) not to apply the Directive in "border cases", by creating parallel regimes, where procedures falling outside the scope of the Directive offer less safeguards compared to the regular return procedure, for instance no voluntary return term, no suspensive effect of an appeal and less restrictions on the length of detention. This lower level of protection gives serious reasons for concern, as **the fact that border situations may remain outside the scope of the Directive also enhances the risks of push backs and refoulement**.

The Directive obliges Member States to issue a return decision to a person staying irregularly on their territory. According to Eurostat, Member States issued over 490.000 return decisions in 2019, of which 85% were issued by the ten Member States under the current study. These figures are less reliable then they seem, due to the divergent practices. In some Member States, migrants are issued with a return decision more than once, children are not issued a decision separately, and refusals at the border are excluded.

The Directive does not include a non-refoulement exception in relation to Member States' obligation to issue a return decision for any person in an irregular situation. As a result, the risk of refoulement is infrequently assessed ex officio before starting a return procedure. This protection gap is even more concerning in the absence of automatic suspensive effect of an appeal, which in turn leads to a higher administrative burden due to a high number of requests for an interim measure.

Your Rapporteur considers that it is key to ensure a proper **assessment of the risk of refoulement prior to the issuance of a return decision.** This already takes place in Sweden and France.

Although unaccompanied minors are rarely returned, most Member States do not officially ban their return. Their being subject to a return procedure adds vulnerability to their situation, due to the lack of safeguards and legal certainty.

Procedural safeguards

Persons who are subjected to a return decision have different backgrounds. They can be rejected asylum seekers, persons who entered the territory irregularly, overstayers, transmigrants or migrants who lost their residence rights, for instance as a worker, student or family member. Their circumstances may require a humanitarian approach. In most Member States there is the **possibility to grant a residence permit** as referred to in Article 6(4) of the Directive. It is positive to see that in some states, such as the Netherlands, Belgium and Poland, this can follow from an ex officio assessment after a refusal.

There are significant national differences in the **right to appeal**, especially regarding the type of appeal body and the appeal time-limits. As the Directive is silent on this, Member States have established different time-limits. Where in some cases time-limits are similar to regular administrative procedures, 30 days, in other situations this limit is halved or even limited to a few days, in which it is virtually very difficult or impossible to lodge a claim.

The granting of automatic suspensive effect also varies across Member States. Although automatic suspension offers the best protection, most Member States require a request from the returnee. In Belgium and Spain, this is reportedly rarely granted by the court.

Especially in systems with short appeal time-limits and the need to request for a suspensive effect of the appeal, proper and accessible **information and legal aid** is key for the right to an effective remedy.

Voluntary departure and voluntary return

The principle of **proportionality** must be observed throughout all the stages of the return procedure, including the stage relating to the return decision, in the context of which the Member State concerned must rule on the granting of a period for voluntary departure. As **priority is to be given to voluntary compliance** with the obligation resulting from the return decision, the Directive obliges Member States to provide an appropriate period for voluntary departure of between 7 and 30 days. **Shortening or refusing** the period for voluntary departure is only justified as a **measure of last resort**, if the measures mentioned in Article 7(3) are not sufficient. However, only Belgium requires non-compliance with these measures for shortening or refusing the period of voluntary departure.

Evidence also shows that voluntary return is cost-effective and easier to organize, also in terms of cooperation of destination countries. Despite the fact that a voluntary departure term is the rule, as confirmed in national legislation in most Member States, the four grounds for exception are applied on a large scale. In Italy, the person has to request a voluntary departure period for this to be applied. Some Member States use grounds for shortening or refusing the voluntary return period other than the grounds exhaustively listed in Article 7(4). For instance, Germany does not grant a period to migrants who are in detention, Spain applies the exception if removal is hindered, the Netherlands if the asylum request is rejected on the basis of the safe country of origin concept, and Sweden if a person is to be expelled following the commitment of a crime.

As one of the grounds for exception, **the risk of absconding** needs to be established on the basis of an **individual assessment** and in line with the principle of proportionality, also if objective criteria are laid down in legislation.

Statistics on the percentage of departure being voluntary show significant varieties between the Member States: from 96% in Poland to 7% in Spain and Italy. Germany and the Netherlands have reported not being able to collect data of non-assisted voluntary returns, which is remarkable in the light of the information provided by other Member States. According to Frontex, almost half of the departures are voluntary.

According to recital 10 of the Directive, Member States should invest in **'assisted voluntary return' programmes**. Although all examined states have those programmes in place, there is a wide variety in scope and size of these programmes and in the number of assisted returns. In Belgium, a successful methodology is voluntary return counselling, as part of an individualised and permanent social guidance during migrant's stay in a reception facility. The Commission should invest in coordinating and supporting AVR programmes.

