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THE EUROPEAN PARLIAMENT

THE COUNCIL

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and of the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC

**REGULATION (EU) 2026/...**  
**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of ...

**establishing a common system**  
**for the return of third-country nationals staying illegally in the Union,**  
**and repealing Directive 2008/115/EC of the European Parliament and of the Council,**  
**Council Directive 2001/40/EC and Council Decision 2004/191/EC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 79(2), point (c), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure<sup>2</sup>,

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<sup>1</sup> OJ C, C/2026/33, 16.1.2026, ELI: <http://data.europa.eu/eli/C/2026/33/oj>.

<sup>2</sup> Position of the European Parliament of 16 September 2026 (not yet published in the Official Journal) and decision of the Council of ...

Whereas:

- (1) The Union, in constituting an area of freedom, security and justice, should have a common policy on the return of third-country nationals with no right to stay in the Union. An effective return policy is a key component of a credible migration management system.
- (2) This Regulation establishes a common system for the return of third-country nationals staying illegally in the Member States ('illegally staying third-country nationals') based on a common procedure for return, effective cooperation with third countries, obligations for illegally staying third-country nationals, a set of tools for managing effective returns, including measures to incentivise return, and cooperation between Member States.
- (3) In accordance with Article 72 of the Treaty on the Functioning of the European Union (TFEU), this Regulation does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.
- (4) To contribute to the implementation of the comprehensive approach set out in Regulation (EU) 2024/1351 of the European Parliament and of the Council<sup>3</sup>, a common system for effectively managing the return of illegally staying third-country nationals should be put in place. That common system should be based on integrated policy making to ensure the coherence and effectiveness of the actions and measures taken by the Union and its Member States, acting within their respective competencies.

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<sup>3</sup> Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L, 2024/1351, 22.5.2024, ELI: <http://data.europa.eu/eli/reg/2024/1351/oj>).

- (5) The European Council has consistently underlined the importance for determined action at all levels to facilitate, increase and speed up returns from the Union. In October 2024, the European Council invited the Commission to submit a new legislative proposal, as a matter of urgency.
- (6) The strategic guidelines for legislative and operational planning within the area of freedom, security and justice adopted by the Justice and Home Affairs Council on 12 December 2024 recalled that a successful return policy is a fundamental pillar of a comprehensive and credible Union asylum and migration system. To that end, the strategic guidelines called for the development and implementation of a more assertive and comprehensive approach to returns, by upgrading the legal framework as a matter of urgency.
- (7) An effective return policy should ensure coherence with and contribute to the integrity of the Pact on Migration and Asylum and should contribute to managing illegal immigration to the Union and preventing unauthorised movements between Member States of illegally staying third-country nationals while respecting fundamental rights.

- (8) The Union and its Member States have been increasing efforts to make return policies more effective. Despite those efforts, the existing legal framework, which consists of Council Directive 2001/40/EC<sup>4</sup> and Directive 2008/115/EC of the European Parliament and of the Council<sup>5</sup>, no longer corresponds to the needs of the Union's migration policy and the legislative and operational needs to ensure effective returns. Since the adoption of Directive 2008/115/EC in 2008, the area of freedom, security and justice and the Union's migration policy have evolved considerably. Union law in the area of migration has moved from legislation setting minimum standards to legislation aimed at bringing Member States' practices closer together. The Commission sought to reform the return rules in 2018 with the proposal to recast Directive 2008/115/EC. The Commission has also sought to support Member States in using the flexibilities provided for in Directive 2008/115/EC through Commission Recommendations (EU) 2017/2338<sup>6</sup> and (EU) 2023/682<sup>7</sup>. However, the limits of the current legal framework have been reached.

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<sup>4</sup> Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (OJ L 149, 2.6.2001, p. 34, ELI: <http://data.europa.eu/eli/dir/2001/40/oj>)

<sup>5</sup> 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 (OJ L 348, 24.12.2008, p. 98, ELI: <http://data.europa.eu/eli/dir/2008/115/oj>).

<sup>6</sup> 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 (OJ L 339, 19.12.2017, p. 83, ELI: <http://data.europa.eu/eli/reco/2017/2338/oj>).

<sup>7</sup> Commission Recommendation (EU) 2023/682 of 16 March 2023 on mutual recognition of return decisions and expediting returns when implementing Directive 2008/115/EC of the European Parliament and of the Council (OJ L 86, 24.3.2023, p. 58, ELI: <http://data.europa.eu/eli/reco/2023/682/oj>).

- (9) A firm common procedure for effective return should be set up to ensure that third-country nationals who do not, or no longer, fulfil the conditions for entry, stay or residence on the territory of the Member States are returned in a humane and sustainable manner and with full respect for fundamental rights as well as international law without undue delay. Clear and transparent rules applicable in all Member States should provide certainty for the third-country national concerned and the competent authorities. It is important to simplify, facilitate and speed up return procedures and ensure that return is not obstructed, including by unauthorised movements to other Member States.
- (10) The application of the rules in this Regulation should not affect the rules on access to international protection in Regulation (EU) 2024/1348 of the European Parliament and of the Council<sup>8</sup>. Where relevant, the rules in this Regulation are complemented by the specific rules set out in Regulation (EU) 2024/1348 linking negative asylum decisions and return decisions as regards their issuance and remedies, and by the return border procedure set out in Regulation (EU) 2024/1349 of the European Parliament and of the Council<sup>9</sup>.

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<sup>8</sup> Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, 2024/1348, 22.5.2024, ELI: <http://data.europa.eu/eli/reg/2024/1348/oj>).

<sup>9</sup> Regulation (EU) 2024/1349 of the European Parliament and of the Council of 14 May 2024 establishing a return border procedure, and amending Regulation (EU) 2021/1148 (OJ L, 2024/1349, 22.5.2024, ELI: <http://data.europa.eu/eli/reg/2024/1349/oj>).

- (11) This Regulation respects the fundamental rights of third-country nationals and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the ‘Charter’) as well as the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 (the ‘Geneva Convention’). It should be applied in compliance with the Charter, general principles of Union law and relevant international law.
- (12) The principle of non-refoulement and the prohibition on collective expulsion provided for in Article 19 of the Charter should be respected. In accordance with that Article, no one may be removed, expelled or extradited to a third country where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.
- (13) The Member State on whose territory the illegally staying third-country national is detected is responsible for ensuring his or her return.
- (14) The court or tribunal designated as competent by the Member State under national law should be responsible for the remedy for challenging a return decision, an entry ban and a decision ordering removal. Compliance with the requirements arising from the principle of non-refoulement should be verified where material in the file brought to the attention of the court or tribunal designated as competent under national law for the remedy against the return decision or the decision ordering removal, as supplemented or clarified following adversarial proceedings, suggests that the principle of non-refoulement might be violated.

- (15) Without prejudice to the right to an effective remedy provided for by Article 47 of the Charter ensuring that the third-country national can challenge the period for departure or the absence thereof in the return decision, the part of the return decision imposing or stating the obligation to leave the territory of the Member States should not be affected by the annulment or revocation of the period for departure.
- (16) In the event of removal, authorities designated as competent under national law should verify compliance with the principle of non-refoulement on the basis of an individual assessment taking into account all relevant circumstances. The third-country national concerned should submit and substantiate as quickly as possible, and prior to his or her removal, information relating to his or her own personal circumstances. It should be possible to rely upon an existing assessment of all relevant circumstances made in previous stages of the procedure or in other previous procedures. Any relevant change in circumstances and any new element evidencing a risk of refoulement should be examined, including to determine whether they are substantiated and not considered to have been brought forward by the third-country national concerned merely in order to delay or frustrate the removal.
- (17) Member States may refer third-country nationals who indicate that the removal would violate the principle of non-refoulement to the appropriate procedure, including the asylum procedure in accordance with Regulation (EU) 2024/1348. Member States may also refer such third-country nationals to the appropriate procedure when their authorities designated as competent under national law become aware of relevant indications that the removal would violate the principle of non-refoulement.

- (18) It is necessary for Member States to be able to cooperate more flexibly, including through new bilateral agreements or arrangements, and in a more targeted manner, to foster effective returns to third countries.
- (19) Once it is established that a third-country national does not fulfil, or no longer fulfils, the conditions for entry, stay or residence on the territory of the Member States, a return decision should be swiftly issued based on an individual assessment taking into account all relevant facts and circumstances. The return decision should state the obligation for the third-country national to leave the territory of the Member States. The return decision should not be required to determine a country of return. The country of return should at the latest be determined prior to removal, and may be determined in either the return decision or in any other decision ordering removal separate from the return decision. Where there is an obstacle to removal, the issuance of a return decision should not be precluded, but removal should be postponed. Where, at the time of issuance of the decision determining the country of return, it remains possible that the third-country national will be removed to one of several countries of return, including due to dual or multiple citizenship, all such countries of return can be determined in that decision. The right to an effective remedy provided by Article 47 of the Charter is to be ensured in respect of all the countries of return determined in the decision. In any event, where the competent authority proceeds with removal, the third-country national should be informed of the country of return to which he or she will be removed sufficiently in advance of the removal.

- (20) This Regulation should not preclude Member States from providing for other grounds for postponement of removal for specific groups of third-country nationals under national law.
- (21) Third-country nationals with an obligation to leave should have the primary responsibility for departing the territory of the Member States.
- (22) It is necessary to ensure that the essential elements of a return decision issued by a Member State are entered in a specific form as a European Return Order, established pursuant to this Regulation, and made available in the Schengen Information System together with the alert on return. The European Return Order should in turn support the recognition and enforcement of enforceable return decisions and decisions ordering removal issued by another Member State where the third-country national moves unauthorised to another Member State.
- (23) Where a third-country national present on the territory of a Member State is subject to an enforceable return decision issued by another Member State, recognition and enforcement of return decisions should facilitate and accelerate the return process on the basis of enhanced cooperation and mutual trust between Member States. Such recognition and enforcement can also contribute to deterring irregular migration and discouraging unauthorised movements within the Union, as well as limiting delays in the return process. The remedy against the return decision should be exercised only in the issuing Member State.

- (24) The recognition of a return decision or decision ordering removal based on the information available in the European Return Order should not constitute an act or decision. The non-recognition of a return decision or decision ordering removal should also not constitute an act or a decision.
- (25) Where a Member State considers recognising and enforcing an enforceable return decision or a decision ordering removal issued by another Member State (mutual recognition), the following elements could guide the Member State in identifying situations in which mutual recognition should not be applied and in which it should instead issue its' own return decision. Such situations could include cases where enforcement would be contrary to the enforcing Member State's public policy, including in relation to the return of certain categories of third-country nationals, such as unaccompanied minors and victims of trafficking in human beings, to which national law provides for a higher level of protection; cases where issuing a new return decision would be faster; cases where the information available in the European Return Order is incomplete; cases where the third-country national has lodged an appeal against the return decision in the issuing Member State; cases where the third-country national is to be removed to a different country of return than determined in the return decision or decision ordering removal of the issuing Member State, or cases where there is no country of return determined in the return decision.

- (26) For the purpose of preparing the steps towards mandatory mutual recognition, the Commission and relevant Union agencies, such as the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), established by Regulation (EU) 2018/1726 of the European Parliament and of the Council<sup>10</sup>, should, where relevant, support Member States, including by identifying the necessary arrangements and adjustments needed for the purpose of ensuring automated handling of the European Return Order.
- (27) Not later than the date of adoption of the implementing act establishing the form of the European Return Order, Member States and the Commission and relevant Union agencies, such as eu-LISA, should start putting in place legal and technical arrangements to ensure that the European Return Order can be made available through the Schengen Information System.

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<sup>10</sup> Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99, ELI: <http://data.europa.eu/eli/reg/2018/1726/oj>).

- (28) By ... [three years from the date of entry into force of this Regulation], the Commission should assess the implementation of mutual recognition, in particular as regards: whether the legal and technical arrangements making the European Return Order available through the Schengen Information System pursuant to this Regulation are put in place by the Member States and are effective; whether the legal and technical arrangements to ensure automated handling of the European Return Order pursuant to this Regulation are put in place by the Member States; the effectiveness of the recognition and enforcement of return decisions and decisions ordering removal; the burden on judicial and administrative national systems resulting thereof; and the results of relevant training and pilot project activities.
- (29) Based on the assessment of the implementation of mutual recognition, the Commission should submit, where appropriate, legislative proposals, including any targeted amendments to ensure effective returns, with a view to introducing mandatory mutual recognition and enforcement of enforceable return decisions and decisions ordering removal issued by another Member State. Where the Commission does not submit a proposal, it should explain the reason for not doing so.

- (30) The effects of national return measures should continue to be given a Union dimension by establishing an entry ban prohibiting entry into and stay on the territory of all Member States. The duration of an entry ban should be determined with due regard to all relevant circumstances of an individual case. When an illegally staying third-country national is detected during exit checks at the external borders, it could be appropriate to impose an entry ban in order to prevent future re-entry and therefore to reduce the risks of illegal immigration while not preventing the swift departure of that third-country national.
- (31) Third-country nationals who have not complied with the obligation to leave, or to whom a departure period has not been granted, can be removed by using coercive measures. Reinforced rules on removal should seek to ensure a direct and immediate consequence in the event that the third-country national fails to leave on or before the expiry of the departure period as well as to prevent unauthorised movements within the Union and security risks. Where there are no reasons to believe that voluntary return would undermine the purpose of a return procedure, it should be possible for cooperating third-country nationals to continue to be returned primarily through voluntary return. Coercive measures should be subject to the principles of proportionality and effectiveness with regard to the means used and objectives pursued.

