Council of the European Union

Brussels, 5 December 2025
(OR. en)

16521/25

Interinstitutional File:
2025/0059 (COD)

MIGR 464
JAI 1871
COMIX 437
RELEX 1642
CODEC 2047
CH
IS
LI
NO

NOTE

From:	Presidency
To:	Council
No. Cion doc.:	6917/1/25 REV 1; 6917/1/25 ADD 1; 6917/2/25 ADD 2
Subject:	Proposal for a 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 - General approach

Delegations will find below the Presidency's compromise text on the abovementioned proposal, in preparation of the Justice and Home Affairs (JHA) Council on 8-9 December 2025. Additions as compared to the Commission's proposal appear in ***bold italic*** and deletions in ~~strikethrough~~.

2025/0059 (COD)

Proposal for a

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

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[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure,

[1] OJ C [...], [...], p. [...]
[2] OJ C [...], [...], p. [...]

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 returning third-country nationals ~~with no right to stay~~ ***illegally staying*** in the ~~Union~~ ***Member States*** based on a common procedure for return ~~and readmission, a system for preventing and~~***, obligations for the illegally staying third-country national, a set of tools for*** managing ~~the risk of absconding~~ ***effective returns, including measures to incentivise return,*** and cooperation ~~based on mutual trust~~ between Member States.

(3) To contribute to the implementation of the comprehensive approach set out in the Regulation (EU) 2024/1351 of the European Parliament and of the Council[3], a common system for effectively managing of 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 coherence and effectiveness of the actions and measures taken by the Union and its Member States acting within their respective competencies.

(4) The European Council has consistently underlined the importance for determined action at all levels to facilitate, increase and speed up returns from the European Union. The European Council in October 2024 invited the Commission to submit a new legislative proposal, as a matter of urgency.

[3] 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 222, 22.5.2024, p. 1).

(5) 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 recall that a successful return policy is a fundamental pillar of a comprehensive and credible Union asylum and migration system. To this end, the strategic guidelines call to develop and implement a more assertive and comprehensive approach to returns, by upgrading the legal framework as a matter of urgency.

(6) An effective return policy should ensure coherence with and contribute to the integrity of the Pact on Migration and Asylum and contribute to managing illegal immigration to the Union and ~~prevent~~ ***preventing*** unauthorised movements between Member States of illegally staying third-country nationals ~~to safeguard the area without internal border controls~~ while respecting fundamental rights.

(7) The Union and its Member States have been increasing efforts to make return policies more effective. Despite these efforts, the existing legal framework which consists of Council Directive 2001/40/EC[4] and Directive 2008/115/EC[5], is no longer corresponding to the needs of the Union 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 has considerably evolved. EU law in the area of migration has moved from legislation with minimum standards to bringing Member States' practices closer. The Commission sought to reform the return rules in 2018 with the proposal to recast the Return Directive[6]. The Commission has also sought to support Member States in using the flexibilities of Directive 2008/115/EC through Recommendations (EU) 2017/2338[7] and (EU) 2023/682[8]. However, the limits of the current legal framework have been reached.

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4 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 222, 22.5.2024, p. 1).

5 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).

6 Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (recast). Brussels, 12.9.2018. COM(2018) 634 final, 2018/0329 (COD).

7 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).

8 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. C/2023/1763. OJ L 86, 24.3.2023, p. 58, ELI: http://data.europa.eu/eli/reco/2023/682/oj.

(8) A common procedure for return that is firm ~~and fair~~ 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 manner and with full respect for fundamental rights as well as international law. Clear and transparent rules applicable in all Member States should provide certainty for the third-country national concerned and 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.

(9) The application of the rules pursuant to this Regulation should not affect the rules on access to international protection in accordance with Regulation (EU) 2024/1348 of the European Parliament and the Council[9]. Where relevant, the rules in this Regulation are complemented by the specific rules linking negative asylum decisions and return decisions for issuance and for remedies in Regulation (EU) 2024/1348 and the return border procedure set out in Regulation (EU) 2024/1349 of the European Parliament and the Council[10].

(9a) Nothing in this Regulation should be construed as affecting the national criminal law of the Member States, and in particular the enforcement of judicial decisions of criminal courts.

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[9] 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*** ~~222~~, 22.5.2024, p. 1, ELI: http://data.europa.eu/eli/reg/2024/1348/oj).

[10] 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).

(10) 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.