Entry bans

Article 11 of the Directive obliges Member States to impose an entry ban if no period for voluntary departure has been granted or if the returnee has not departed within the term of voluntary return. In all other cases Member States may impose an entry ban. The policies regarding entry bans thus depend on the way Member States deal with the voluntary departure

term. As Article 7(4) is often applied in an automatic way, and as the voluntary departure period is often insufficient to organise the departure, **many returnees are automatically subject to an entry ban**. Due to the **different interpretations of a risk of absconding**, the scope of the mandatory imposition of an entry ban may vary considerably between the countries. The legislation and practice in Belgium, Bulgaria, France, the Netherlands and Sweden provides for an automatic entry ban if the term for voluntary departure was not granted or respected by the returnee and in other cases, the imposition is optional. In Germany, Spain, Italy, Poland and Bulgaria however, legislation or practice provides for an automatic imposition of entry bans in all cases, including cases in which the returnee has left during the voluntary departure period. Also in the Netherlands, migrants with a voluntary departure term can be issued with an entry ban before the term is expired. This raises questions on the purpose and effectiveness of imposing an entry ban, as it can have a **discouraging effect if imposed at an early stage**. Why leave the territory in time on a voluntary basis if that is not rewarded with the possibility to re-enter? This approach is also at odds with the administrative and non-punitive approach taken in the Directive.

The **length of an entry ban** has to be decided on an individual basis, taking into account all relevant circumstances and interests. National practices on the length of entry bans are **far from harmonised**, despite the fact that they have an effect in other Member States as well. The obligation to take into account the individual circumstances, humanitarian reasons and the right to family life should be strengthened in order to protect the proportionality principle and fundamental rights.

Detention and definition of risk of absconding

The Directive provides that detention must be prescribed by law and be necessary, reasonable and proportional to the objectives to be achieved and it should last for the shortest time possible. Your Rapporteur stresses that, in line with the principles of necessity and proportionality and with the preventive nature of administrative detention established within the Directive, pre-removal administrative detention could only be justified by a combination of a well-established risk of absconding and a proportionality test.

National legislation transposing the definition of "risk of absconding" significantly differs, and while several Member States have long lists of criteria which justify finding a risk of absconding (Belgium has 11, France 8, Germany 7, The Netherlands 19), other Member States (Bulgaria, Greece, Poland) do not enumerate the criteria in an exhaustive manner. A broad legal basis for detention allows **detention to be imposed in a systematic manner**, while individual circumstances are marginally assessed. National practices highlighted in this context also confirm previous studies that most returns take place in the first few weeks and that **longer detention hardly has an added value**.

The proportionality test requires that returnees may only be detained where other less coercive measures cannot be applied. However, the study shows that, despite the existence in the legislation of most Member States of **alternatives to detention**, in practice, very few viable alternatives to detention are made available and applied by Member States.

Your Rapporteur is particularly concerned of the situation of children and families in detention and stresses that the **detention of children** because of their or their parents' residence status constitutes a direct violation of the UN Convention on the Rights of the

Child, as detention can **never be justified as in a child's best interests**.

External dimension

In its 2016 Communication on establishing a new Partnership Framework with third countries under the European Agenda on Migration, the Commission recognised that cooperation with third countries is essential in ensuring effective and sustainable returns. Since the adoption of this Communication, several informal arrangements have been concluded with third countries, including Gambia, Bangladesh, Turkey, Ethiopia, Afghanistan, Guinea and Ivory Coast. The Rapporteur regrets that such informal deals are concluded in the complete absence of duly parliamentary scrutiny and democratic and judicial oversight that according to the Treaties the conclusion of formal readmission agreements would warrant.

With the informalisation of cooperation with third countries in the field of migration, including with transit countries, also came an increased emphasis on conditionality in terms of return and readmission. The Rapporteur is concerned that funding earmarked for development cooperation is increasingly being redirected away from development and poverty eradication goals.

In order to get a better understanding of the compliance of the Return Directive with fundamental rights obligations, any assessment of the effectiveness of returns should not only include data on forced returns in terms of travel, but also look at the circumstances and fate of returned persons after they have arrived in their destination country. The Commission has to ensure that this monitoring is effective, meaning that it is exercised by monitoring bodies with sufficient capacity and level of independence. In the case of unaccompanied minors, Member States are obliged to conduct post-return monitoring to fully fulfil the conditions laid down in Article 10 of the Directive. Save the Children recently conducted interviews with children who were returned to Afghanistan and concluded that nearly three-quarters of the children did not feel safe during the returns process. On arrival, the children received little or no support, and only three had a specific reintegration plan. The Rapporteur is deeply worried about these result and urges Member States to conduct better post-return monitoring and publish the results of this monitoring in a transparent manner.

Conclusions

With a view to the dual objective of the Return Directive, notably promoting effective returns and ensuring that returns comply with fundamental rights and procedural safeguards, this Report shows that the Directive allows for and supports effective returns, but that most factors impeding effective return are absent in the current discourse, as the effectiveness is mainly stressed and understood as return rate.