- (32) Since this Regulation solely applies to third-country nationals staying illegally in the Union, it does not affect return and reintegration counselling and other programmes for supporting voluntary returns and reintegration of third-country nationals who are staying legally in the Union.
- (33) Common rules are necessary to ensure that illegally staying third-country nationals posing security risks are efficiently identified and swiftly returned. It is necessary to ensure that relevant checks are carried out to identify and flag third-country nationals posing security risks including by relying on the screening process set out in Regulation (EU) 2024/1356 of the European Parliament and of the Council<sup>11</sup>. For third-country nationals posing security risks, removal should in general be the rule, and it should be possible to derogate from the general rules in order to provide for longer or indefinite entry bans and for longer detention periods, and to derogate from the use of specialised detention facilities, so that those who threaten the security of the Member States are swiftly removed.

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<sup>11</sup> Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (OJ L, 2024/1356, 22.5.2024, ELI: <http://data.europa.eu/eli/reg/2024/1356/oj>).

- (34) New rules should extend the possibilities for Member States to ensure returns to third countries through additional tools. It should be possible to put in place specific agreements or arrangements with third countries for the purpose of providing Member States with more options for returns subject to the conditions that international human rights standards and, in the event of removal, the principle of non-refoulement are respected by the third country concerned. Deficiencies in relation to specific parts of the territory of the third country or to identifiable categories of persons should not prevent the conclusion of such an agreement or arrangement, provided that sufficient guarantees are in place to ensure full respect for the rights of the third-country nationals who are concerned by such an agreement or arrangement. In particular, the agreement or arrangement should set out the procedures applicable to the return, the conditions for the stay in the country concerned, the respective obligations and responsibilities of the parties to the agreement or arrangement and the consequences in the case of violations of the agreement or arrangement. Where an agreement or an arrangement involves onward return from the third country, that agreement or arrangement should in addition set out the consequences in the event that onward return is not possible, the respective obligations and responsibilities of the parties to the agreement or arrangement, the consequences of a significant change adversely impacting the situation in the third country, and an independent monitoring body or mechanism to assess the implementation of the agreement or arrangement. Such an agreement or arrangement would constitute the implementation of Union law for the purposes of Article 51(1) of the Charter.

- (35) In order to ensure that the legitimate interests linked to the management of the external borders and the internal security of the Member States concerned are sufficiently protected, in circumstances where a Member State negotiates an agreement or arrangement for the purposes of this Regulation with one of the Union's neighbouring third countries, the Member States that share a common border with that third country should, at an appropriate time before the conclusion of the agreement or arrangement concerned, be informed of those negotiations, in full respect of the principle of sincere cooperation laid down in Article 4(3) of the Treaty on European Union (TEU). Upon the conclusion of an agreement or arrangement with a third country, Member States should be required to inform the Commission and other Member States of that agreement or arrangement before it is provisionally applied, or before it enters into force, whichever occurs first. In addition, to avoid any non-compliance with Union law and to further enhance transparency with regard to agreements or arrangements between Member States and third countries, Member States could, on a voluntary basis, keep the Commission and other Member States informed of the progress of negotiations with a third country relating to agreements or arrangements authorised under this Regulation, before final agreement has been reached by the parties, including with a view to seeking the Commission's assessment as to the compatibility with Union law of the envisaged agreement or arrangement under negotiation.

- (36) A well-functioning Schengen area without internal borders relies on the effective and efficient application by the Member States of the relevant *acquis*. Council Regulation (EU) 2022/922<sup>12</sup> establishes an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, including in relation to the effective return of illegally staying third-country nationals and respect for fundamental rights.
- (37) The best interests of the child should be a primary consideration of Member States when applying return procedures, in accordance with Article 24 of the Charter and the 1989 United Nations Convention on the Rights of the Child. In assessing the individual best interests of the child, Member States should, in particular, take due account of the minor's well-being and social development in the short, medium and long term, safety and security considerations and the views of the minor in accordance with his or her age and maturity, including his or her background. Unaccompanied minors should be guided by a representative or a person designated to safeguard the best interests of the child through all the steps of the return process.
- (38) Where there are grounds for doubting whether the third-country national is a minor, the competent authority should be able to carry out an age assessment of the person concerned in accordance with Union or national law. It should be possible for the competent authority to rely on age assessments completed under previous procedures. For the purpose of ensuring coherence across migration management in the Union, competent authorities could have regard to the procedure provided for in Regulation (EU) 2024/1348.

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<sup>12</sup> Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, and repealing Regulation (EU) No 1053/2013 (OJ L 160, 15.6.2022, p. 1, ELI: <http://data.europa.eu/eli/reg/2022/922/oj>)

- (39) To reinforce the effectiveness of the return procedure, clear obligations of third-country nationals should be established. Third-country nationals should have the obligation to leave the territory of the Member States and to cooperate with the authorities throughout the return procedure. Third-country nationals should remain available to, and contactable by, the competent authorities and should provide any information relevant to preparing and carrying out the return. They should also not obstruct removal either physically or verbally. In order to be deemed to constitute verbal obstruction, the behaviour of the third-country national concerned should be of a nature or character that is of greater intensity than mere objection. It should primarily be the responsibility of third-country nationals to establish their identity and to obtain and provide the travel documents necessary for return. In the event that the obligations to leave and cooperate are not complied with, effective, dissuasive and proportionate consequences should be imposed, and competent authorities should take the relevant steps to ensure return, including through investigative measures, if applicable. Third-country nationals who cannot be removed, including due to the principle of non-refoulement or due to their lack of cooperation with the competent authorities, should not be excluded from the imposition of general obligations, including the obligations to remain, reside and report. The consequences in the case of non-compliance with the obligation to cooperate should include for instance reduced benefits and allowances granted in accordance with national law or seizure of travel documents.
- (40) This Regulation does not affect obligations and measures not related to return or provisions governing social benefits under national law.

- (41) This Regulation should not affect the possibility for Member States to impose, where applicable, criminal sanctions, including imprisonment, in accordance with national criminal law to third-country nationals falling within the scope of this Regulation.
- (42) A set of legal remedies against decisions related to return should be established to guarantee effective protection of the rights of the individuals concerned. The necessary legal aid should be made available, upon request, in cases of appeal or review before a court or tribunal, without prejudice to the possibility to restrict access to legal assistance and representation.
- (43) Legal assistance and representation includes the preparation of an appeal or request for review, including the drafting of the procedural documents required under national law and, where a hearing takes place, participation in that hearing before a court or tribunal, in order to ensure the right to an effective remedy and to a fair trial.

- (44) The notion of court or tribunal is a concept governed by Union law, as interpreted by the Court of Justice of the European Union. That notion, among other elements, can only mean an authority acting as a third party in relation to the authority which adopted the decision forming the subject-matter of the proceedings. That authority should perform judicial functions and it is not decisive whether that authority is recognised as a court or tribunal under national law. This Regulation should not affect Member States' competence to organise their national court system and determine the number of instances of appeal. Where national law provides for the possibility to lodge further appeals against a first appeal or a subsequent appeals decision, and such an appeal has been lodged, removal should not be suspended unless the third-country national requests suspension and a court or tribunal decides to grant it, taking into due account the specific circumstances of the individual case. That should be without prejudice to national law providing for a suspensive effect of such remedies.
- (45) To improve the effectiveness of the return procedures, while ensuring respect for the right to an effective remedy in accordance with Article 47 of the Charter, appeals against return related decisions should be challenged as far as possible before one judicial level. The rules of this Regulation related to appeals and the suspension of the enforcement of decisions should comply with the right to an effective remedy as provided for in Article 47 of the Charter.

- (46) Although this Regulation does not provide for automatic suspensive effect of an appeal, Member States should, fully respecting Article 47 of the Charter, ensure that removal can be suspended by the competent court or tribunal of first instance prior to the enforcement of the return decision or decision ordering removal. A third-country national should be able to submit a request to suspend the enforcement of a return decision or decision ordering removal, unless national law also provides for the possibility of its suspension by the competent court or tribunal *ex officio*. That should be without prejudice to the possibility of Member States providing for automatic suspensive effect of an appeal under national law. In order to avoid duplication in the assessment of the risk of violating the principle of non-refoulement, reliance should be placed on any material in the file, in particular previous assessments, including, where relevant, those carried out in the context of an asylum procedure.
- (47) Member States should be provided with the necessary tools to ensure swift and effective returns, including measures as consequences of non-compliance and incentives for compliance with the obligations to leave and cooperate, as well as measures to prevent the risk of absconding. Absconding includes actions such as leaving the territory of the Member States without permission from the competent authorities, for reasons that are not beyond the control of the third-country national. Common rules, without restricting the right of Member States to lay down additional measures and criteria in national law, should streamline requirements relating to the obligation to cooperate and the criteria for determining a risk of absconding. Such common rules should also ensure that detention and alternatives to detention are applied in Member States to effectively manage the return process.

- (48) It should be possible to impose detention when proportionate and necessary, following an individual assessment of each case only for the purpose of return, including for preparing the return, readmission or carrying out the removal. The authorities should act with due diligence, and detention should be maintained only for as short a period as possible and should generally not exceed 24 months in a given Member State. In cases where illegally staying third-country nationals abscond to another Member State, previous periods of detention should not be taken into account when calculating the maximum period of detention. Detention periods provided for under other Regulations or Directives not concerning the return procedure should not be included in the calculation of the maximum period of detention. Special needs arising from a vulnerability assessment should be addressed during detention. Where national law provides for the detention of minors, the best interests of the child should be a primary consideration. Other less coercive alternative measures to detention should be used when they can be applied effectively to illegally staying third-country nationals.
- (49) Where detention has been maintained for a period of 24 months, Member States should under certain circumstances have the possibility to detain illegally staying third-country nationals for further periods, not exceeding six months in total, where there is a risk of absconding and changes in circumstances indicate a reasonable prospect of removal due to new significant information. The detention should be ordered in compliance with the principles of necessity and proportionality and should be maintained for as short a period as possible.

- (50) Returning third-country nationals posing security risks require specific measures aimed at protecting the rights and freedoms of others. It should therefore be possible to detain such third-country nationals for a period longer than 24 months. Any such detention should comply with the principle of proportionality.
- (51) Third-country nationals in detention should be treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law, taking into account the practical guidelines from the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Detention should, as a general rule, take place in specialised detention facilities or dedicated branches of other facilities. It should be possible for prison accommodation to be resorted to when a Member State cannot provide for such facility, keeping, to the extent possible, such third-country nationals separate from ordinary prisoners. It should be possible for third-country nationals posing security risks to be placed under enhanced security arrangements within detention facilities.
- (52) The grounds for detention set out in this Regulation are without prejudice to other grounds for detention, including grounds for detention within the framework of criminal proceedings, which are applicable under national law.

(53) The obligation of any State to readmit its own nationals represents a fundamental principle of state sovereignty and international cooperation. The duty of States to readmit their own nationals is considered a principle of customary international law and is provided for in Annex 9, Chapter 5, to the Convention on International Civil Aviation and set out in the Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part (Samoa Agreement). Effective returns are only possible if States comply with the obligation to readmit their own nationals. Therefore, Member States depend on the cooperation of third countries to be able to implement effective returns. Existing instruments, such as Article 25a of Regulation (EC) 810/2009 of the European Parliament and of the Council<sup>13</sup> and support provided by the European Border and Coast Guard Agency (Frontex) in accordance with Regulation (EU) 2019/1896 of the European Parliament and of the Council<sup>14</sup>, are used by the Union and Member States to improve cooperation with third countries where necessary.

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<sup>13</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1, ELI: <http://data.europa.eu/eli/reg/2009/810/oj>).

<sup>14</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1, ELI: <http://data.europa.eu/eli/reg/2019/1896/oj>).

- (54) The external dimension of return policy is an integral part of the comprehensive approach to migration management. Effective cooperation on return and readmission is a core external component of balanced and comprehensive partnerships with third countries in line with the objectives referred to in Regulation (EU) 2024/1351. The European Council, among others, in its October 2024 Conclusions, called for swift action to ensure effective returns using as leverage all relevant Union policies and tools, including visa policy, trade, development and diplomacy. A ‘whole-of-government’ approach is needed both within Member States and within Union institutions.
- (55) As cooperation of third countries in the area of return and readmission of illegally staying third-country nationals may prove challenging in practice, and without prejudice to the assessment of third countries’ cooperation on readmission provided for in Article 25a of Regulation (EC) No 810/2009, where one or more Member States encounter difficulties in third country cooperation on readmission, including for confirmation of nationality, obtaining the necessary travel documents from the relevant third country authorities and organising return operations, the Union and the Member States should be able to make use of the relevant and existing tools provided for in Union law, insofar as they are bound by the legislative acts establishing those tools, as part of a coordinated Union approach to improving cooperation in the area of return and readmission.

- (56) A coordinated approach to readmission among Member States is crucial to facilitate the return of third-country nationals. Insufficient follow-up to enforceable return decisions risks hampering the efficiency of the common approach to returns. Enforceable return decisions should be systematically followed by all necessary measures to implement the return, including, where applicable, the submission of readmission requests to third countries' authorities, in cases where nationality is in doubt or a travel document needs to be obtained.
- (57) Effective return procedures rely on efficient administrative cooperation and information sharing between Member States. The exchange of information, including the sharing of data, on the identity and nationality of the third-country nationals, their travel documents and other relevant information should be based on clear rules, including those set out in Regulation (EU) 2018/1860 of the European Parliament and of the Council<sup>15</sup>. Those rules should respect the principles of data protection and the rights of the individual concerned, ensuring that such information is accurate and is only used for the purposes of return, removal, readmission and reintegration, and is protected against unauthorised access, disclosure or use.

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<sup>15</sup> 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 (OJ L 312, 7.12.2018, p. 1, ELI: <http://data.europa.eu/eli/reg/2018/1860/oj>).