(11) The principle of non-refoulement and the prohibition of collective expulsion provided for in Article 19 of the Charter should be respected ~~when applying this Regulation~~. 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.

(12) The Member State on whose territory the illegally staying third-country national is detected is responsible for ensuring his or her return. Upon detection of illegal stay, Member States should***, without duplicating checks undertaken in previous proceedings or processes,*** swiftly identify the third-country national ***subject to return*** and verify possible security risks by querying the relevant Union and national databases. ~~Member States should check for any vulnerabilities and, where relevant, perform a health check.~~

(12a) The court or tribunal designated as competent by the Member State under national law should be in charge of the remedy challenging the return decision, entry ban, and decision ordering the 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 the removal, as supplemented or clarified following adversarial proceedings, suggests that the principle of non-refoulement might be undermined.

(12b) Without prejudice to the right to an effective remedy provided by Article 47 of the Charter ensuring that the third-country national can challenge the period of voluntary departure or the absence thereof in the return decision, the obligation to leave the territory of the Member States laid down in that return decision should not be affected by the annulment or revocation of the period of voluntary departure.

(13) ***In case of removal,*** ~~competent~~ 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 as quickly as possible evidence relating to his or her own personal circumstances. It should be possible to rely upon an existing ~~thorough~~ assessment of all relevant circumstance made in previous stages of the procedure ***or in other previous procedures. Any relevant*** ~~Any~~ change in circumstances and any new element evidencing a risk should be examined***, provided that they are substantiated and not considered to have been brought forward by the third-country national merely in order to delay or frustrate the removal***.

(13a) ***Member States may refer the third-country national who indicates that the removal would breach the principle of non-refoulement to the appropriate procedure, including the asylum procedure in reference to Regulation 2024/1348 of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU. The Member State may refer the third country national to the appropriate procedure also when its authorities designated as competent under national law become aware of relevant indications that the removal would breach the principle of non-refoulement.***

(14) It is necessary that Member States can cooperate more flexibly, including through new bilateral agreements or arrangements, and in a more targeted manner to ~~reduce movements of illegally staying third-country nationals across common internal borders while at the same time safeguarding the Schengen area without internal border controls~~ ***foster effective returns to third countries***.

(15) Once it is established that the third-country national does not or no longer fulfil 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 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 the removal separate from the return decision. Where a risk of refoulement has been identified, issuance of a return decision should not be precluded, but removal should be postponed.***

(15a) Nothing in this regulation should preclude Member States from providing other grounds for postponing removal for specific groups in national law.

(15b) The third-country national with an obligation to leave should have the primary responsibility for departing the territory of the Member States in accordance with the return decision.

(16) 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 and made available in- the Schengen Information System together with the alert on return or through bilateral information exchange with another Member State. The European Return Order should in turn support the recognition and enforcement of ***enforceable*** return decisions ***or decisions ordering the removal*** issued by another Member State where the third country national moves unauthorised to another Member State.

(17) ~~Often, and especially in cases where there is no cooperation by the third country national, it is difficult for the competent authorities to identify the country of return at the time of issuing the return decision. In such cases, the competent authorities should determine the country of return on the basis of the information available and indicate the most likely country or countries in the return decision.~~

(18) Where a third-country national present on the territory of a Member State is subject to an enforceable return decision from another Member State, ~~that decision should be recognised and enforced.~~ 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*** ~~They~~ can also contribute to deterring irregular migration and discouraging unauthorised secondary movements within the Union, as well as limiting delays in the return process. The remedy against the return ~~decisions~~ ***decision*** should be exercised ***only*** in the issuing Member State.

(18a) The recognition of a return decision or a decision ordering the removal based on the information available in the European Return Order referred to in Article 7(7) should not constitute a decision or act. The non-recognition of a return decision or a decision ordering the removal should not constitute a decision or act.

(18b) Where a Member State considers recognising and enforcing an enforceable return decision or a decision ordering the removal of the issuing Member State, the following guiding principles may assist the Member State in identifying situations in which mutual recognition should not be applied and in which a national return decision should instead be issued. Such situations may include where an enforcement would be contrary to the enforcing Member States public policy, including in relation to the return of certain categories of third-country nationals, such as unaccompanied minors and victims of human trafficking, to which national law provides for a higher level of protection; issuing a new return decision is faster; the information available in the European Return Order is incomplete; the third country national has lodged an appeal against the return decision in the issuing Member State; the third country national is to be removed to a different third country than stated in the return decision or decision ordering the removal of the issuing Member State, and there is no country of return stated in the return decision.