- **Promoting effective returns**

The Report highlights that a number of measures laid down in the Directive will not directly increase the number of people returned, and may even have a counterproductive effect. First, the option that an entry ban can be imposed alongside voluntary return may reduce the incentive of the returnee to actually leave the Member State. Second, short periods of time for voluntary departure may preclude departure altogether, as the necessary time needed for preparing the return often exceeds the voluntary departure term. This is especially a risk with the frequent application of the possibility to shorten or refuse the voluntary term. In that

context, Member States should be reminded that the proportionality principle and the structure of the Directive require that the criteria of Article 7(4) need to be applied strictly and assessed on a case-by-case basis, and that shortening and reducing the term is a measure of last resort. Third, the maxim period of immigration detention does not seem to increase the return rate. National practices confirm previous studies that most returns take place in the first few weeks and that longer detention doesn't have an added value. Here the counter-productivity comes in, as a long duration of detention affects the fundamental rights of returnees. This is especially concerning with regard to the practice of a more or less automatic application of the detention measure in many Member States instead of applying it as a real measure of last resort. Although the Directive requires that the return process is handled with due diligence, the possibility of such long detention periods does not offer any incentive to do so. In order to avoid administrative or judicial review of the detention, Member States tend to order detention for the maximum period set out in the legislation. Shorter time periods would increase oversight of detention and may speed up the return process as well.

- **Ensuring fundamental rights**

The Report highlights that the Directive has a positive influence on certain safeguards, but that the optional clauses and frequent derogations significantly reduce that effect. This is for instance the case with the optional clause to leave the border situation outside of the scope of the Directive. As migrants at the border are often in a vulnerable situation and the non-refoulement principle may be at stake, Member States should be urged to apply the Directive to border situations as well. Furthermore, the broad interpretation and application of the definition 'risk of absconding' undermines the guarantee of an individual assessment where all circumstances and interests are taken into account. Access to legal aid and interpreters is hampered by the lack of capacity and funding. Lack of funding also affects effective post-return monitoring in several Member States. The Commission should play a key role in ensuring that alternatives to detention are used as a proportional and effective measure to avoid absconding. In cases where return cannot be effectuated, people are often left in limbo without a tolerated status, which puts their dignity and fundamental rights at risk. This practice calls for a European solution.

Finally, despites the obligation for Member States to respect the principle of non-refoulement and to take due account of the best interests of the child and family life, implementation policies and practice show clear gaps. Although this concerns all stages of the return procedure, the detention of children, which is never in their best interests, makes this painfully visible.

- **Taking into account the external dimension**

Regarding effective returns, Member States make clear that the most important factor impeding effective returns is related to their cooperation with countries of origin. This is at odds with the most common reliance on the return rate as the primary indicator of the policy effectiveness of the Return Directive. This report underlines that an effective return policy in line with fundamental rights requires a qualitative assessment of the sustainability of returns and the reintegration of the returnee, including effective post-return monitoring. At the same time, the obstacles to return people to their country of origin, should be taken seriously through a critical assessment of migration cooperation with third countries, where conditionality and informalisation raise concerns regarding human rights, democratic and

judicial control, equality of partnerships as well as the coherence of EU’s foreign policy.

ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the report, until the adoption thereof in committee:

Entity and/or person
Caritas International
Jesuit Refugee Service (JRS)
The Churches´ Commission for Migrants in Europe (CCME)
The International Catholic Migration Commission (ICMC)
United Nations Children's Fund (UNICEF)
Platform for International Cooperation on Undocumented Migrants (PICUM)
European Council on Refugees and Exiles (ECRE)
Save the Children International
European Commission, DG Migration and Home Affairs
Germany’s Presidency of the Council of the European Union
Finland’s Presidency of the Council of the European Union

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the implementation of the Return Directive
(2019/2208(INI))

The European Parliament,

– having regard to the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948,

– having regard to the UN Convention on the Rights of the Child,

– having regard to the European Convention on Human Rights,

– having regard to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Geneva Convention), and in particular the right to non-refoulement,

– having regard to the Charter of Fundamental Rights of the European Union and in particular Articles 1, 3, 4, 6, 7, 18, 19, 20 and 47 thereof,

– having regard to the Global Compact for Safe, Orderly and Regular Migration, adopted by the UN General Assembly on 19 December 2018,

– having regard to the Twenty Guidelines on Forced Return, adopted by the Committee of Ministers of the Council of Europe on 4 May 2005,

– having regard to Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals[1] (‘the Return Directive’),

– having regard to Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third country nationals[2] (‘SIS return’),

– having regard to Regulation (EU) 2020/851 of the European Parliament and of the Council of 18 June 2020 amending Regulation (EC) No 862/2007 on Community statistics on migration and international protection[3],

– having regard to the judgments of the Court of Justice of the European Union related to Directive 2008/115/EC, including Cases C-357/09 Kadzoev[4], C-61/11 El Dridi[5], C-534/11 Arslan[6], C-146/14 Mahdi[7], C-554/13 Z. Zh.[8], C-47/15 Sélina Affum[9], C-82/16

[1] OJ L 348, 24.12.2008, p. 98.
[2] OJ L 312, 7.12.2018, p. 1.
[3] OJ L 198, 22.6.2020, p. 1.
[4] ECLI:EU:C:2009:741.
[5] ECLI:EU:C:2011:268.
[6] ECLI:EU:C:2013:343.
[7] ECLI:EU:C:2014:1320.
[8] ECLI:EU:C:2015:377.
[9] ECLI:EU:C:2016:408.