- (58) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>16</sup> applies to the processing of personal data for the purposes of this Regulation. Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>17</sup> applies to the processing of personal data by the Union institutions and bodies for the purposes of this Regulation. In view of the important reasons of public interest behind readmission and effective return, the transfer of personal data of third-country nationals subject to a return decision, including data relating to their identity, travel documents, other relevant data as well as, in duly justified cases, data concerning their criminal convictions and health, could be necessary for the purposes of return, removal, readmission and reintegration. Such transfers must be carried out in accordance with Chapter V of Regulation (EU) 2016/679 and Chapter V of Regulation (EU) 2018/1725 and with the rights of data subjects, as well as with the principles of non-refoulement, proportionality and necessity and the Charter.
- (59) Competent authorities responsible for asylum and competent authorities involved in the different phases of the return process should work together and coordinate closely to ensure effective returns.

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<sup>16</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1, ELI: <http://data.europa.eu/eli/reg/2016/679/oj>).

<sup>17</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39, ELI: <http://data.europa.eu/eli/reg/2018/1725/oj>).

- (60) A common system for returns should make full use of digital systems supporting managing returns, readmission and reintegration with an emphasis on efficient administrative procedure, cooperation, information sharing and interoperability.
- (61) Cooperation and assistance between Member States should, as a general rule, take place including for the purpose of allowing transit through their territory, logistical or other material or in-kind assistance linked to such transit, the facilitation of transfers to another Member State, whether pursuant to bilateral agreements or arrangements or based on cooperation between Member States, or supporting the departure of third-country nationals to Member States in which they have a right to stay.
- (62) The Union provides financial and operational support, without prejudice to the Multiannual Financial Framework 2028-2034, in order to achieve an effective implementation of this Regulation. To the extent that activities should be financed by the Asylum and Migration Fund thematic facility, these may be implemented under the direct, indirect or shared management. Member States should make best use of the available Union financial instruments, programmes and projects in the field of return, in particular under Regulation (EU) 2021/1147 of the European Parliament and of the Council<sup>18</sup>, as well as of the operational assistance provided by Frontex in accordance with Regulation (EU) 2019/1896.

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<sup>18</sup> Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund (OJ L 251, 15.7.2021, p. 1, ELI: <http://data.europa.eu/eli/reg/2021/1147/oj>).

- (63) The reporting on the effectiveness of this Regulation and the identification of areas for improvement should be based on the collection and analysis of existing, reliable and comparable statistics regarding the efficiency of return procedures, cooperation of third countries, and reintegration efforts. The standards set out in Regulation (EC) No 862/2007 of the European Parliament and of the Council<sup>19</sup>, in Regulation (EU) 2019/1896 and in national law should be considered and, where necessary, reviewed to ensure the relevance of the statistics. Common standards and definitions for the collection and reporting of relevant data should be established to enable the impact of this Regulation to be assessed and to contribute to making informed decisions on future policy developments.
- (64) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to establish the European Return Order. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>20</sup>.

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<sup>19</sup> Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 2, ELI: <http://data.europa.eu/eli/reg/2007/862/oj>).

<sup>20</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13, ELI: <http://data.europa.eu/eli/reg/2011/182/oj>).

- (65) This Regulation puts in place a new common system of return of illegally staying third-country nationals, to be directly implemented by national authorities. That new system brings about important novelties aimed at improving the efficiency of the return procedure, including with regard to the third countries of return and the external dimension of returns. To allow for the prompt application of the measures provided for in this Regulation, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*. The provisions not referred to in Article 50(2) of this Regulation that will supersede Directive 2008/115/EC and aim at fully replacing the legal framework provided for by that Directive should apply from ... [12 months from the date of entry into force of this Regulation] with a view to allowing for all the necessary preparatory and operational steps to be taken and ensuring its smooth, effective and consistent implementation at Union and national levels, as well as to avoiding any overlap between that Directive and this Regulation. Directives 2001/40/EC and 2008/115/EC and Council Decision 2004/191/EC<sup>21</sup> should therefore be repealed from that date.
- (66) Since the objective of this Regulation, namely to improve the efficiency of return of illegally staying third-country nationals, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the action to ensure a common and coherent approach among Member States, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

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<sup>21</sup> Council Decision 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals (OJ L 60, 27.2.2004, p. 55, ELI: <http://data.europa.eu/eli/dec/2004/191/oj>).

- (67) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide, within a period of six months after the Council has decided on this Regulation, whether it will implement it in its national law.
- (68) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Protocol 19 on the Schengen *acquis* integrated into the framework of the European Union, annexed to the TEU and the TFEU and, subject to the application of Article 4 of that Protocol, Ireland is not bound by it or subject to its application.
- (69) As regards Iceland and Norway, this Regulation constitutes 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 latter's association with the implementation, application and development of the Schengen *acquis*<sup>22</sup>, which fall within the area referred to in Article 1, point C, of Council Decision 1999/437/EC<sup>23</sup>.

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<sup>22</sup> OJ L 176, 10.7.1999, p. 36, ELI: [http://data.europa.eu/eli/agree\\_international/1999/439\(1\)/oj](http://data.europa.eu/eli/agree_international/1999/439(1)/oj).  
<sup>23</sup> Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application 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* (OJ L 176, 10.7.1999, p. 31, ELI: <http://data.europa.eu/eli/dec/1999/437/oj>).

- (70) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*<sup>24</sup>, which fall within the area referred to in Article 1, point C, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC<sup>25</sup>.
- (71) As regards Liechtenstein, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point C, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU<sup>26</sup>.

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<sup>24</sup> OJ L 53, 27.2.2008, p. 52, ELI: [http://data.europa.eu/eli/agree\\_internation/2008/178\(1\)/oj](http://data.europa.eu/eli/agree_internation/2008/178(1)/oj).

<sup>25</sup> Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1, ELI: <http://data.europa.eu/eli/dec/2008/146/oj>).

<sup>26</sup> Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19, ELI: <http://data.europa.eu/eli/dec/2011/350/oj>).

- (72) This Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 3(1) of the 2003 Act of Accession.
- (73) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered its opinion on 23 May 2025,

HAVE ADOPTED THIS REGULATION:

# Chapter I

## General provisions

### *Article 1*

#### *Subject matter*

1. This Regulation establishes a common system for the effective return of third-country nationals staying illegally on the territory of the Member States ('illegally staying third-country nationals'), in accordance with fundamental rights recognised by the Charter of Fundamental Rights of the European Union (the 'Charter') and general principles of Union law, as well as applicable international obligations, including on human rights.
2. The objective of this Regulation is to enable Member States to take all necessary measures to ensure effective returns of illegally staying third-country nationals, taking into account the comprehensive approach set out in Article 3, Article 4, point (h), and Article 5, point (e), of Regulation (EU) 2024/1351.

### *Article 2*

#### *Scope*

1. This Regulation applies to illegally staying third-country nationals.

2. This Regulation shall not apply to persons enjoying the right of free movement under Union law, as defined in Article 2, point (5), of Regulation (EU) 2016/399 of the European Parliament and of the Council<sup>27</sup>.
3. This Regulation is without prejudice to the provisions of Regulations (EU) 2024/1351, (EU) 2024/1348 and (EU) 2024/1349.
4. Without prejudice to paragraph 5 of this Article, this Regulation shall not apply to any third-country national who is:
  - (a) subject to a refusal of entry at external borders in accordance with Article 14 of Regulation (EU) 2016/399 or, in the case of a Member State not bound by that Regulation, refused entry to the territory of such a Member State in accordance with equivalent national law;
  - (b) apprehended or intercepted by competent authorities in connection with an illegal border crossing by land, sea or air of the external border of a Member State and who has not subsequently obtained an authorisation or a right to stay in that Member State;
  - (c) subject to return as a criminal law sanction or as a consequence of a criminal law sanction, in accordance with national law;
  - (d) the subject of an extradition procedure.

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<sup>27</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1, ELI: <http://data.europa.eu/eli/reg/2016/399/oj>).

5. A Member State may decide to apply this Regulation to one or more of the categories of third-country national referred to in paragraph 4, points (a), (b) and (c). In such cases, this Regulation shall apply to those categories of third-country national from the date on which the Member State notifies its decision to the other Member States and to the Commission.
6. Where a Member State decides to apply this Regulation to third-country nationals who are subject to return as a criminal law sanction, Articles 5, 7 and 8 shall not apply.
7. With regard to third-country nationals who are excluded from the scope of this Regulation in accordance with paragraph 4, points (a) or (b), Member States shall ensure that their treatment and level of protection are no less favourable than that set out in Article 10(9) and (10), Article 11(2), Article 11(6), points (c) and (e), Article 32(1) to (6) and Article 33, and shall respect the principle of non-refoulement.
8. This Regulation applies without prejudice to the national criminal law of the Member States, and in particular to provisions laying down effective, proportionate and dissuasive criminal penalties, including imprisonment, in relation to illegal stay, provided that the criminal procedures concerned and the application of such penalties do not jeopardise the achievement of effective returns.

*Article 3*  
*Definitions*

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

- (1) ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 20 of the Treaty on the Functioning of the European Union and who is not a person enjoying the right of free movement under Union law, as defined in Article 2, point (5), of Regulation (EU) 2016/399;
- (2) ‘illegal stay’ means the presence, on the territory of a Member State, of a third-country national who does not fulfil, or who no longer fulfils, the entry conditions for third-country nationals as set out in Article 6 of Regulation (EU) 2016/399, or the conditions for stay or residence in that Member State, or, in the case of a Member State not bound by that Regulation, the conditions for entry, stay or residence laid down in equivalent national law;
- (3) ‘country of return’ means one of the following:
  - (a) a third country that is the country of origin of the third-country national;
  - (b) a third country that is the country of former habitual residence of the third-country national;
  - (c) a third country of transit on the way to the Union in accordance with Union or Member States’ readmission agreements or arrangements;

- (d) a third country, other than the one referred to in points (a) and (b), where the third-country national has a right to enter and reside;
  - (e) a safe third country in relation to which the application for international protection of a third-country national has been rejected as inadmissible, pursuant to Article 38(1), point (b), of Regulation (EU) 2024/1348 or, in the case of Member States not bound by that Regulation, in accordance with equivalent provisions where they have introduced such provisions in national law;
  - (f) the first country of asylum in relation to which the application for international protection of a third-country national has been rejected as inadmissible, pursuant to Article 38(1), point (a), of Regulation (EU) 2024/1348 or, in the case of Member States not bound by that Regulation, in accordance with equivalent provisions where they have introduced such provisions in national law;
  - (g) a third country, other than the one referred to in point (a), (b) or (d), with which there is an agreement or arrangement on the basis of which the third-country national is accepted, in accordance with Article 14 of this Regulation.
- (4) ‘return decision’ means an administrative or judicial act or decision, stating or declaring the stay of a third-country national to be illegal and stating or imposing an obligation for that third-country national to leave the territory of the Member States;
- (5) ‘return’ means the actions by which an illegally staying third-country national:
- (a) voluntarily returns, as defined in point 8; or

- (b) is removed by competent authorities from the Member States to a country of return determined in a decision ordering removal or, where applicable, in a return decision;
- (6) ‘decision ordering removal’ means an administrative or judicial act or decision stating or declaring that a third-country national can be removed to one or more countries of return;
- (7) ‘removal’ means the enforcement of a return decision or a decision ordering removal by the competent authorities through physical transportation from the Member States to a country of return;
- (8) ‘voluntary return’ means the departure from the territory of the Member States on his or her own, with or without assistance, and without resorting to removal, of an illegally staying third-country national complying with the obligation to leave within or after the expiry of the departure period set out in the return decision;
- (9) ‘absconding’ means the action by which a third-country national does not remain available to the competent administrative or judicial authorities;
- (10) ‘entry ban’ means an administrative or judicial act or decision prohibiting the entry into and stay on the territory of the Member States of a third-country national;
- (11) ‘return operation’ means an operation organised or coordinated by a competent authority or supported by Frontex by which third-country nationals are returned from one or more Member States.

*Article 4*  
*Fundamental rights*

When applying this Regulation, Member States shall act in full compliance with relevant Union law, including the Charter, with relevant international law, with the obligations related to access to international protection, with the principle of non-refoulement, and with fundamental rights.

**Chapter II**  
**Return procedure**

**SECTION 1**  
**PROCEDURE ORDERING RETURN**

*Article 5*  
*Return decision*

1. A return decision shall be issued by the competent authorities of a Member State to any illegally staying third-country national on its territory, stating or imposing an obligation for that third-country national to leave the territory of the Member States.
2. A return decision shall:
  - (a) state a departure period, which shall not exceed 30 days, by the end of which the third-country national shall leave the territory of the Member States; or

- (b) state that the third-country national shall leave the territory of the Member States immediately.

The departure period not to be exceeded referred to in point (a) of the first subparagraph may be shortened as specified in national law.

Member States may lay down in their national law the circumstances in which a third-country national is to be granted a departure period or is to leave immediately.

3. By way of derogation from paragraph 2, first subparagraph, point (a), a return decision may state a departure period that exceeds 30 days with due regard to the specific circumstances of the individual case.
4. Competent authorities may extend the departure period initially stated in a return decision with due regard to the specific circumstances of the individual case, in particular participation in a return and reintegration programme pursuant to Article 44(3) or compliance with the obligation to cooperate as set out in Article 18.
5. Competent authorities may shorten the departure period initially stated in a return decision in the case of non-compliance with the obligation to cooperate as set out in Article 18.
6. The date from which the departure period is calculated shall be defined under national law.