(18c) For the purpose of preparing the steps towards mandatory mutual recognition, the Commission and relevant EU agencies, such as eu-LISA, 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.

(19) ~~From the date of application of this Regulation~~ ***At the latest, by the adoption of the implementing act referred to in Article 7(8)***, Member States ***and the Commission and relevant EU agencies, such as eu-LISA,*** should ~~put~~ ***start putting*** in place legal and technical arrangements to ensure that the European Return Order- can be made available through the Schengen Information System. ~~By 1 July 2027, just over one year after the date of application of Regulation (EU) 2024/1351, the Commission should review whether Member States have established appropriate legal and technical arrangements to effectively process European Return Orders through the Schengen Information System. Based on that review, the Commission should adopt an implementing decision by which the recognition of enforceable return decisions, supported by the European Return Order, should become mandatory.~~

(19a) Two years after the entry into application 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 Article 7(7) 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 Article 7(9) are put in place by the Member States; the effectiveness of the recognition and enforcement of return decisions and decisions ordering the removal; the burden on judicial and administrative national systems resulting thereof, and results of relevant training and pilot project activities.

(19b) Based on that assessment referred to in Article 9(10), the Commission should submit, as appropriate, legislative proposals, including any targeted amendments to ensure effective returns, with a view to introduce mandatory recognition and enforcement of enforceable return decisions and decisions ordering the removal issued by another Member State. Where the Commission does not submit a proposal, it should explain the reason thereof.

(20) 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 length of an entry ban should be determined with due regard to all relevant circumstances of an individual case and should in principle not exceed ~~ten~~ ***twenty*** years. 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 the third-country national***.

(21) ~~Third-country~~ ***Third country*** nationals ~~can be returned by coercive measures through removal or by voluntarily complying~~ ***who have not complied*** with the obligation to leave~~.~~ ~~The two types of return should be linked to avoid gaps in the system. Whereas cooperating third-country nationals should continue to be returned primarily through~~ ***or to whom a period for*** voluntary return ***has not been granted***, ***can be removed by using coercive measures.*** Reinforced rules on removal seek to ensure a direct and immediate consequence in case the third-country national does not respect the ~~date~~ ***period*** by which they need to leave ***at the latest as well as to prevent unauthorised secondary movements and security risks***.~~–~~ ***Where there are no reasons to believe that voluntary return would undermine the purpose of a return procedure, cooperating third-country nationals may 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.

(21a) 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.

(22) Common rules are necessary to ensure that ***illegally staying*** third-country nationals posing security risks ~~and with no right to stay in the Union~~ are efficiently identified and swiftly returned. It is necessary to ensure that relevant checks are carried out to identify and flag third-country nationals with security risks including by relying on the screening process as set out in Regulation 2024/1356 of the European Parliament and of the Council[11]. 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, longer detention periods and from ~~the use of~~ the use of specialised detention facilities so that those who threaten the security of ~~Union~~ ***the Member States*** are swiftly removed.

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[11] 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).

(23) 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 the international human right standards and***, in case 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 category of persons should not prevent the conclusions of such an agreement or arrangement, provided that sufficient guarantees are in place to ensure the full respect of the rights of the third country nationals which are concerned by such agreement or arrangement.*** In particular, the agreement or arrangement should set out the ~~modalities of transfer~~ ***procedures applicable to the return***, the conditions for the stay in the country, the ~~modalities in case of onward return to~~ ***obligations of*** the ***third*** country ~~of origin,~~ ***and*** the consequences in case of violations ***of the agreement or arrangement. Where an agreement or an arrangement involves onward return from the third country, the agreement or arrangement should in addition set out the consequences in case onward return is not possible, the obligations and responsibilities of the Member State or the EU and the third country, the consequenses in case*** ~~or~~ of significant changes 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 agreements or arrangements will constitute an implementation of Union law for the purposes of Article 51 (1) of the Charter.

(23a) 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, 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. Upon concluding agreements or arrangements with third countries, Member States should be required to inform the Commission and other Member States of such agreements or arrangements before they are provisionally applied, or enter into force, whichever is the earliest. In addition, in order to avoid any non-compliance with Union law and to further enhance transparency, Member States should be able, on a voluntary basis, to keep the Commission and other Member States informed of the progress of negotiations with a third country relating to agreements or arrangements authorised by 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 of the envisaged agreement or arrangement under negotiation with Union law.