K.A. and Others[10] and C-181/16 Gnandi[11],

– having regard to the judgments of the European Court of Human Rights related to Directive 2008/115/EC, including *Amie and Others* v. *Bulgaria* (application No 58149/08), *N.D. and N.T.* v. *Spain* (application Nos 8675/15 and 8697/15) and *Haghilo* v. *Cyprus* (application No 47920/12),

– having regard to the Commission communication of 28 March 2014 on EU Return Policy (COM(2014)0199),

– having regard to the Commission communication of 13 May 2015 on a European Agenda on Migration (COM(2015)0240),

– having regard to the conclusions of the European Council summits of October 2016 and June 2018,

– having regard to the Council's non-binding common standards of 11 May 2016 for Assisted Voluntary Return (and Reintegration) Programmes implemented by Member States,

– having regard to the Commission communication of 2 March 2017 on a more effective return policy in the European Union – a renewed Action Plan (COM(2017)0200),

– having regard to Commission Recommendation (EU) 2017/432 of 7 March 2017 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council[12],

– having regard to Commission Recommendation (EU) 2017/2338 of 16 November 2017 establishing a common 'Return Handbook' to be used by Member States' competent authorities when carrying out return related tasks[13],

– having regard to the 2017 Synthesis Report of the European Migration Network entitled 'The effectiveness of return in EU Member States: challenges and good practices linked to EU rules and standards',

– having regard to the Commission proposal for a directive of the European Parliament and of the Council of 12 September 2018 on common standards and procedures in Member States for returning illegally staying third-country nationals (recast) (COM(2018)0634),

– having regard to the Commission communication of 4 December 2018 on managing migration in all its aspects: progress under the European agenda on migration (COM(2018)0798),

– having regard to the Commission communication of 16 April 2020 on COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and

[10] ECLI:EU:C:2018:308.
[11] ECLI:EU:C:2018:465.
[12] OJ L 66, 11.3.2017, p. 15.
[13] OJ L 339, 19.12.2017, p. 83.

return procedures and on resettlement (C(2020)2516),

– having regard to its resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration[14],

– having regard to its resolution of 5 April 2017 on addressing refugee and migrant movements: the role of EU External Action[15],

– having regard to its position of 13 March 2019 on the proposal for a regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund[16],

– having regard to the European Court of Auditors' Special Report No 24/2019 of November 2019 entitled 'Asylum, relocation and return of migrants: time to step up action to address disparities between objectives and results',

– having regard to the European Parliamentary Research Service's (EPRS) Substitute Impact Assessment of March 2019 on the proposed recast Return Directive,

– having regard to the EPRS' European Assessment of June 2020 providing an evaluation of the implementation of the Return Directive and of the external dimension of the Return Directive,

– having regard to the Frontex evaluation report 15 of June 2020 on return operations in the 2nd semester of 2019,

– having regard to the 4th Annual Report of Europol's European Migrant Smuggling Centre of 15 of May 2020,

– having regard to the reports on the application of the Schengen acquis in the field of return produced in accordance with Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen[17],

– having regard to the Council of Europe's handbook of 17 September 2019 entitled 'Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results';

– having regard to the analysis of the Steering Committee for Human Rights (CDDH) of the Council of Europe of 7 December 2017 on Legal and practical aspects of effective alternatives to detention in the context of migration;

– having regard to the Interinstitutional Agreement of 13 April 2016 between the European Parliament, the Council of the European Union and the European

[14] OJ C 58, 15.2.2018, p. 9.
[15] OJ C 298, 23.8.2018, p. 39.
[16] Texts adopted, P8_TA(2019)0175.
[17] OJ L 295, 6.11.2013, p. 27.

Commission on Better Law-Making[18],

– having regard to its resolution of 30 May 2018 on the interpretation and implementation of the Interinstitutional Agreement on Better Law-Making[19],

– having regard to Rule 54 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0238/2020),

A. whereas the Commission has only assessed the implementation of the Return Directive once (in 2014), despite the legal obligation under Article 19 of the directive to report on its application every three years, starting from 2013; whereas in 2015 the Commission published a communication setting out an action plan on returns; whereas in 2017 it issued a recommendation on making returns more effective when implementing Directive 2008/115/EC and published a Return Handbook; whereas in September 2018, without carrying out an impact assessment, the Commission presented a proposal to recast the Directive to achieve a more effective and coherent return policy; whereas the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) mandated the European Parliamentary Research Service (EPRS) to provide a substitute impact assessment on the proposed recast; whereas this assessment points to the lack of evidence that the recast proposal would lead to more effective returns;

B. whereas the twofold objective of the directive is to establish common rules concerning effective return in line with fundamental rights and the principle of proportionality; whereas in its recommendation on making returns more effective, the Commission focuses on the rate of returns as an indicator of the directive's effectiveness and recommends measures which may have the unwanted effect of limiting certain safeguards of the directive, such as the right to appeal and to make use of longer detention periods; whereas sustainable returns and successful reintegration are important indicators in the assessment of the effectiveness of returns; whereas post-return monitoring is currently not sufficiently comprehensive and accurate; whereas evidence has emerged that not all returns are sustainable, especially in relation to unaccompanied minors, owing to a lack of a personal reintegration plan or support upon return;