7. The return decision shall be issued in writing and give reasons of fact and of law. The third-country national shall be informed about available legal remedies and the time limits for seeking those remedies. The return decision shall be notified to the third-country national as soon as possible in accordance with the national law of the issuing Member State. Where the whereabouts of the third-country national are unknown, the return decision shall be notified in accordance with national law.
8. Competent authorities may decide not to provide or may decide to limit the reasons of fact referred to in paragraph 7, where national law provides for the right to information to be restricted or where it is necessary to safeguard public order, public security or national security and for the prevention, investigation, detection and prosecution of criminal offences. In such cases, the third-country national shall be informed of the essence of the grounds on which the return decision has been taken for the purpose of access to an effective remedy. The obligation to inform the third-country national of the essence of the grounds does not include an obligation to disclose any classified information.
9. The country or countries of return may be determined in the return decision or pursuant to Article 10(4) prior to carrying out removal. Where the third-country national decides to return voluntarily to a country other than the country or countries of return determined in the return decision or in the decision ordering removal, the issuance of a new decision determining the country of return shall not be required.

10. Competent authorities shall not be precluded from issuing a return decision where there is an obstacle to removal. Where the country of return has been determined in the return decision and a risk of refoulement has been identified, removal to that country of return shall be postponed in accordance with Article 11(1), point (a).
11. The third-country national shall, upon request, be provided with a written or oral translation of the main elements of the return decision, including information on available legal remedies in a language the third-country national understands or is reasonably presumed to understand. For that purpose, the competent authorities may, where appropriate, use standardised translation templates or machine-assisted or machine-generated translation tools.
12. The return decision shall be issued in the same act or in a separate act at the same time and together with the decision ending a legal stay of a third-country national or without undue delay thereafter, and without affecting the procedural safeguards provided for in Chapter V and other relevant provisions of Union and international law.
13. The Commission shall adopt not later than ... [six months from the date of entry into force of this Regulation] an implementing act to establish the form 'European Return Order'. The European Return Order shall include the main elements of the return decision and, where relevant, the decision ordering removal. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 47(2).
14. Upon issuance of the return decision, Member States shall use the European Return Order and make it available through the Schengen Information System in accordance with Regulation (EU) 2018/1860.

15. By the date of adoption of the implementing act referred to in paragraph 13, the Member States and the Commission and relevant Union agencies, such as eu-LISA, shall start putting in place the necessary legal and technical arrangements to make available the European Return Order through the Schengen Information System to facilitate the fulfilment of the obligation in paragraph 14. The Commission and relevant Union agencies, such as eu-LISA, shall support Member States, as appropriate.
16. By ... [12 months from the date of entry into force of this Regulation], the Commission and relevant Union agencies, such as eu-LISA, shall implement measures to ensure the possibility of automated handling of the European Return Order, with a view to making the application of Article 7 more efficient.
17. By ... [12 months from the date of entry into force of this Regulation] Member States shall notify the Commission about the necessary legal and technical arrangements put in place to fulfil the obligation referred to in paragraph 14.

## *Article 6*

### *Exceptions from the obligation to issue a return decision*

1. Member States' competent authorities may decide not to issue a return decision where an illegally staying third-country national is:
  - (a) transferred to another Member State in accordance with the procedure provided for in Article 23a of Regulation (EU) 2016/399;

- (b) transferred to another Member State pursuant to bilateral agreements or arrangements or based on cooperation between Member States in accordance with Article 42;
  - (c) a person whose illegal stay is detected in connection with border checks carried out at exit at an external border in accordance with Article 8 of Regulation (EU) 2016/399 or, in the case of Member States not bound by that Regulation, equivalent checks in accordance with national law avoiding as far as possible the postponement of the departure of the third-country national concerned.
2. A return decision shall not be issued in cases where the third-country national is holding a valid residence permit, a long-stay visa or other authorisation offering a right to stay issued by another Member State.
  3. In the cases referred to in paragraph 2 of this Article, the Member State on whose territory the third-country national is staying illegally shall require the third-country national to go to the territory of the other Member State immediately. Where the third-country national does not comply, or where the third-country national's immediate departure is required for reasons of public policy, public security or national security, the Member State on whose territory that third-country national is illegally staying may request cooperation from the other Member States pursuant to Article 42 or issue a return decision in accordance with Article 5.
  4. A return decision shall not be issued in cases where the procedure laid down in Article 7 is applied.

## *Article 7*

### *Recognition and enforcement of return decisions issued by another Member State*

1. The Member State where the third-country national is illegally staying ('enforcing Member State') may recognise and enforce an enforceable return decision, and where relevant a decision ordering removal, issued to that third-country national by another Member State ('issuing Member State') pursuant to Article 5(1) and Article 10(3). That enforcement shall be based on the information available in the European Return Order and shall be carried out in accordance with national rules and the procedures set out in Article 10.
2. Recognition shall not be required to take the form of an administrative procedure. Member States shall not be required to issue administrative acts or decisions for the purpose of recognition.
3. Where a Member State does not recognise or enforce a return decision or decision ordering removal pursuant to paragraph 1, that Member State shall issue a return decision subject to the conditions set out in Article 5 or a decision ordering removal pursuant to Article 10(3).
4. Where a Member State recognises or enforces a return decision or decision ordering removal pursuant to paragraph 1, it shall suspend removal where the effects of the return decision or decision ordering removal in the issuing Member State are suspended, and may issue a return decision subject to the conditions set out in Article 5.

5. Where the issuing Member State suspends or withdraws the return decision or where the return decision is annulled by an administrative authority, or by a court or tribunal, the enforcing Member State shall issue a return decision subject to the conditions set out in Article 5.
6. The issuing Member State shall upon request provide the enforcing Member State with all available data and documents necessary for the purpose of return or removal, in accordance with Regulation (EU) 2018/1860.
7. The application of this Article shall be without prejudice to the use of the exceptions set out in Article 6.
8. Member States shall, by the date of adoption of the implementing act referred to in Article 5(13), start putting in place preparatory steps that could facilitate the recognition of return decisions or decisions ordering removal issued by another Member State, including, where relevant, legal and technical arrangements in their national systems, changes to national IT systems, relevant training, and pilot project activities.
9. By ... [three years from the date of entry into force of this Regulation], the Commission shall assess the implementation of mutual recognition under paragraph 1 of this Article, in particular as regards the following:
  - (a) whether the legal and technical arrangements referred to in Article 5(15) to make the European Return Order available through the Schengen Information System are put in place by the Member States and are effective;

- (b) whether the legal and technical arrangements to ensure automated handling of the European Return Order referred to in Article 5(16) are put in place by the Member States;
  - (c) the effectiveness of the recognition and enforcement of return decisions and decisions ordering removal;
  - (d) the burden on judicial and administrative national systems resulting thereof; and
  - (e) the results of relevant training and pilot project activities.
10. Based on the assessment referred to in paragraph 9, the Commission shall submit, where appropriate, legislative proposals, including any targeted amendments to ensure effective returns, with a view to introducing mandatory recognition and enforcement of enforceable return decisions and decisions ordering removal issued by another Member State. Where the Commission does not submit a proposal, it shall explain the reason for not doing so.

## **SECTION 2**

### **ENTRY BAN**

#### *Article 8*

#### *Issuance of an entry ban*

1. Return decisions shall be accompanied by an entry ban when:
- (a) the third-country national is subject to removal in accordance with Article 10;

- (b) the obligation to leave the territory of the Member States has not been complied with within the time limits set in accordance with Article 5; or
  - (c) the third-country national poses a security risk within the meaning of Article 13.
2. In cases other than those listed in paragraph 1, competent authorities may accompany a return decision or decision ordering removal with an entry ban taking into account relevant circumstances, in particular the level of cooperation of the third-country national.
  3. The entry ban shall be issued as part of the return decision or as part of the decision ordering removal or separately in writing. The entry ban shall be notified to the third-country national in a language that he or she understands or is reasonably presumed to understand. For that purpose, the competent authorities may, where appropriate, use standardised translation templates or machine-assisted or machine-generated translation tools.
  4. Competent authorities may impose an entry ban without issuing a return decision to a third-country national who has been illegally staying on the territory of the Member States and whose illegal stay is detected in connection with border checks carried out at exit in accordance with Article 8 of Regulation (EU) 2016/399, or, in the case of Member States not bound by that Regulation, equivalent checks in accordance with national law. The entry ban in these cases may be imposed and notified after the third-country national has departed from the territory of the Member States avoiding as far as possible postponing the departure of the third-country national concerned.

5. Where an illegally staying third-country national departs from the territory of the Member States before a return decision is issued, the competent authorities may impose an entry ban without issuing a return decision.
6. Where the grounds for issuing an entry ban have arisen after a return decision is issued, the competent authorities may impose an entry ban without issuing a new return decision.
7. Competent authorities may refrain from issuing an entry ban in individual cases for humanitarian reasons, if the third-country national is a victim of trafficking in human beings or if the third-country national duly cooperates with the competent authorities, including by enrolling in a return and reintegration programme.
8. The duration of an entry ban shall be determined with due regard to all relevant circumstances of the individual case for a maximum of 10 years. Without prejudice to Article 13(5), point (a), an entry ban may be issued for a maximum of 20 years for duly substantiated reasons whenever it is considered necessary to prevent the third-country national from entering the territory of the Member States.
9. The period of the entry ban shall start from the date on which the third-country national left the territory of the Member States.

## *Article 9*

### *Withdrawal, suspension or shortening of the duration of an entry ban*

1. An entry ban may be withdrawn, suspended or have its duration shortened by the competent authority of the issuing Member State where the third-country national demonstrates that he or she has returned voluntarily, without prejudice to paragraphs 2 and 3.
2. The competent authority of the issuing Member State may, where it considers it appropriate, withdraw, suspend or shorten the duration of an entry ban in justified individual cases, including for humanitarian reasons, taking into account all relevant circumstances, without prejudice to paragraph 3.
3. The third-country national may submit a duly justified request for withdrawal, suspension or shortening of the duration of an entry ban, provided that the third-country national has departed from the territory of the Member States, without prejudice to paragraph 4.
4. A third-country national, who has been issued an entry ban that exceeds 10 years in accordance with Article 8(8) or Article 13(5), point (a), may 10 years after his or her departure from the territory of the Member States request the issuing Member State to review whether the entry ban is to be withdrawn, suspended or shortened, having due regard to all relevant circumstances, including, where relevant, whether the third-country national still poses a security risk within the meaning of Article 13, and whether the entry ban remains necessary to prevent the third-country national from entering the territory of the Member States. The request for review shall be duly justified.

5. Member States may make the withdrawal of an entry ban conditional on the reimbursement of the costs of the removal of the third-country national.

### **SECTION 3**

#### **ENFORCEMENT OF RETURN**

##### *Article 10*

##### *Removal*

1. The Member States shall take all necessary measures to remove a third-country national subject to a return decision or decision ordering removal where:
- (a) the third-country national has not complied with the obligation to leave the territory of the Member States in accordance with Article 5;
  - (b) the third-country national does not cooperate with the competent authorities;
  - (c) the third-country national falls within the scope of Article 13;
  - (d) the third-country national moves to another Member State without authorisation, including during the period set in accordance with Article 5;
  - (e) the competent authorities consider that removal is necessary and proportionate, as provided for in national law, for reasons other than those listed in points (a) to (d).

2. This Regulation shall not prevent Member States from permitting or facilitating voluntary return of a third-country national who is otherwise subject to removal pursuant to paragraph 1, in particular where it is considered as leading to a faster and more effective return.
3. A decision ordering removal may be issued by competent authorities to any third-country national who is subject to return. Where a decision ordering removal is issued, it shall be in writing and may be in the same decision as the return decision or as a separate administrative or judicial act or decision or as a part of another administrative or judicial decision.
4. Where a country of return has not yet been determined or where it differs from the country of return previously determined, the competent authority shall determine one or more countries of return in the return decision or decision ordering removal prior to carrying out the removal.
5. Where a decision ordering removal is issued, it shall give reasons of fact and of law. The third-country national shall be informed about available legal remedies and the time limits for seeking those remedies. The decision ordering removal shall be notified to the third-country national as soon as possible in accordance with the national law of the issuing Member State.

6. Where a decision ordering removal is issued, the third-country national shall, upon request, be provided with a written or oral translation of the main elements of that decision, including information on available legal remedies, in a language the third-country national understands or is reasonably presumed to understand. For that purpose, the competent authorities may, where appropriate, use standardised translation templates or machine-assisted or machine-generated translation tools.
7. When the third-country national indicates, or the authorities of the Member State become aware of, relevant indications that the removal would violate the principle of non-refoulement, the competent authorities shall refer the third-country national to the appropriate procedure, including, where applicable, the asylum procedure in accordance with Regulation (EU) 2024/1348, or, in the case of Member States not bound by that Regulation, in accordance with equivalent provisions where they have introduced such provisions in national law, or shall assess in accordance with national law whether removal is in compliance with the principle of non-refoulement. The third-country national concerned shall bring forward as soon as possible any relevant information concerning his or her own personal circumstances in order to substantiate his or her claim that removal would violate the principle of non-refoulement. The competent authorities may rely on or take into consideration any previous assessment of the risk of refoulement of that third-country national. Any further assessment that there is a risk of refoulement shall only be made if relevant information has been substantiated.

8. Member States may decide that the principle of non-refoulement may be assessed by an authority other than the competent authority that is issuing or enforcing the return decision.
9. Coercive measures taken to ensure removal shall be necessary and proportionate and shall, in any event, not exceed the threshold of reasonable force. They shall be implemented in accordance with national law respecting fundamental rights and with due respect for the dignity and physical integrity of the third-country national concerned.
10. In carrying out removals by air, Member States shall take into account the common guidelines on security provisions for joint removals by air set out in the Annex to Council Decision 2004/573/EC<sup>28</sup>.

### *Article 11*

#### *Conditions for postponing removal*

1. Removal pursuant to Article 10 shall be postponed in the following circumstances:
  - (a) when it would violate the principle of non-refoulement; or
  - (b) when and for as long as suspension of the return decision in accordance with Article 28 is in place.
2. Removal pursuant to Article 10 may be postponed, taking into account the specific circumstances of the individual case. Where there is a risk of absconding, additional measures may be applied pursuant to paragraph 7 of this Article.