(24) 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 establishes an evaluation and monitoring mechanism to verify the application of the Schengen acquis ~~by means of periodic, unannounced and thematic evaluations~~, including in relation to the effective return of third-country nationals with no right to stay ~~and the respect of fundamental rights. This mechanism allows to swiftly identify deficiencies that could disrupt the correct functioning of the Schengen area and ensures that those deficiencies are duly addressed.~~**.**

(25) 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. ~~The~~ Unaccompanied ~~minor~~ ***minors*** should be guided by a representative through all the steps of the return process.

(26) Where there are grounds for doubting as to whether or not the third-country national is a minor, an age assessment ~~should~~ ***may*** be carried out ***in accordance with national law. Member States may rely on age assessments completed under previous procedures.*** ~~.~~For the purpose of ensuring coherence across migration management in the Union the same procedure as provided for in Regulation (EU) 2024/1348 of the European Parliament and of the Council[12]~~should~~ ***may*** be followed. ~~When carrying out age assessments, Member States should in particular take into account relevant guidelines from the European Union Agency for Asylum.~~

[12] 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 222, 22.5.2024, p. 1).

(27) To reinforce the effectiveness of the return procedure, clear ~~responsibilities for~~ ***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 ~~at all stages of~~ ***throughout*** the return procedure. Third-country nationals should remain available ***to, and reachable by, the competent authorities and provide any information relevant to preparing and carrying out the return. It follows that it should primarily be the responsibility of the third-country national to establish their identity and to obtain*** and provide the ***travel documents*** necessary ~~information to prepare the~~ ***for*** return. In case the obligations to ***leave and*** cooperate are not respected, effective and proportionate consequences should be imposed, ***and competent authorities should take the relevant steps to ensure return,*** including ***through investigative measures. 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 should include*** for instance reduced benefits and allowances granted in accordance with national law~~,~~ ***or*** seizure of travel documents~~or the extension of the duration of an entry ban. The competent authorities should inform the third-country national of the different steps of return procedure, their obligations and the consequences of not complying with those obligations.~~**.**

(27a) Obligations and measures not related to return, do not fall within the scope of these provisions. In this regard Articles 21 et seq. do not affect the provisions governing consequences on social benefits under national law.

(28) 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.

(29) A set of legal remedies against decisions related to return should be established to guarantee effective protection of the ~~interests~~ ***rights*** of the individuals concerned. The necessary legal aid should be made available, upon request, ~~to those who lack sufficient resources~~ in cases of appeal or review before a ~~judicial authority~~ ***court or tribunal without prejudice to the right to restrict access to legal assistance and representation***.

(29a) 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 subsequent appeals decision, the procedure and the suspensive effect of such appeals should be regulated in national law, in accordance with Union law and international obligations.

(30) To improve the effectiveness of the return procedures, while ensuring the respect of 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 ~~suspensive effect~~ ***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 of Fundamental Rights.

(31) Member States should be provided with the necessary tools ~~for assessing, managing and preventing~~ ***to ensure a swift and effective return, 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. Common rules***, without restricting the right of Member States to establish additional measures and criteria in national law,*** should streamline ***requirements under the obligation to cooperate and the criteria for determining a risk of absconding. Such rules should also ensure that detention and*** ~~the assessment of this risk in individual cases and seek to increase the use of efficient~~ alternatives to detention ***are applied*** in Member States to effectively manage the return process.

(32) It should be possible to impose detention when proportionate and necessary, following an individual assessment of each case, ~~including consideration of any situation of vulnerability, only~~ for the purpose of ***return, including for*** preparing ~~return. For this purpose, detention could be imposed when there is a risk that third-country nationals abscond, when third-country nationals hamper or avoid~~ ***the*** return, ~~or when they pose a security risk, or do not comply with alternatives to detention, or detention is necessary to determine or verify identity or nationality~~ ***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 ~~may~~ ***should generally*** not exceed 24 months ***in a given Member State. In cases of absconding to another Member State, previous periods of detention shall not be taken into account when calculating the maximum period of detention. Detention periods under other regulations or directives should not be included in calculating the maximum period of detention. Special needs arising from 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.

(32a) Where detention has been maintained for a period of 24 months, the Member State should have the possibility to detain the third-country national for new periods not exceeding six months, where there is a risk of absconding and where a reasonable prospect of removal has emerged due to new significant information under certain circumstances. The detention should be ordered in respect of the principle of necessity and proportionality and should be maintained for as short a period as possible.