C. whereas the Commission has noted that Member States face several barriers to effective returns, of a procedural, technical and operational nature, *inter alia* the level of cooperation among all stakeholders involved, including with third countries; whereas identification of returnees and the need to obtain the necessary documentation from third countries has been identified by the Commission as one of the main reason for non-return;

D. whereas the lack of harmonisation has a deep impact on return practices among Member States; whereas the evaluations carried out by the Commission when publishing its recommendation on making returns more effective indicated that 'the margins of

[18] OJ L 123, 12.5.2016, p. 1.
[19] OJ C 76, 9.3.2020, p. 86.

discretion left to the Member States by Directive 2008/115/EC led to an inconsistent transposition in national legislations, with a negative impact on the effectiveness of the Union return policy' and that 'a more effective implementation of that Directive would reduce possibilities of misuse of procedures and remove inefficiencies, while ensuring the protection of fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union';

E. whereas the Commission, in its action plan on return published in 2015, expressed the view that voluntary returns were the preferred option whenever possible; whereas - again, as stated by the Commission in its action plan - 'it is estimated that around 40 % of returns were voluntary departures, [up] from just 14 % in 2009'; whereas, according to the Commission's estimates, 300 000 people per year cannot be returned owing to administrative barriers, health issues or the risk of refoulement; whereas their situation should be addressed, including by granting them a legal status on humanitarian grounds;

F. whereas data relating to the implementation of the directive is publicly available through Eurostat but is not in all cases disaggregated and comparable; whereas more information may be provided with the implementation of Regulation 2018/1860 on the use of the Schengen Information System for the return of illegally staying third-country nationals ('SIS return') and with Regulation (EU) 2020/851 amending Regulation (EC) No 862/2007 on Community statistics on migration and international protection;

G. whereas between 2014 and 2018 the number of irregular border crossings decreased from 1.82 million to 142 000; whereas Member States issued around 3 million first residence permits in 2019; whereas the number of asylum applications decreased from 1.29 million in 2015 to 698 000 in 2019; whereas in 2018, Member States issued 283 880 return decisions, of which 147 815 people returned;

H. whereas Member States do not systematically share information on the return decisions or entry bans they issue, meaning that the mutual recognition of return decisions issued by Member States and their enforcement Union-wide is, in practice, impossible; whereas in order to increase the efficiency of readmissions, and in order to ensure the coherence of returns at a European level, formal EU agreements should take preference over bilateral agreements between Member States and third countries;

General observations

1. Notes the lack of an implementation assessment from the Commission and calls on the Commission to carry out such an assessment, which was due in 2017,in compliance with Article 19 of the directive and in line with the principle of better law-making;

2. Reiterates the importance of an evidence-based common approach to guide coherent policy-making and well-informed public discourse and calls on the Commission to urge and support Member States to collect and publish qualitative and quantitative data on the implementation of the directive, particularly data on entry bans and detention, as these are the categories currently not collected by Eurostat, and making use in particular of the newly available instruments such as SIS return and Regulation (EU) 2020/851 amending Regulation (EC) No 862/2007 on Community statistics on migration and international protection; invites Member States to collect statistics on this basis of Regulation (EU) 2020/851 as soon as possible and to participate in the associated pilot studies; notes with concern the lack of available data, including data disaggregated by

gender and age, concerning the implementation of the directive;

3. Is concerned that since 2015, the number of return decisions enforced has been decreasing and notes that this number does not necessarily correspond to an increase or decrease in irregular entries; stresses than an effective return policy is one of the key elements of a well-functioning EU asylum and migration policy; notes that, according to the Commission's statement, the return rate decreased from 46 % in 2016 to 37 % in 2017 and that this may not present the full picture, owing to the inherent margin of discretion that Member States have in the implementation of the directive, notably difficulties in cooperation with third countries, the fact that some Member States issue more than one return decision to one person, that decisions are not withdrawn if the return does not take place owing to humanitarian reasons, that some people are not returnable as their return would violate the principle of non-refoulement, or that some people return voluntarily without their return being registered; underlines that not every return decision is followed by swift return and readmission procedures owing to practical and legal obstacles and notes with concern that this can cause serious strain, not only on local facilities, but on the people involved;

4. Shares the Commission's objective of improving the effective implementation of the directive and the effectiveness of return procedures in the Member States; calls on the Commission to launch infringement procedures where justified; highlights that the effectiveness of the directive should be measured by referring to the return rate as well as by the sustainability of returns and implementation of fundamental rights safeguards, the respect for procedural guarantees and the effectiveness of voluntary returns; stresses that the measuring of the effective implementation of the directive should be further enhanced and further streamlined among Member States in order to strengthen the transparency and comparability of data;

5. Notes that the Commission has stated that the lack of third-country identification and readmission of returnees is one of the main reasons for non-return; stresses the need to improve relations with third countries in a constructive migration dialogue based on equality, in order to ensure mutually beneficial cooperation for effective and sustainable returns;