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<sup>28</sup> 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 subjects of individual removal orders (OJ L 261, 6.8.2004, p. 28, ELI: <http://data.europa.eu/eli/dec/2004/573/oj>).

3. If the third-country national requests postponement of removal, the request shall be duly substantiated.
4. Member States shall provide the third-country national concerned with a written confirmation of the postponement in accordance with paragraph 1 or 2 and of his or her rights during postponement. A translation of the confirmation may be communicated orally to the third-country national in a language he or she understands or is reasonably presumed to understand, including with the use of interpretation services.
5. The postponement of the removal shall be reviewed in the event of a change of relevant circumstances.
6. The following shall be taken into account concerning the situation of the third-country national, including the compliance by the third-country national with the obligations laid down in this Regulation, during periods for which the removal has been postponed:
  - (a) basic needs;
  - (b) family unity with family members present in the Member State's territory;
  - (c) emergency health care and essential treatment of illness;
  - (d) access of minors to the basic education system subject to the duration of their stay;
  - (e) special needs of vulnerable persons.
7. If the removal is postponed, the measures set out in Articles 18, 23 and 29 may be applied when the conditions are fulfilled.

*Article 12*  
*Monitoring of removal*

Member States shall provide for an independent removal monitoring system. Member States may rely on existing monitoring mechanisms such as structures and expertise established pursuant to Regulation (EU) 2024/1356 as relevant for the purpose of this Article.

*Article 13*  
*Return of third-country nationals posing security risks*

1. This Article shall apply to third-country nationals where:
  - (a) they pose a threat to public policy, to public security or to national security, including where they are subject to an alert pursuant to Article 24(1), point (a), of Regulation (EU) 2018/1861 of the European Parliament and of the Council<sup>29</sup>;

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<sup>29</sup> Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006 (OJ L 312, 7.12.2018, p. 14, ELI: <http://data.europa.eu/eli/reg/2018/1861/oj>).

- (b) there are reasonable indications for believing that they have committed a serious criminal offence as referred to in Article 2(2) of Council Framework Decision 2002/584/JHA<sup>30</sup> or have committed an offence carrying a penalty involving the deprivation of liberty of at least two years under national law or have committed multiple offences carrying a penalty involving the deprivation of liberty of at least one year under national law;
  - (c) there are reasonable indications that they are involved in any of the offences referred to in Directive (EU) 2017/541 of the European Parliament and of the Council<sup>31</sup>;
  - (d) there are reasonable indications of their intention to commit an offence referred to in points (b) and (c) of this paragraph in the territory of a Member State;
  - (e) there are reasonable indications that they pose any other security threat as identified under national law.
2. Paragraph 1, points (b), (c) and (d), shall also apply to third-country nationals where there are reasonable indications that they have incited or otherwise participated in the commission of the crimes or acts referred to in those points.
3. Third-country nationals falling within the scope of this Article shall be subject to removal in accordance with Article 10.

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<sup>30</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States – Statements made by certain Member States on the adoption of the Framework Decision (OJ L 190, 18.7.2002, p. 1, ELI: [http://data.europa.eu/eli/dec\\_framw/2002/584/oj](http://data.europa.eu/eli/dec_framw/2002/584/oj)).

<sup>31</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6, ELI: <http://data.europa.eu/eli/dir/2017/541/oj>).

4. Member States shall take the necessary measures to ensure that return decisions concerning third-country nationals falling within the scope of this Article are dealt with and enforced as a matter of priority.
5. By way of derogation from the relevant provisions of this Regulation, third-country nationals falling within the scope of this Article may be:
  - (a) subject to an entry ban issued in accordance with Article 8 that exceeds the maximum duration provided for in Article 8(8) or an entry ban for an indefinite duration where justified and proportionate to the security risk posed by the third-country national; in such cases, Article 9(4) shall apply;
  - (b) detained in accordance with Article 29(3), point (c);
  - (c) detained in prisons and, to the extent possible, be kept separated from ordinary prisoners;
  - (d) subject to detention for additional periods that exceed the maximum duration referred to in Article 30(3) and that are determined by a court or tribunal taking into account the circumstances of the individual case, and that are subject to a review by a court or tribunal at least every three months.

6. When the threat to public policy, to public security or to national security posed by third-country nationals referred to in paragraph 1, point (a), cannot be effectively addressed pursuant to this Article, Member States may provide for other measures under national law. The Member States shall ensure that, when the relevant decision is taken, the measure is necessary and proportionate having regard to the severity of that threat, or the danger posed by the person concerned.
7. Member States may rely on an existing thorough security assessment of all relevant circumstances carried out by the competent authorities at previous stages, including in the context of asylum, visa, and border control procedures, including screening.

#### *Article 14*

##### *Return to a third country with which there is an agreement or arrangement*

1. Return of illegally staying third-country nationals to a country of return referred to in Article 3, point (3)(g), requires an agreement or arrangement to be concluded with that third country. Such an agreement or arrangement may only be concluded with a third country where international human rights standards and principles in accordance with international law, including the principle of non-refoulement, are respected.
2. An agreement or arrangement concluded pursuant to paragraph 1 shall set out the following:
  - (a) the procedures applicable to the return of illegally staying third-country nationals out of the Member States to the country of return referred to in Article 3, point (3)(g);

- (b) the conditions for the stay of the third-country national in the country of return referred to in Article 3, point (3)(g), including the respective obligations and responsibilities of the parties to that agreement or arrangement;
- (c) the obligations of the third country referred to in the second sentence of paragraph 1;
- (d) the consequences of violations of that agreement or arrangement or of a significant change adversely impacting the situation in the country of return referred to in Article 3, point (3)(g).

3. Where an agreement or arrangement concluded pursuant to paragraph 1 of this Article provides for onward return to a country of return as referred to in Article 3, points (3)(a) to (d), that agreement or arrangement shall, in addition to paragraph 2 of this Article, set out the following:

- (a) the consequences in the event that onward return is not possible;
- (b) the respective obligations and responsibilities of the parties to that agreement or arrangement;
- (c) the consequences of a significant change adversely impacting the situation in the country of return referred to in Article 3, point (3)(g);
- (d) an independent body or mechanism to monitor the effective application of the agreement or arrangement.

An agreement or arrangement pursuant to the first subparagraph of this paragraph may include the conditions for detention in the country of return referred to in Article 3, point (3)(g).

4. Member States shall, at an appropriate time, inform the relevant Member States of negotiations on an agreement or arrangement as referred to in paragraph 1 with a third country that shares a common border with those Member States. Member States shall inform the Commission and the other Member States of any bilateral or multilateral agreements or arrangements concluded in accordance with paragraph 1 prior to their entry into force, or, where an agreement or arrangement is to be applied provisionally, before the beginning of its provisional application. The Commission and the other Member States shall also be informed of any subsequent changes to, or the termination of, such agreements or arrangements.
5. Unaccompanied minors shall not be returned to a country of return referred to in Article 3, point (3)(g) pursuant to an agreement or arrangement referred to in paragraph 1 of this Article.

## **SECTION 4**

### **RETURN OF MINORS**

#### *Article 15*

#### *Best interests of the child*

The best interests of the child shall be a primary consideration when applying this Regulation.

*Article 16*  
*Age assessment of minors*

1. Where, as a result of statements by the third-country national, available documentary evidence or other relevant indications, there are doubts as to whether or not he or she is a minor, the competent authority may undertake an age assessment in accordance with Union or national law. For the purpose of such an age assessment, the competent authority may have regard to the procedure set out in Article 25 of Regulation (EU) 2024/1348.
2. The competent authority may rely on an existing age assessment conducted in previous stages of the return procedure or in other relevant procedures.
3. A Member State may recognise the results of an age assessment of another Member State where that age assessment was carried out in compliance with Union law.
4. A refusal to undergo an age assessment, including the medical examination, shall not prevent the competent authority from continuing the return procedure. Such refusal may only be considered to be a rebuttable presumption that the third-country national is not a minor.

*Article 17*  
*Return of unaccompanied minors*

1. Assistance by appropriate bodies other than the authorities enforcing return shall be provided in accordance with the best interests of the child.

2. A representative or a person designated to safeguard the best interests of the child shall be appointed to represent, assist and act, as applicable, on behalf of an unaccompanied minor in the return process. It shall be ensured that the appointed representative is appropriately trained in child-friendly and age-appropriate communication and that they can communicate, including with the use of interpretation services, in a language that the minor understands or is reasonably presumed to understand. That person may be the person designated to act as a representative under Directive (EU) 2024/1346 of the European Parliament and of the Council<sup>32</sup> where the person has been designated in accordance with Article 27 of that Directive.
3. The unaccompanied minor shall be heard, either directly or through the representative or person referred to in paragraph 2, including in the context of the determination of the best interests of the child. At the latest before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the country of return.

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<sup>32</sup> Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection (OJ L, 2024/1346, 22.5.2024, ELI: <http://data.europa.eu/eli/dir/2024/1346/oj>).

## **Chapter III**

### **Obligations of the third-country national**

#### *Article 18*

#### *Obligation to cooperate*

1. Third-country nationals shall comply with the obligation to leave the territory of the Member States and they shall have the obligation to cooperate with the competent authorities of the Member States at all stages of the return procedure.
2. Third-country nationals shall provide competent authorities with information on any changes in his or her individual situation relevant for the purpose of this Regulation, without undue delay.
3. Without prejudice to the obligation to leave the territory of the Member States, third-country nationals shall:
  - (a) remain available to the competent authorities on the territory of the Member State competent for the return procedure of which the third-country nationals are the subject, not abscond, including to another Member State, and present themselves for the departure of the transportation for return as determined by the competent authority;
  - (b) not physically or verbally obstruct the return;

- (c) provide without undue delay, all information and physical and digital documents and documentation, including copies and electronic records thereof, relevant for establishing or verifying identity or nationality or otherwise relevant within the return procedure that they possess or are reasonably presumed to be able to obtain, in particular by providing the competent authorities with an identity or travel document or cooperating on obtaining an identity or travel document;
- (d) not destroy, withhold or otherwise dispose of information, documents and documentation, referred to in point (c), use aliases with fraudulent intent, provide other false information in an oral or written form, or otherwise mislead the authorities or fraudulently oppose the return procedure;
- (e) provide an explanation in the event that they are not in possession of an identity or travel document;
- (f) provide information on the third countries transited, the travel routes used, or other third countries with which they may have other connections that might facilitate return;

- (g) provide biometric data as defined in Union and national law, including Article 2(1), point (s), of Regulation (EU) 2024/1358 of the European Parliament and of the Council<sup>33</sup>;
- (h) comply with travel requirements of carriers and entry requirements of third-country authorities, including health requirements, when such requirements are generally imposed on international travellers;
- (i) provide, when requested by the competent authorities precise contact details, including current place of residence, address, telephone number where they may be reached and, where available, an electronic mail address;
- (j) provide, without undue delay, information on any changes to the contact details referred to in point (i);
- (k) comply with any measure imposed under Article 20(1) and Article 23(1), throughout the return procedure;

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<sup>33</sup> Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of ‘Eurodac’ for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council (OJ L, 2024/1358, 22.5.2024, ELI: <http://data.europa.eu/eli/reg/2024/1358/oj>).

- (l) provide all required information and statements in the context of requests lodged with the competent authorities of relevant third countries for the purpose of obtaining travel documents and cooperate with these authorities of third countries, as necessary;
- (m) appear in person or by means of videoconference, as required by the competent authorities, before the competent national or third-country authorities at the location indicated by such authorities for the purpose of acquiring travel documents and establishing their identity or nationality;
- (n) where required by competent authorities, participate in return and reintegration counselling;
- (o) comply with other relevant additional measures in relation to return under national law.

Obligations imposed upon the third-country national under this Article shall be without prejudice to obligations and measures not related to return provided for under national law.

4. The information, documents and documentation or, where not available, copies and electronic records thereof, referred to in paragraph 3, point (c), shall include in particular third-country nationals' statements and any documentation in their possession regarding:
- (a) their name, date and place of birth, gender and nationality or nationalities or the fact that they are stateless;

- (b) their family members and other personal details of the third-country national if relevant for carrying out the return procedure or for the determination of the country of return;
- (c) the type, number, period of validity and issuing country of any identity or travel document of the third-country nationals and other documents provided by them which the competent authority deems relevant for the purposes of identifying them, for carrying out the return procedure and for the determination of the country of return;
- (d) any residence permits or other authorisation offering the third-country nationals a right to stay issued by another Member State or by a third country;
- (e) any return decision, decision ordering removal, or entry ban issued by another Member State;
- (f) country or countries and place or places of previous residence, travel routes, countries transited and travel documentation.

5. Where the competent authorities decide to retain any document necessary for the purpose of return as referred to in paragraph 3, point (c), they shall ensure that the third-country national receives without undue delay photocopies or other appropriate proof of retention of the documents. In the case of voluntary return, the competent authorities shall either hand back such documents to the third-country national at the time of departure or upon arrival in the third country.

6. The third-country national shall be contactable by means of communication as defined in national law. Member States shall establish in national law the method of communication and the point in time at which the communication is considered received by and notified to the third-country national or make use of digital systems developed and/or supported by the Member States or the Union for the purpose of such communication.

### *Article 19*

#### *Risk of absconding*

1. There is a risk of absconding, in an individual case, unless proven otherwise, where one or more of the following criteria is fulfilled:
- (a) the third-country national has entered or moved without authorisation to the territory of a Member State, including following transit through a third country, or attempts to do so;
  - (b) the third-country national is subject to a return decision issued by a Member State other than the one on the territory of which he or she is currently staying illegally, including as detected through the alerts entered into the Schengen Information System pursuant to Regulation (EU) 2018/1860;
  - (c) the third-country national does not comply with one or more of the measures imposed in accordance with Article 20(1), and Article 22, or expresses or demonstrates intent to do so;

- (d) the third-country national has re-entered the territory of the Member States in violation of a valid entry ban.