(33) Returning third-country nationals who pose a security risk requires 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 ~~period~~ ***than 24 months***, while any such detention has to comply with the principle of proportionality.

(34) 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 and degrading treatment~~. Detention should, as a ***general*** rule, take place in specialised detention facilities or dedicated branches of other facilities. Prison accommodation may be resorted to when a Member State cannot provide for such facility***, or if the Member State considers that the third-country national's transportation is disproportional in view of the enforcement of the return decision,*** keeping the third-country nationals separate from ordinary prisoners~~.~~

(35) The grounds for detention set out in this Regulation are without prejudice to other grounds for detention, including detention grounds within the framework of criminal proceedings, which are applicable under national law ~~and unrelated to the third-country national's illegal stay~~.

(36) 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~~. The existence of such a duty is further evidenced~~ ***and is foreseen*** by the ~~consistent practice of~~ ***ICAO convention, Annex IX, Chapter 5, and set out in the Samoa Agreement. Effective returns are only possible if*** States ~~in implementing readmission agreements and arrangements, combined with~~ ***comply with the obligation to readmit*** their ~~recognition of this principle as a necessary aspect of international~~ ***own nationals. Therefore, Member States depend on the*** cooperation ~~in managing migration~~ ***of third countries to be able to implement effective returns***. ***Existing instruments such as Article 25a of Regulation (EU) 810/2009 and Frontex support are used by the EU and Member States to improve cooperation with third countries where necessary.***

(37) A ~~systematic and~~ 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.

(38) ~~While readmission also depends on the cooperation of third countries, a coherent approach should be taken among Member States to increase the efficiency and effectiveness of readmission procedures, and to ensure unity among Member States. Transparency and coordination on engagement with third countries, including in the context of negotiating readmission instruments, should be ensured to strengthen a coherent Union approach. To ensure effective returns, communication with relevant third country entities for the purpose of the readmission procedure should not amount to diplomatic recognition of the third-country entities concerned.~~

(39) 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[13]. These 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.

(40) ~~Member States should take the necessary measures to ensure competent authorities respect Directive [...] amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime to encourage crime reporting and foster trust in the justice system.~~

[13] 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, ELI: http://data.europa.eu/eli/reg/2018/1860/oj).

(41) Regulation (EU) 2016/679 of the European Parliament and of the Council[14] 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 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[15]~~, as applicable, as well as with the principles of non-refoulement, proportionality and necessity and the Charter of Fundamental Rights of the European Union~~.

(42) ~~Obstacles to cooperation and communication among Member State~~ ***Competent*** authorities responsible for the asylum and the~~ return procedures represent a key structural challenge for a more efficient return process.~~ competent authorities involved in the different phases of the return process should work and coordinate closely. ~~Where Member States designate law enforcement authorities as competent authorities under this Regulation, it should be understood that this designation is limited to such authorities when acting in their capacity of enforcing return decisions. Law enforcement authorities acting in their capacity as investigative authorities in criminal proceedings should not be covered by such a designation.~~ ***to ensure effective returns.***

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14 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).

15 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).

(43) ~~A common system for returns should make full use of digital systems supporting managing returns, readmission and reintegration either operationally managed on Union level or by the Member States, with an emphasis on efficient administrative procedure, cooperation, information sharing and interoperability.~~

(43a) 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 a third-country national towards the Member State in which he or she has a right to stay.

(44) 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[16], as well as of the operational assistance by the European Border and Coast Guard Agency according to Regulation (EU) 2019/1896 of the European Parliament and of the Council[17]. ~~Such support should be used in particular for establishing return management systems and programmes for providing logistical, financial and other material or in-kind assistance to support the return of illegally staying third-country nationals.~~

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[16] 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).

[17] 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).

(45) The ~~collection and analysis of reliable and comparable statistics on return, readmission, and reintegration are essential for monitoring~~ ***reporting on*** the effectiveness of this Regulation and ~~for identifying~~ ***the identification of*** areas for improvement ***should be based on the collection and analysis of existing, reliable and comparable statistics regarding***~~, as they provide valuable insights into~~ the efficiency of return procedures, ~~the~~ cooperation of third countries, and ~~the outcomes of~~ reintegration efforts***. The standards in Regulation (EU) 862/2007, Regulation (EU) 2019/1896, and 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 ~~Commission and the Member States to assess~~ ***assessment of*** the impact of this Regulation and to contribute to making informed decisions on future policy developments.