6. Takes note of the informalisation of cooperation with third countries; calls on the Member States to urge and enable the Commission to conclude formal EU readmission agreements coupled with EU parliamentary scrutiny and judicial oversight; stresses that incentives should be offered to facilitate cooperation; notes that the bilateral readmission agreements used pursuant to Article 6(3) of the directive do not offer adequate procedural safeguards, including notification to the person concerned of an individual measure and information regarding available and effective remedies and recourse to appeal; notes that Member States face challenges in regularly ensuring the full occupancy of seats available for returnees in return operations using charter flights coordinated by Frontex; notes with concern that in some cases the option to carry out joint Frontex return operations is excluded by bilateral agreements between organising or participating Member States and non-EU countries of destination;

7. Stresses the need for more cooperation on returns between the Member States, including information sharing and the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals , in line with

fundamental rights guarantees; underlines the need for support, including operational support, by the relevant Union agencies; stresses the need for increased cooperation between the Member States and Frontex;

8. Calls on the Member States to allocate adequate capacity, including human resources and sufficient training, to authorities responsible for taking and implementing return decisions, and in doing so to invest in the quality of their decision-making and implementation;

9. Stresses the importance of fair, swift and effective procedures for the return of third-country nationals staying irregularly on Union territory, including those whose applications have been rejected, with respect for the fundamental rights of the persons concerned;

Return decisions and voluntary departure

10. Points to the importance in the directive of ensuring migrants’ compliance with return decisions and recalls the key principle enshrined in the directive that voluntary returns should be prioritised over forced returns where there are no serious reasons to believe that this would undermine the purpose of a return procedure, as voluntary returns are more sustainable, less costly and cumbersome for states and more apt to respect the fundamental rights of the person concerned; calls on the Commission to continue considering voluntary returns as the preferred option over forced returns and to encourage Member States to develop an effective framework for access to voluntary return programmes;

11. Calls on the Commission to continue to provide funding for and increase the resources available to assisted voluntary return programmes in order to encourage the use of such programmes with the ultimate aim of ensuring sustainable returns and reintegration;

12. Highlights that under Article 7 of the directive, a return decision shall, as a general rule, provide for an appropriate period for voluntary departure of between 7 and 30 days, which Member States shall extend where necessary, taking into account the specific circumstances of the individual case; points to the exceptions laid out in Article 7(4) of the directive; notes that Member States’ national programmes to assist voluntary departure are sometimes insufficient in scope and means; recalls that Member States that offer this period for voluntary departure only following an application must inform the third-country nationals concerned of the possibility to submit such an application;

13. Welcomes the provisions in several Member States which allow for individual circumstances to be duly taken into account and for extensions to a period for voluntary departure to be granted; recalls that, in cases where the directive requires Member States to postpone removal, such as when it would violate the principle of non-refoulement, Article 14(2)of the directive requires Member States to provide the persons concerned with written confirmation that the return decision will temporarily not be enforced;

14. Stresses that a broad definition of the risk of absconding may lead to Member States refraining from granting a period for voluntary departure; recalls that lifting the voluntary departure period also leads to the imposition of an entry ban, which may further undermine voluntary departure; stresses the need for enhanced implementation

of the current legal framework in order to step up successful voluntary returns;

15. Calls on the Member States and Frontex to share information and best practices on successful and dignified voluntary returns, and to provide operational assistance among Member States, on request, to strengthen and improve the operational effectiveness of voluntary returns;

16. Highlights the importance of providing individual case management and assistance, tailored to the individual circumstances and prospects of the returnee, with particular attention to unaccompanied minors;

Procedural safeguards

17. Stresses that the directive requires return and entry-ban decisions and decisions on removal to be individualised, clearly justified with reasons in law and in fact, issued in writing, and complete with information about available remedies and the relevant deadlines; stresses the importance of this information being provided in a language the person understands; expresses concerns regarding the lack of sufficient detail and justification in return decisions;

18. Takes the view that unaccompanied children should not be returned unless it can be demonstrated that it is in the child's best interests, and that children should be informed in a child-friendly manner and in a language that they understand about their rights and the remedies available to them;

19. Recalls that the principle of non-refoulement is binding on Member States in all circumstances, including for return procedures not falling within the scope of application of the return directive;

20. Takes note of significant differences between Member States in the right to appeal, particularly regarding the type of appeal body and the appeal time-limits; stresses the need to guarantee the right to effective remedy, including by providing proper and accessible information and legal aid, including appropriate funds for the provision of legal assistance;

21. Notes that the use of the optional clause in Article 2(2)(a) may lead to diminished implementation of safeguards at borders compared to the regular return procedure; urges Member States, therefore, to ensure procedural safeguards and respect for human rights and to apply the directive to border situations;

22. Highlights that the directive allows for the temporary suspension of the enforcement of a removal, pending a review of a decision relating to return; underlines the need to ensure such suspensions in cases where there is a risk of refoulement; notes that in most countries, appeal against return is not automatically suspensive, which may diminish protection ; stresses that an automatic suspensive remedy would ensure that people are not returned before a final decision on the return procedure is taken; stresses that the best interests of the child must be the primary consideration for all decisions concerning children, including pending decisions relating to return;