2. In cases not covered by paragraph 1, the risk of absconding shall be determined on the basis of an overall assessment of the circumstances of the individual case. The assessment shall take into account one or more of the following criteria regarding the illegally staying third-country national concerned:

- (a) lack of residence, fixed abode or reliable address;
- (b) non-compliance with the obligation to leave the territory of the Member States within the departure period as set out in accordance with Article 5(2), point (a);
- (c) where departure is imminent, there are reasons to believe that the third-country national intends to violate the obligation to cooperate as set out in Article 18(3), point (a);
- (d) using false or forged identity or travel documents, residence permits or visas or documents justifying conditions of entry, destroying or otherwise disposing of such documents, using aliases with fraudulent intent, providing other false information in an oral or written form, or otherwise fraudulently opposing the return or readmission procedure;
- (e) not attending return and reintegration counselling, where required by the competent authorities;

- (f) lack of social anchoring, in particular the absence of family ties, and insufficient means of subsistence;
- (g) non-compliance with the obligations under Article 18(3), points (a) to (d), (f), (h), (k), (l) and (m), including lack of cooperation in obtaining travel documents;
- (h) other criteria than those set out in points (a) to (g) where provided for in national law.

## **Chapter IV**

### **Measures to promote return and alternatives to detention**

#### *Article 20*

##### *Availability for the return process*

1. For the purpose of preparing and ensuring an effective return or to further incentivise compliance with the obligations to leave and cooperate, Member States may impose on the third-country national one or more of the following measures:
  - (a) the obligation to remain within a geographical area within the Member State's territory in which he or she is able to move freely;
  - (b) the obligation to reside at a specific address or place designated by the competent authorities;

- (c) the obligation to report to the competent authorities at specified times, in person or by other means as specified in national law;
  - (d) other measures than those referred to in points (a) to (c) where provided for in national law.
2. Any measure referred to in paragraph 1 shall only be applied to the extent that it is compatible with the special needs of vulnerable persons and the best interests of the child.
  3. The measures referred to in paragraph 1 may also be imposed on third-country nationals who cannot be removed, due to their lack of cooperation with the competent authorities.
  4. Upon request, competent authorities may grant the third-country national permission not to comply temporarily with a measure referred to in paragraph 1.
  5. The third-country national shall be informed whether or not the permission in accordance with paragraph 4 is granted.
  6. The third-country national shall not be required to request permission pursuant to paragraph 4 to attend appointments with authorities and courts, where it would otherwise have violated the obligations of paragraph 1, and where the attendance of that third-country national is necessary. The third-country national shall notify the competent authorities of such appointments in advance.

7. The decisions taken in accordance with paragraph 1, points (b) and (c), shall be made in writing, be proportionate and take into account specific circumstances of the third-country national concerned.
8. The third-country national shall be informed of any decision to apply measures referred to in paragraph 1 of this Article and of the consequences of non-compliance with that decision, including detention under Article 29.

## *Article 21*

### *Investigative measures*

1. Without prejudice to investigative measures for other reasons not related to return in accordance with national law, the competent authorities of the Member States may, where necessary, proportionate and duly justified for the purpose of preparing or ensuring an effective return:
  - (a) search the third-country national and, subject to a prior judicial order or, in accordance with relevant national law, an administrative order where necessary, proportionate and duly justified by the urgency of such search, his or her place of residence or other relevant premises;
  - (b) take administrative measures for the purpose of ensuring compliance with the obligation to provide biometric data as laid down in national law, including fingerprints, which could include the possibility to use means of coercion as a last resort where a third-country national does not provide biometric data as required under Article 18(3), point (g);

- (c) search and seize personal belongings, electronic devices, and other items of relevance;
  - (d) impose other investigative measures, where provided for in national law.
2. Any investigative measures under paragraph 1, points (a), (b) and (c), may be carried out without the consent of the third-country national concerned.
3. Any investigative measures imposed in accordance with paragraph 1, points (a), (b) and (c), shall respect fundamental rights and be subject to the safeguards and remedies provided for in Union and national law.

## *Article 22*

### *Consequences of non-compliance with the obligation to cooperate*

In the event of non-compliance with the obligation to cooperate as set out in Article 18(1) and the requirements laid down in Article 18(3), Member States shall impose on the third-country national concerned one or more of the measures set out in Article 20(1), and may impose one or more of the following measures which shall be effective and proportionate:

- (a) refusal or reduction of certain benefits and allowances, where provided for in national law, unless it would lead to the third-country national's inability to make provision for his or her basic needs;

- (b) refusal or reduction of incentives granted to promote voluntary return including refusal or reduction of assistance in return and reintegration programmes pursuant to Article 44(3);
- (c) refusal or withdrawal of work permit, where provided for in national law;
- (d) extension of the duration of an entry ban up to the applicable maximum provided for in Article 8(8);
- (e) criminal sanctions, including imprisonment, where provided for in national law;
- (f) financial penalties;
- (g) other measures or consequences than those referred to in points (a) to (f) where provided for in national law.

### *Article 23*

#### *Alternatives to detention*

1. Member States may impose one or more of the following alternatives to detention, taking into account the individual circumstances of the third-country national concerned, including the level of the risk of absconding assessed in accordance with Article 19:
  - (a) deposit of an adequate financial guarantee;

- (b) the use of electronic monitoring;
  - (c) measures other than those referred to in points (a) and (b) where provided for in national law.
2. The measures referred to in paragraph 1 shall primarily aim to ensure the effective and timely return of the third-country national.
  3. A decision to apply the measures referred to in paragraph 1 shall state the relevant reasons of fact and of law.
  4. Third-country nationals shall be informed in writing of any decision to apply the measures referred to in paragraph 1 and the consequence of non-compliance with that decision, including detention under Article 29.
  5. Member States shall ensure that decisions to apply the measures referred to in paragraph 1 are reviewed by a court or tribunal upon application by the third-country national concerned or *ex officio*.

# Chapter V

## Safeguards and remedies

### SECTION 1

#### PROCEDURAL SAFEGUARDS

#### *Article 24*

#### *Right to information*

1. Competent authorities shall ensure that third-country nationals subject to return are informed of the following:
  - (a) the purpose of the procedure;
  - (b) the obligations of third-country nationals as set out in Articles 18 and 20, the consequences of non-compliance pursuant to Article 22 and Article 29(3), point (e), the existence of an alert on return on the person in the Schengen Information System and the recognition and enforcement of a return decision or decision ordering removal issued by another Member State in accordance with Article 7;
  - (c) return and reintegration counselling and programmes pursuant to Article 44;
  - (d) their procedural rights in accordance with this Regulation and national law, in particular the right to legal assistance and representation pursuant Article 25.

2. The information provided pursuant to paragraph 1 shall be given without undue delay in a language which the third-country national understands or is reasonably presumed to understand. That information may be provided by means of standard information sheets, either on paper or in electronic format, and, where necessary, supplemented orally, using translation and interpretation services. In the case of unaccompanied minors, the information shall be provided in an age-appropriate manner with the involvement of the representative or the person designated to assist the minor referred to in Article 17(2).
3. Where the competent authority proceeds with removal on the basis of a return decision or a decision ordering removal which has determined more than one country of return, the third-country national shall be informed of the country of return to which he or she will be removed sufficiently in advance of the removal.

#### *Article 25*

##### *Legal assistance and representation*

1. In the case of an appeal before a court or tribunal in accordance with Article 27, Member States shall, at the request of the third-country national, ensure that he or she is provided with necessary free legal assistance and representation.
2. The competent authorities shall ensure that unaccompanied minors are represented and assisted in such a way so as to enable them to benefit from their rights and comply with their obligations under this Regulation.

3. Free legal assistance and representation shall be provided by legal advisers or other suitably qualified persons, admitted or permitted under national law to assist or represent the third-country national, or by non-governmental organisations accredited under national law to provide legal services or representation to third-country nationals.
4. The provision of free legal assistance and representation in the appeal procedure may be excluded by the Member States where:
  - (a) the third-country national is considered to have sufficient resources to afford legal assistance and representation at his or her own cost;
  - (b) it is considered that the appeal has no tangible prospect of success or is abusive;
  - (c) the appeal or review is at a second level of appeal or higher, as provided for under national law, including re-hearings or reviews of appeal;
  - (d) the third-country national is already assisted or represented by a legal adviser.
5. The third-country national requesting free legal assistance and representation shall disclose his or her financial situation and immediately inform the competent authorities of any significant change to his or her financial situation, unless national law provides for free legal assistance and representation irrespective of the person's financial situation.

6. With the exception of any assistance provided to unaccompanied minors, Member States may:
- (a) impose monetary or time limits on the provision of free legal assistance and representation, provided that such limits are not arbitrary and do not unduly restrict access to free legal assistance and representation;
  - (b) request total or partial reimbursement of any costs incurred where the third-country national's financial situation has improved during the return procedure or where the decision to provide free legal assistance and representation was taken on the basis of false information supplied by the third-country national;
  - (c) provide that, as regards fees and other costs and reimbursements, the treatment of third-country nationals shall be equal to, but not more favourable than, the treatment generally given to their nationals in matters pertaining to legal assistance and representation.
7. Member States shall lay down specific procedural rules governing the manner in which requests for free legal assistance and representation in relation to an appeal before a court or tribunal in accordance with Article 27 are filed and processed, or apply existing rules for domestic claims of a similar nature, provided that those rules do not render access to free legal assistance and representation excessively difficult or impossible.

8. Where a decision not to grant free legal assistance and representation is taken by an authority which is not a court or tribunal on the grounds that the appeal is considered to have no tangible prospect of success or to be abusive, the third-country national shall have the right to an effective remedy before a court or tribunal against that decision.
9. Member States may provide for free legal assistance and representation in the administrative procedure in accordance with national law.

## **SECTION 2**

### **REMEDIES**

#### *Article 26*

##### *The right to an effective remedy*

1. The third-country national concerned shall be afforded an effective remedy to challenge the decisions referred to in Article 5(1), Article 8 and Article 10(3) before a court or tribunal competent under national law.
2. The effective remedy shall provide for a full examination of both points of fact and points of law.

3. Where material in the file brought to the attention of the court or tribunal competent for the remedy against a return decision or decision ordering removal, as supplemented or clarified following adversarial proceedings, suggests that the third-country national concerned is at risk of refoulement, compliance with the requirements arising from the principle of non-refoulement shall be verified.
4. The annulment or revocation of a non-essential element of a return decision shall not result in the annulment or revocation of the remainder of the decision concerned.

### *Article 27*

#### *Appeal before a competent court or tribunal*

1. For the purpose of applying this Regulation, the Member States shall lay down in national law a period for lodging an appeal challenging the decisions referred to in Article 5(1), Article 8 and Article 10(3) before a court or tribunal of first instance which shall not exceed 14 days.

By way of derogation from the first subparagraph, Member States which by ... [the date of entry into force of this Regulation] provide in their national law for periods for lodging an appeal which are 30 days or longer may maintain or lay down in national law a period for lodging an appeal not exceeding 30 days.

2. The time limits referred to in paragraph 1 shall start to run from the date on which any of the decisions referred to in Article 5(1), Article 8 and Article 10(3) is notified to the third-country national, or is considered to have been notified under national law.

3. Where a return decision is based on, or issued in, the same act as a decision refusing or ending the legal stay, the time limits to appeal the return decision may be those laid down in national law for appealing a decision ending or refusing legal stay.
4. Where an entry ban or a decision ordering removal is issued together with a return decision pursuant to Article 5(12), they shall be appealed against jointly with that return decision, before the same court or tribunal and within the same proceedings and the same time limits. Where an entry ban or decision ordering removal is issued separately from a return decision or is the only decision being challenged, it may be appealed against separately.

### *Article 28*

#### *Suspensive effect*

1. Although this Regulation does not provide for automatic suspensive effect of an appeal, Member States shall ensure, fully respecting Article 47 of the Charter, that removal can be suspended by the competent court or tribunal of first instance prior to the enforcement of the decisions issued pursuant to Article 5 and Article 10(3). The removal may be suspended upon request of the third-country national concerned for the period for lodging the appeal pursuant to Article 27 or, where an appeal has been lodged, for the period pending the outcome of such an appeal, unless national law also provides that enforcement of such a decision may be suspended *ex officio*. This paragraph shall be without prejudice to provisions of national law which provide for an automatic suspensive effect of remedies before a court or tribunal of first instance.

2. In the assessment of the request pursuant to paragraph 1, the court or tribunal may rely on the material in the file brought to its attention, including any assessment of relevant circumstances carried out at previous stages of the return procedure and, where relevant, of the asylum procedure.
3. Where a further appeal against a first or subsequent appeal decision is lodged, the removal shall not be suspended unless national law provides for a suspensive effect of such remedies or the third-country national requests suspension and a competent court or tribunal decides to grant it, taking due account of the specific circumstances of the individual case.

## **Chapter VI**

### **Detention**

#### *Article 29*

#### *Grounds for detention*

1. Member States may detain a third-country national pursuant to this Regulation on the basis of an individual assessment of each case and only in so far as detention is proportionate.
2. Member States may only keep in detention a third-country national for the purpose of return, including for preparing the return, readmission or carrying out the removal.