23. Recalls that Article 6(4) of the directive provides Member States with the possibility to grant an autonomous residence permit on compassionate, humanitarian or other grounds

to a third-country national staying irregularly on their territory; stresses the importance of successfully exhausting the options provided in the directive to enforce return decisions, with an emphasis on voluntary return; notes, however, the limited use of Article 6(4) of the directive and encourages Member States to expand the use of this clause; is concerned about the failure of Member States to issue a temporary residence permit where return has proven not to be possible, which often leaves unreturnable migrants unable to access their fundamental rights; underlines the fact that granting residence permits to individuals who cannot return to their country of origin could help to prevent protracted irregular stays and reduce vulnerability to labour exploitation and may facilitate individuals' social inclusion and contribution to society; notes that this would also help to get people out of administrative limbo where they may be stuck; highlights, at the same time, that coordination within the Union is necessary in order to prevent onward irregular movements of persons subject to a return decision;

Entry bans

24. Notes with concern the widespread automatic imposition of entry bans, which in some Member States are enforced alongside voluntary departure; stresses that this approach risks reducing incentives for voluntary return; calls on Member States to comply with the obligation of the directive to consider withdrawing or suspending the ban in cases where a third-country national can demonstrate that he or she has left the territory of a Member State;

25. Notes that the situation of a person may vary during the period imposed by an entry ban and that a person may find themselves at risk of persecution in the country they have been returned to; calls on Member States to lift the entry ban on the basis of humanitarian considerations in such cases; reiterates that an entry ban should not be automatically applied, but should instead be based on an individual assessment; calls on the Member States to have effective procedures in place for requesting the lifting of an entry ban, in which an individual assessment is guaranteed, where the best interests of the child are the primary consideration and the right to family life, the right to family reunification and the principle of proportionality are respected;

26. Notes that although the threat of imposition of an entry ban may serve as an incentive to leave a country within the time period of voluntary departure, once imposed, entry bans may reduce the incentive to comply with a return decision and may increase the risk of absconding; calls on Member States to consider timing the imposition of entry bans in order to successfully carry out return decisions; stresses that the directive has rules allowing for entry bans to be lifted and calls on Member States to make use of these when necessary;

27. Stresses that entry bans may have disproportionate consequences in particular for families and children; welcomes the option introduced by some Member States to exempt children from the imposition of an entry ban, but stresses that children's interests should also be a primary consideration when deciding on the (withdrawal of the) entry ban of their parents; calls on Member States to ensure family reunification and respect for the right to family life, including by applying this as a basis on which to refrain from imposing entry bans;

Detention and the risk of absconding

28. Recalls that Article 3(7) of the directive states that the 'risk of absconding' means the existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is the subject of return procedures may abscond; notes differences in the transposition into national legislations of the definition of the ‘risk of absconding’; highlights that in order to comply with Article 3(7) of the directive, due consideration needs to be given to the individual circumstances of the person involved when identifying a risk of absconding to justify detention;

29. Is concerned that the legislation of several Member States includes extensive and sometimes divergent lists of ‘objective criteria’ for defining the risk of absconding, among which general criteria such as a lack of money; is concerned that varying definitions of objective criteria for the assessment of the risk of absconding in the national legislation of Member States may result in inconsistent use of detention across the Union; regrets that these criteria are often applied in a more or less automatic way, while individual circumstances are of marginal consideration; stresses that this has led to detention being imposed in a systematic manner in many Member States; underlines the need for harmonisation in the definition and implementation of objective criteria to establish the risk of absconding;

30. Stresses that, in line with international human rights law, detention must remain a measure of last resort and be prescribed by law and be necessary, reasonable and proportional to the objectives to be achieved, that it must last for the shortest time possible and that the decision to impose detention always has to be based on an assessment of the individual circumstances, in which the interests of the individual concerned have been taken into account;

31. Reiterates that longer detention does not automatically increase the chance of return and is generally more costly than alternatives to detention, and adds that states should not automatically resort to the maximum period permissible under the directive, and, furthermore, that they should ensure that all conditions for lawful detention are fulfilled throughout the detention period;

32. Notes that the directive establishes under which circumstances returnees may lawfully be detained; notes that detention is only possible if other sufficient but less coercive measures cannot be applied effectively in a specific case; expresses regret that in practice, very few viable alternatives to detention are developed and applied by Member States; calls on Member States, as a matter of urgency, to offer viable community-based alternatives to detention, which have a less negative impact on migrants, especially children and vulnerable people; calls on the Member States to report on the measures they take as an alternative to detention;

33. Realls that Member States should respect the mandates of relevant and competent national and international bodies, such as National Human Rights Institutions, ombudsman institutions and national preventive mechanisms, which conduct independent oversight of conditions of detention;