3. A third-country national may only be detained based on one or more of the following grounds for detention:
  - (a) a risk of absconding determined in accordance with Article 19;
  - (b) the third-country national avoids or hampers readmission, the preparation of the return, or the removal;
  - (c) the third-country national poses a security risk within the meaning of Article 13;
  - (d) to determine or verify his or her identity or nationality;
  - (e) non-compliance with the obligations laid down in Article 18(3), points (a) to (d), (f), (h), (k), (l) and (m), including lack of cooperation in obtaining travel documents;
  - (f) other necessary and proportionate relevant grounds related to return provided for in national law, to ensure effective return procedures.
4. Detention shall be ordered by administrative or judicial authorities. Detention shall be ordered by a written decision giving the reasons of fact and of law on which it is based as well as information on available legal remedies. The decision shall be communicated orally or in writing to the third-country national in a language that he or she understands or is reasonably presumed to understand, including with the use of interpretation or translation services.
5. When detaining a third-country national pursuant to paragraph 2, Member States shall take into account whether the third-country national is a vulnerable person.

*Article 30*  
*Detention period*

1. Detention shall be maintained for as short a period as possible and for as long as the grounds laid down in Article 29 are fulfilled and it is necessary to ensure the effective and successful return of the third-country national.
2. When it appears that the grounds laid down in Article 29 are no longer fulfilled, the third-country national shall be released from detention pursuant to this Regulation. Such release shall not preclude the application of measures in accordance with Articles 20 and 23.
3. Detention shall not exceed 12 months in a Member State. Where the return procedure is likely to last longer owing to a lack of cooperation by the third-country national concerned, or delays in obtaining the necessary documentation from third countries, or in other exceptional circumstances provided for in national law, detention may be applied for a longer period but shall not exceed 24 months in a Member State.

Where the third-country national has moved to another Member State and his or her conduct constitutes a ground for detention as referred in Article 29(3), a new period of detention shall apply.

4. Detention may, after the expiry of the maximum detention period of 24 months pursuant to paragraph 3, be applied for additional periods, not exceeding 6 months in total, where there is a risk of absconding and where one or more of the following changes in circumstances indicate a reasonable prospect of removal:
- (a) there is new significant information on the third-country national's identity;
  - (b) a travel document has been obtained, or may reasonably be presumed to be obtained due to a change in circumstances;
  - (c) cooperation with the third country concerned has improved.

When detaining a third-country national in accordance with this paragraph, the competent authorities shall prioritise such a case in order to ensure that detention is maintained for as short a period as possible.

5. The expiry of the maximum detention periods in accordance with paragraphs 3 and 4 does not preclude the application of measures in accordance with Articles 20 and Article 23.
6. Where a third-country national is cooperating on his or her return during detention, the voluntary return of the third-country national concerned shall, where appropriate, be organised without undue delay. Detention may, where relevant, be maintained until departure to ensure effective return in compliance with paragraphs 3 and 4.

## Article 31

### *Review of detention orders*

1. Member States shall ensure that detention is reviewed at least every six months either on application by the third-country national concerned or *ex officio*.
2. Member States shall ensure that detention of unaccompanied minors is reviewed *ex officio* at least every three months, or upon request of the unaccompanied minor concerned or the representative or person appointed pursuant to Article 17(2).
3. Where detention has been ordered or extended by administrative authorities, Member States shall:
  - (a) provide for a judicial review of the lawfulness of detention to be decided on as speedily as possible within a period that is laid down in national law after the beginning of the detention; or
  - (b) grant the third-country national concerned the right to initiate proceedings by means of which the lawfulness of detention shall be subject to judicial review, to be decided on as speedily as possible within a period laid down in national law after the launch of the relevant proceedings. In such cases Member States shall immediately upon detention inform the third-country national concerned about the possibility of initiating such proceedings.

Where a third-country national is detained for a period exceeding the maximum detention period of 24 months pursuant to Article 30(4), and that extension exceeds three months, the detention shall be subject to review by a court or tribunal at least every three months.

## *Article 32*

### *Detention conditions*

1. Detention shall generally take place in specialised facilities, including those in dedicated branches of other facilities. Where a Member State cannot provide for detention in such facilities and is obliged to resort to prison accommodation, the third-country nationals shall, to the extent possible, be kept separated from ordinary prisoners.
2. Detained third-country nationals shall have access to open-air space. Access to open-air space may be restricted for a limited period of time, if necessary and proportionate to ensure a well-functioning detention facility.
3. Third-country nationals in detention shall be allowed, upon request, to establish in due time contact with legal representatives, family members and competent consular authorities.
4. Particular attention shall be paid to the special needs of detained vulnerable persons. Emergency health care and essential treatment of illness shall be provided to detained third-country nationals.

5. Legal representatives, family members, competent consular authorities and relevant and competent national, international and non-governmental organisations and bodies shall have the possibility to visit any detention facility and communicate with the third-country nationals and visit them in conditions that respect privacy. Such visits may be subject to authorisation and other appropriate conditions, including prior issuance by a competent authority of an appropriate security clearance in accordance with national law. Member States may impose limits to such access by virtue of national law where such limits are objectively necessary for the security, public order or administrative management of the facility.
6. Third-country nationals kept in detention shall be provided with information which explains the rules applied in the facility and sets out their rights and obligations in a language they understand or are reasonably presumed to understand. Such information shall include information on their entitlement under national law to contact the persons or bodies referred to in paragraphs 3 and 5.
7. Third-country nationals identified as posing security risks pursuant to Article 13 may be placed under enhanced security arrangements within detention facilities, including stricter separation measures or increased supervision, for a period strictly necessary to manage the risk and facilitate their return.

### *Article 33*

#### *Conditions for detention of unaccompanied minors and families with minors*

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 and taking into account the best interests of the child.
2. Unaccompanied minors and families with minors shall during the detention period be provided with separate accommodation guaranteeing adequate privacy. Personnel shall be adequately trained, and facilities adapted to take into account the needs of minors and their age and their gender.
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 access to education or educational activities in the format most appropriate to the duration of their detention.

## Chapter VII

### Readmission

#### *Article 34*

#### *Readmission*

1. After issuing a return decision, competent authorities shall where relevant, with the support of Frontex where relevant, initiate readmission, including, where applicable, in relation to the confirmation of nationality of the third-country national, the issuance of a travel document for the third-country national and the organisation of a return operation.

Where applicable, the European travel document for return shall be used in compliance with the applicable readmission instrument and Regulation (EU) 2016/1953 of the European Parliament and of the Council<sup>34</sup>.

2. The readmission in third countries shall be supported by dedicated Union return liaison officers financed by the Union. Such liaison officers shall be part of the structure of the Union delegations and shall closely coordinate with the Commission in achieving the relevant Union policy priorities.

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<sup>34</sup> Regulation (EU) 2016/1953 of the European Parliament and of the Council of 26 October 2016 on the establishment of a European travel document for the return of illegally staying third-country nationals, and repealing the Council Recommendation of 30 November 1994 (OJ L 311, 17.11.2016, p. 13, ELI: <http://data.europa.eu/eli/reg/2016/1953/oj>).

### *Article 35*

#### *External dimension and cooperation with third countries*

The Union and Member States shall ensure that the external dimension of return policy forms an integral part of the comprehensive approach to migration management.

Where lack of cooperation from a third country is identified, or where one or more Member States encounter difficulties in third country cooperation on readmission, the Union and the Member States shall take appropriate measures, including the use of conditionality in relation to all relevant policies and tools, such as visa policy, as well as trade and development, as provided for in the Union legislative acts regulating them and for the Member States that are bound by those acts, for the purpose of supporting predictable and effective return procedures with third countries and ensuring effective and sustained cooperation on readmission.

## **Chapter VIII**

### **Sharing and transfer of personal data**

### *Article 36*

#### *Information sharing between Member States*

1. Member States shall make use of all appropriate means of cooperation and of exchanging information in order to implement this Regulation.
2. The exchange of information shall be carried out at the request of a Member State and may only take place between Member States' competent authorities.

3. Member States shall, upon request, communicate to each other available information concerning a third-country national falling within the scope of this Regulation for the purpose of carrying out the return procedure and providing return and reintegration assistance.
4. Where the information referred to in paragraph 3 of this Article can be exchanged through the EU Information Systems as defined in Article 4, point 15, of Regulation (EU) 2019/818 of the European Parliament and of the Council<sup>35</sup> or through supplementary information in compliance with Regulation (EU) 2018/1860, such information shall, as a general rule, be exchanged only through those means.
5. The request for information shall include the grounds on which it is based.
6. The information referred to in paragraph 3 may include in particular:
  - (a) information necessary to establish the identity of the third-country national and, where applicable, the identity of his or her family members, relatives and any other family relations;
  - (b) information related to the biometric data taken of the third-country national in accordance with Regulation (EU) 2024/1358;
  - (c) information related to the nationality and any travel documents of the third-country national;

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<sup>35</sup> Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135, 22.5.2019, p. 85, ELI: <http://data.europa.eu/eli/reg/2019/818/oj>).

- (d) information related to the third-country national's places of residence, routes travelled, languages spoken and contact details, such as electronic mail addresses and telephone numbers;
- (e) information on any residence status or authorisations offering a right to stay, including residence documents or visas as well as any applications or extensions thereof, issued by a Member State or a third country;
- (f) information related to the return operation of the third-country national;
- (g) information related to the reintegration of the third-country national, where applicable, including information on vulnerability;
- (h) the grounds for any return decision taken concerning the third-country national;
- (i) information on the compliance of the third-country national with the obligations under Article 18 or measures pursuant to Article 20;
- (j) information as to whether the third-country national was detained or alternatives to detention were applied;
- (k) information related to the criminal records or related to the threat to public policy, to public security or to national security posed by the third-country national;
- (l) information on vulnerability, health and medical needs of the third-country national.

7. The requested Member State shall be obliged to reply as soon as possible and at the latest within two weeks.

8. A lack of response, an incomplete response or a delayed response from a Member State to a request made pursuant to this Article shall not prevent or delay the enforcement of a return decision or a decision ordering removal initiated by another Member State. The requesting Member State may proceed on the basis of the information already available to its competent authorities, in accordance with Union and national law.
9. The information exchanged may be used only for the purposes set out in paragraph 3. In each Member State such information may, depending on its type and the powers of the recipient authority, only be communicated to authorities or judicial authorities entrusted with the return procedure, the readmission or the provision of reintegration assistance.
10. Member States shall upon request transfer to each other the original travel documents of a third-country national, where those travel documents are necessary to ensure return.

#### *Article 37*

##### *Transfer of data to third countries relating to third-country nationals for the purposes of return, readmission and reintegration*

1. Without prejudice to Articles 38 and 39, data referred to in Article 36(6), points (a) to (h) may be processed and transferred by a competent authority and, where applicable, Frontex to a third country's competent authority or third parties competent for reintegration assistance or other tasks related to implementing the return, such as airlines or medical providers, where necessary for the purposes of return, readmission or reintegration.

2. Member States and Frontex transferring personal data pursuant to paragraph 1 of this Article shall ensure that such transfers comply with Chapter V of Regulation (EU) 2016/679 and Chapter V of Regulation (EU) 2018/1725, respectively.
3. Where a transfer is made pursuant to paragraph 1 of this Article, such a transfer shall be documented and the documentation shall, upon request, be made available to the competent supervisory authority established in accordance with Article 51(1) of Regulation (EU) 2016/679 and Article 52(1) of Regulation (EU) 2018/1725, including the date and time of the transfer and information about the receiving third country's competent authority. That documentation shall be limited to the information strictly necessary to demonstrate compliance with the legal basis for the transfer and shall not entail any additional reporting obligations for Member States.

## Article 38

### *Transfer of data to third countries relating to criminal convictions of third-country nationals for the purposes of return, readmission and reintegration*

1. Data relating to one or more criminal convictions of a third-country national may be processed and transferred in individual cases by a competent authority and, where applicable, Frontex, to a third country's competent authority or third parties competent for reintegration assistance or other tasks related to implementing the return where the following conditions are met:
  - (a) the third-country national whose personal data is transferred has been convicted in the previous 25 years of a terrorist offence or in the previous 15 years of any other criminal offence listed in the Annex to Regulation (EU) 2018/1240 of the European Parliament and of the Council<sup>36</sup> or has committed an offence carrying a penalty involving the deprivation of liberty of at least two years under national law or has committed multiple offences carrying a penalty involving the deprivation of liberty of at least one year under the national law of the convicting Member State;
  - (b) the transfer of data is necessary for the purposes of return, readmission, or providing tailor-made non-financial reintegration assistance;
  - (c) the competent authority has verified and, where applicable, Frontex is satisfied that the transfer of data does not risk violating the principle of non-refoulement;

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<sup>36</sup> Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1, ELI: <http://data.europa.eu/eli/reg/2018/1240/oj>).

- (d) the competent authority has verified and, where applicable, Frontex is satisfied that the transfer of data does not risk violating Article 50 of the Charter.
2. Where Member States and Frontex transfer personal data pursuant to paragraph 1 of this Article, they shall ensure that such transfers comply with Chapter V of Regulation (EU) 2016/679 and Chapter V of Regulation (EU) 2018/1725, respectively.
3. Where a transfer is made pursuant to paragraph 1 of this Article, such a transfer shall be documented and the documentation shall, upon request, be made available to the competent supervisory authority established in accordance with Article 51(1) of Regulation (EU) 2016/679 and Article 52(1) of Regulation (EU) 2018/1725, including the date and time of the transfer, information about the receiving third country's competent authority, the justification that the transfer complies with the conditions laid down in paragraph 1 of this Article and the personal data transferred. That documentation shall be limited to the information strictly necessary to demonstrate compliance with the legal basis for the transfer and shall not entail any additional reporting obligations for Member States.

## Article 39

### *Transfer of health data of third-country nationals to third countries for the purposes of carrying out the return operation and reintegration*

1. Data concerning the medical assistance to be provided to third-country nationals during the return operation may be processed and transferred in individual cases by a competent authority and, where applicable, Frontex, to a third country's competent authority or third parties competent for reintegration assistance or other tasks related to implementing the return, such as medical providers, where the following conditions are met:
  - (a) the transfer of data is necessary for the purposes of carrying out the return operation;
  - (b) the competent authority has verified and, where applicable, Frontex is satisfied that the transfer of data does not risk violating the principle of non-refoulement.
2. Data concerning health and medical needs of third-country nationals may be processed and transferred in individual cases by a competent authority and, where applicable, Frontex to a third party competent for reintegration assistance or other tasks related to implementing the return where the following conditions are met:
  - (a) the transfer of data is necessary for the purposes of providing reintegration assistance referred to in Article 44 that is tailored to the medical needs of the third-country national;
  - (b) the third-country national whose personal data is transferred has consented to such transfer.

3. Member States and Frontex transferring personal data pursuant to paragraph 1 or 2 of this Article shall ensure that such transfers comply with Chapter V of Regulation (EU) 2016/679 and Chapter V of Regulation (EU) 2018/1725, respectively.
4. Where a transfer is made pursuant to paragraph 1 or 2 of this Article, such a transfer shall be documented and the documentation shall, upon request, be made available to the competent supervisory authority established in accordance with Article 51(1) of Regulation (EU) 2016/679 and Article 52(1) of Regulation (EU) 2018/1725, including the date and time of the transfer, information about the receiving third country's competent authority, the justification that the transfer complies with the conditions laid down in paragraph 1 or 2 of this Article and the personal data transferred. That documentation shall be limited to the information strictly necessary to demonstrate compliance with the legal basis for the transfer and shall not entail any additional reporting obligations for Member States.

## **Chapter IX**

### **Common system for returns**

#### *Article 40*

#### *Components of a common system for returns*

1. A common system for returns pursuant to this Regulation shall consist of:
  - (a) a common procedure for the return of third-country nationals with no right to stay on the territory of the Member States;

- (b) a system of recognition and enforcement of return decisions and decisions ordering removal among Member States;
  - (c) digital systems for managing the return, readmission and reintegration of third-country nationals;
  - (d) cooperation between Member States;
  - (e) a sufficient level of detention capacity as determined by the Member States, taking into account actual needs;
  - (f) financial support by the Union and operational support by the Union bodies, offices and agencies in line with their respective mandates.
2. The development of digital systems shall rely, to the greatest extent possible, on existing national infrastructures and interoperable Union systems and shall not create additional reporting or procedural burdens for Member States.

3. The Union and the Member States shall identify common priorities in the field of return and reintegration and ensure the necessary follow-up, taking into account the European Asylum and Migration Management Strategy adopted pursuant to Article 8 of Regulation (EU) 2024/1351, the implementation of the return border procedure pursuant to Regulation (EU) 2024/1349, the assessment of the level of cooperation of third-countries with Member States on readmission in accordance with Article 25a of Regulation (EC) No 810/2009 and the Union readmission instruments and any other Union instrument relevant for the cooperation on readmission.
4. The Union and the Member States shall ensure loyal cooperation and close coordination between competent authorities and between the Union and the Member States, as well as synergy between internal and external components.

#### *Article 41*

##### *Competent authorities*

Each Member State shall designate, in accordance with national law, the competent authorities responsible for fulfilling the obligations arising under this Regulation.

## *Article 42*

### *Cooperation between Member States*

1. Cooperation and assistance between competent authorities designated in accordance with Article 41 shall as a general rule take place for the purpose of:
  - (a) allowing transit through their territory to assist that a return decision of another Member State can be complied with or travel documents obtained;
  - (b) providing logistical or other material or in-kind assistance in connection to transit through their territory pursuant to point (a);
  - (c) facilitating the transfer referred to in Article 6(1), point (b);
  - (d) supporting the departure of a third-country national to the Member State in which he or she has a right to stay in accordance with Article 6(3).
2. Cooperation and assistance between competent authorities designated in accordance with Article 41 may take place, including for the purpose of:
  - (a) leading or supporting the policy dialogue and exchanges with the authorities of third countries for the purpose of facilitating readmission;
  - (b) contacting the competent authorities of third countries for the purpose of verifying the identity of third-country nationals and obtaining a valid travel document;

- (c) organising, on behalf of the requesting Member State, the practical arrangement for the enforcement of return;
- (d) providing logistical or other material or in-kind assistance.

#### *Article 43*

##### *Frontex support*

1. Member States may request that their competent authorities be assisted by experts deployed or supported by Frontex, including return liaison officers and other liaison officers, in accordance with Regulation (EU) 2019/1896.
2. Member States shall provide relevant information to Frontex with regard to planned needs for Frontex support for the purpose of the necessary planning of that support in accordance with Regulation (EU) 2019/1896.

#### *Article 44*

##### *Support for return and reintegration*

1. Member States shall ensure availability of return and reintegration counselling to provide, where relevant, third-country nationals with information and guidance about return and reintegration options, including programmes referred to in paragraph 3, as early in the return process as possible. Return and reintegration counselling may be combined with other counselling in the context of other migration procedures in the Member State.

2. Member States shall ensure that information about return and reintegration is provided at the latest when the return decision is issued.
3. Member States shall ensure the availability of return and reintegration programmes, supported or financed at Union or national level. Such programmes shall include logistical, financial or other material or in-kind assistance or incentives, including reintegration assistance in the country of return, provided to a third-country national.
4. Return and reintegration assistance shall not be an individual right and shall not constitute a pre-requisite for the readmission procedure.
5. The assistance provided through return and reintegration programmes shall reflect the level of cooperation and compliance of the third-country national and may be reduced over time or withdrawn. The following criteria may be taken into account when determining the kind and extent of the return and reintegration assistance where applicable:
  - (a) the cooperation of the third-country national concerned during the return and readmission procedure, as provided for in Article 18;
  - (b) whether the third-country national is returning voluntarily, or is subject to removal;
  - (c) whether the third-country national is a national of a third country listed in Annex II to Regulation (EU) 2018/1806 of the European Parliament and of the Council<sup>37</sup>;
  - (d) whether the third-country national has been convicted of a criminal offence;

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<sup>37</sup> Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 303, 28.11.2018, p. 39, ELI: <http://data.europa.eu/eli/reg/2018/1806/oj>).

- (e) whether the third-country national has specific needs by reason of being a vulnerable person, minor, unaccompanied minor or part of a family;
  - (f) additional criteria under national law.
6. The assistance referred to in this Article shall not be granted to third-country nationals who already benefited from another or the same support provided by a Member State or the Union. The Union, Member States and Frontex shall ensure coherence and coordination on reintegration assistance.

## **Chapter X**

### **Final provisions**

#### *Article 45*

#### *Emergency situations*

1. In situations where an exceptionally large number of third-country nationals to be returned places an unforeseen and heavy burden on the capacity of the detention facilities of a Member State or on its administrative or judicial staff, such a Member State may, as long as the exceptional situation persists, decide to allow for periods longer than those provided for in Article 27(1), Article 31(3) and Article 36(7) and to take urgent measures in respect of the conditions of detention derogating from those set out in Article 32(1) and Article 33(2). Member States may temporarily adjust administrative procedures and internal reporting requirements to expedite return operations, provided that such adjustments are strictly necessary to address the exceptional situation.

2. When resorting to such exceptional measures, the Member State concerned shall inform the Commission without delay. It shall also inform the Commission as soon as the reasons for applying these exceptional measures have ceased to exist.
3. Nothing in this Article shall be interpreted as allowing Member States to derogate from their general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under this Regulation.

#### *Article 46*

##### *Statistics*

1. For monitoring of readmission cooperation with third countries, the Commission may on an annual basis request the following data to be communicated to Frontex, regarding relevant third countries, disaggregated per each third country:
  - (a) number of requests for confirmation of nationality and number of positive and negative replies received concerning confirmation of nationality requests;
  - (b) number of requests for issuance of travel documents, of which the number of requests for issuance of travel documents in cases where nationality was confirmed, number of travel documents issued by the third-country authorities and number of negative replies concerning the request for issuance of travel documents.

2. Frontex shall grant the Commission access to the data referred to in paragraph 1. The data referred to in paragraph 1, points (a) and (b), disaggregated by Member State, may be communicated to third countries for the purposes of monitoring the implementation of, and compliance with, readmission obligations, including in the framework of the Union readmission instruments.
3. Member States shall, upon request of the Commission, provide the necessary information for completing the assessment pursuant to Article 7(9), in particular statistics on the number of third-country nationals subject to return decisions issued by another Member State and the number of third-country nationals removed or returned on the basis of recognised return decisions and, where relevant, decisions ordering removal issued by another Member State within a specified period of time.
4. The Commission shall, for the purposes of this Article and where possible, make use of the information made available under Regulation (EC) No 862/2007.
5. Where the Commission submits a legislative proposal under Article 7(10), it shall, if necessary, propose amendments to this Article, taking into account relevant legislative developments in digitalisation.

#### *Article 47*

##### *Committee procedure*

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act, and Article 5(4), third subparagraph, of Regulation (EU) No 182/2011 shall apply.

#### *Article 48*

##### *Reporting*

1. By ... [five years from the date of entry into force of this Regulation] and every five years thereafter, the Commission shall report to the European Parliament and to the Council on the application of this Regulation in the Member States and shall, where appropriate, propose amendments.
2. Member States shall, at the request of the Commission, send available information necessary for drawing up its report pursuant to paragraph 1 no later than nine months before the time limit expires. The Commission shall, where possible, make use of the information made available under Regulation (EC) No 862/2007.

#### *Article 49*

##### *Repeal*

1. Directive 2008/115/EC, Directive 2001/40/EC and Decision 2004/191/EC are repealed for the Member States bound by this Regulation, with effect from ... [12 months from the date of entry into force of this Regulation].

2. References to the repealed Directives and Decision shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

#### *Article 50*

##### *Entry into force and application*

1. This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.
2. Article 1, Article 2(1), (2) and (3), Article 3, point (3), Article 4, Article 5(13) and (15), and Articles 14, 15, 16, 34, 35, 41, 43, 47, 48 and 49 shall apply from ... [the date of entry into force of this Regulation].

3. The remaining provisions of this Regulation shall apply from ... [12 months from the date of entry into force of this Regulation].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ..., ...

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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## ANNEX

Correlation table

| Directive<br>2001/40/EC | Decision 2004/191/EC | Directive<br>2008/115/EC | This Regulation               |
|-------------------------|----------------------|--------------------------|-------------------------------|
|                         |                      | Article 1                | Article 1                     |
|                         |                      | Article 2                | Article 2                     |
|                         |                      | Article 3, point 1       | Article 3, point (1)          |
|                         |                      | Article 3, point 2       | Article 3, point (2)          |
|                         |                      | Article 3, point 3       | Article 3, points (3) and (5) |
|                         |                      | Article 3, point 4       | Article 3, point (4)          |
|                         |                      | Article 3, point 5       | Article 3, point (7)          |
|                         |                      | Article 3, point 6       | Article 3, point (10)         |
|                         |                      | Article 3, point 7       | Article 19                    |
|                         |                      | Article 3, point 8       | Article 3, point (8)          |
|                         |                      | Article 3, point 9       | –                             |
|                         |                      | Articles 4(1) to (3)     | –                             |
|                         |                      | Article 4(4)             | Article 2(7)                  |
|                         |                      | Article 5                | Article 4 and Article 15      |
|                         |                      | Article 6(1)             | Article 5(1), (9) and (10)    |
|                         |                      | Article 6(2)             | Article 6(2) and (3)          |
|                         |                      | Article 6(3)             | Article 6(1), point (b)       |
|                         |                      | Article 6(4)             | –                             |
|                         |                      | Article 6(5)             | –                             |

| Directive<br>2001/40/EC | Decision 2004/191/EC | Directive<br>2008/115/EC | This Regulation                                      |
|-------------------------|----------------------|--------------------------|------------------------------------------------------|
|                         |                      | Article 6(6)             | Article 5(12)                                        |
|                         |                      | Article 7(1)             | Article 5(2) and (3)                                 |
|                         |                      | Article 7(2)             | Article 5(4)                                         |
|                         |                      | Article 7(3)             | Article 20 and Article 23                            |
|                         |                      | Article 7(4)             | Article 5(2), point (b)<br>and Article 5(5)          |
|                         |                      | Article 8(1) to (5)      | Article 10                                           |
|                         |                      | Article 8(6)             | Article 12                                           |
|                         |                      | Article 9                | Article 11(1) to (5)<br>and (7)                      |
|                         |                      | Article 10               | Article 17                                           |
|                         |                      | Article 11               | Article 8 and Article 9                              |
|                         |                      | Article 12               | Article 5(7), (8) and (11)<br>and Article 8(3)       |
|                         |                      | Article 13(1) and (2)    | Article 26, Article 27 and<br>Article 28             |
|                         |                      | Article 13(3) and (4)    | Article 25                                           |
|                         |                      | Article 14(1)            | Article 11(6)                                        |
|                         |                      | Article 14(2)            | Article 11(4)                                        |
|                         |                      | Article 15(1)            | Article 29(1), (2) and (3),<br>points (a) and (b)    |
|                         |                      | Article 15(2)            | Article 29(4),<br>Article 30(2) and<br>Article 31(3) |

| Directive<br>2001/40/EC | Decision 2004/191/EC | Directive<br>2008/115/EC                                         | This Regulation                                                                                                                                                                             |
|-------------------------|----------------------|------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Articles 1 to 6         |                      | Article 15(3)<br>Article 15(4)<br>Article 15(5)<br>Article 15(6) | Article 31(1) and (2)<br>Article 30(2)<br>Article 30(1) and (3),<br>first sentence<br>Article 30(3), first<br>subparagraph, second<br>sentence and<br>Article 30(3), second<br>subparagraph |
|                         | Articles 1 to 3      | Article 16<br>Article 17<br>Article 18<br>—<br>—                 | Article 32<br>Article 33<br>Article 45<br>Article 7(1) to (8)<br>—                                                                                                                          |