34. Notes that a significant number of children are still detained in the European Union as part of return procedures, agrees with the UN Committee on the Rights of the Child, which has clarified that children should never be detained for immigration purposes,

and detention can never be justified as in a child's best interests also in line with the New York Declaration for Refugees and Migrants of 19 September 2016; calls on the Member States to provide adequate, humane and non-custodial alternatives to detention;

35. Calls on the Commission to ensure that Member States and Frontex have monitoring bodies in place that are supported by a proper mandate, capacity and competence, a high level of independence and expertise, and transparent procedures; stresses that return monitoring should encompass all phases of return operations, with adequate resources; calls on the Commission and Member States to make use of existing independent monitoring bodies, such as national and international organisations and National Human Rights Institutions, by cooperating with or designating them as forced return monitoring systems; urges the Commission to ensure the establishment of a post-return monitoring mechanism to understand the fate of returned persons, where legally and practically possible, with particular attention for vulnerable groups, including unaccompanied minors and families; calls on the Member States to carry out proper handovers of child protection services among national authorities to ensure that returned children are taken care of and have access to national child protection services; highlights the need to follow up on the reintegration plans of returnees to ensure their effective implementation; calls on the Commission to facilitate the exchange of good practices between the Member States regarding post-return monitoring and to allocate sufficient funding for this purpose;

36. Calls on the Member States to ensure the proper implementation of the directive in all its aspects; calls on the Commission to continue monitoring this implementation and take action in the event of non-compliance;

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37. Instructs its President to forward this resolution to the Council and the Commission.

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	1.12.2020
Result of final vote	+: 51 –: 14 0: 3
Members present for the final vote	Magdalena Adamowicz, Katarina Barley, Pietro Bartolo, Nicolas Bay, Vladimír Bilčík, Vasile Blaga, Ioan-Rareş Bogdan, Patrick Breyer, Saskia Bricmont, Jorge Buxadé Villalba, Damien Carême, Caterina Chinnici, Marcel de Graaff, Anna Júlia Donáth, Lena Düpont, Cornelia Ernst, Laura Ferrara, Nicolaus Fest, Jean-Paul Garraud, Maria Grapini, Sylvie Guillaume, Andrzej Halicki, Balázs Hidvéghi, Evin Incir, Sophia in 't Veld, Patryk Jaki, Lívia Járóka, Marina Kaljurand, Assita Kanko, Fabienne Keller, Peter Kofod, Łukasz Kohut, Moritz Körner, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Nuno Melo, Nadine Morano, Javier Moreno Sánchez, Maite Pagazaurtundúa, Nicola Procaccini, Emil Radev, Paulo Rangel, Terry Reintke, Diana Riba i Giner, Ralf Seekatz, Michal Šimečka, Birgit Sippel, Martin Sonneborn, Tineke Strik, Ramona Strugariu, Annalisa Tardino, Tomas Tobé, Dragoş Tudorache, Milan Uhrík, Tom Vandendriessche, Bettina Vollath, Jadwiga Wiśniewska, Elena Yoncheva, Javier Zarzalejos
Substitutes present for the final vote	Beata Kempa, Leopoldo López Gil, Kris Peeters, Anne-Sophie Pelletier, Sira Rego, Franco Roberti, Miguel Urbán Crespo, Hilde Vautmans

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

51	+
EPP	Magdalena Adamowicz, Vladimír Bilčík, Vasile Blaga, Ioan-Rareş Bogdan, Lena Düpont, Andrzej Halicki, Jeroen Lenaers, Leopoldo López Gil, Nuno Melo, Kris Peeters, Emil Radev, Paulo Rangel, Ralf Seekatz, Tomas Tobé, Javier Zarzalejos
S&D	Katarina Barley, Pietro Bartolo, Caterina Chinnici, Maria Grapini, Sylvie Guillaume, Evin Incir, Marina Kaljurand, Łukasz Kohut, Juan Fernando López Aguilar, Javier Moreno Sánchez, Franco Roberti, Birgit Sippel, Bettina Vollath, Elena Yoncheva
RENEW	Anna Júlia Donáth, Sophia In 'T Veld, Fabienne Keller, Moritz Körner, Maite Pagazaurtundúa, Michal Šimečka, Ramona Strugariu, Dragoş Tudorache, Hilde Vautmans
GREENS/EFA	Patrick Breyer, Saskia Bricmont, Damien Carême, Alice Kuhnke, Terry Reintke, Diana Riba I Giner, Tineke Strik
ECR	Patryk Jaki, Assita Kanko, Beata Kempa, Jadwiga Wiśniewska
NI	Laura Ferrara, Martin Sonneborn

14	-
EPP	Balázs Hidvéghi, Lívia Járóka, Nadine Morano
ID	Nicolas Bay, Nicolaus Fest, Jean-Paul Garraud, Marcel De Graaff, Peter Kofod, Annalisa Tardino, Tom Vandendriessche
ECR	Jorge Buxadé Villalba, Nicola Procaccini
EUL/NGL	Sira Rego
NI	Milan Uhrík

3	0
EUL/NGL	Cornelia Ernst, Anne-Sophie Pelletier, Miguel Urbán Crespo

Key to symbols:
+ : in favour
- : against
0 : abstention