(46) 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~~ and the common form of readmission requests~~. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[18].

(47) Directive 2001/40/EC, 2008/115/EC and Council Decision 2004/191/EC should be repealed.

[18] 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).

(48) Since the objectives of the Regulation to improve the efficiency of return ~~to safeguard the area without internal borders~~, 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 of the Treaty on European Union. 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 those objectives.

(49) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, 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 ~~– to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EU) 2016/399 of the European Parliament and of the Council~~[19] – 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.

[19] 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 2016/399, 15.3.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/399/oj).

(50) ~~To the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EU) 2016/399,~~ This Regulation constitutes a development of ***the*** provisions of the Schengen acquis in which Ireland does not take part, in accordance with ~~Council Decision 2002/192/EC[20]; Ireland is therefore not taking part in the adoption of this Regulation and, subject to the application of Article 4 of~~ Protocol 19 on the Schengen acquis integrated into the framework of the European Union, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, ***and, subject to the application of Article 4 of that Protocol, Ireland*** is not bound by it or subject to its application[21]. ~~[Nevertheless, to the extent that this Regulation does not constitute a development of the Schengen acquis, Ireland has, in accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and the TFEU, notified [, by letter of …,] its wish to take part in the adoption and application of this Regulation.]~~

~~[or]~~

~~[In addition, to the extent that this Regulation does not constitute a development of the Schengen acquis, in accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is therefore not bound by it or subject to its application.]~~

~~[20] Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L 64, 7.3.2002, p. 20, ELI: http://data.europa.eu/eli/dec/2002/192/oj).~~

[21] ***This recital will be amended if Ireland requests to take part in this Regulation in accordance with Article 4(1) of Protocol 19 on the Schengen acquis integrated into the framework of the European Union and the Council adopts its decision simultaneously with the adoption of this Regulation. In such case, the recital will refer to the Council decision concerning Ireland's request to take part in some of the provisions of the Schengen acquis.***

(51) As regards Iceland and Norway, this Regulation constitutes ~~— to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EU) 2016/399 —~~ 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 latters' association with the implementation, application and development of the Schengen acquis[22], which fall within the area referred to in Article 1, point C, of Council Decision 1999/437/EC.

(52) As regards Switzerland, this Regulation constitutes ~~— to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EU) 2016/399 —~~ 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[23], 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[24].

[22] OJ L 176, 10.7.1999, p. 36, ELI: http://data.europa.eu/eli/agree_internation/1999/439(1)/oj.
[23] OJ L 53, 27.2.2008, p. 52.
[24] 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).

(53) As regards Liechtenstein, this Regulation constitutes ~~— to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EU) 2016/399 —~~ 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[25].

~~(54) Where this Regulation refers to an obligation to leave the European Union, this should be understood as an obligation to leave the territory of all the Member States to which this Regulation applies, including in the light of the preceding recitals.~~

(55) The European Data Protection Supervisor was consulted in accordance with Article 42(2) of Regulation (EU) 2018/1725 and delivered its opinion on […].

[25] 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).

HAVE ADOPTED THIS REGULATION:

Chapter I
GENERAL PROVISIONS

Article 1

Subject matter

1. ***In order to ensure effective return of third-country nationals illegally staying in the territory of the Member States,*** this Regulation establishes a- common system for the return of third-country nationals ~~staying~~ illegally ~~in the Union~~ ***staying on the territory of the Member States***, in accordance with fundamental rights recognised ~~in particular~~ by the Charter of Fundamental Rights of ~~the~~ European Union (***'***the ~~'~~Charter~~'~~***'***) ***and general principles of Union law,*** as well as applicable ~~obligations under~~ international ~~law~~ ***obligations***, including on ~~refugee protection and~~ human rights.

2. The objective of this Regulation is to ***enable Member States to take all necessary measures to*** ensure ~~the~~ effective ~~return and readmission of illegally staying third-country nationals in line with the comprehensive approach as set out in Articles 3, Article 4, point (h), and Article 5, point (e), of Regulation (EU) 2024/1351~~ ***returns***.

Article 2

Scope

1. This Regulation applies to third-country nationals ~~staying~~ illegally ***staying*** on the territory of the Member States.

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.

3. This Regulation is without prejudice to the provisions of Regulations (EU) 2024/1351 and 2024/1348.

4. Without prejudice to paragraph 5 of this Article, this Regulation shall not apply to third-country nationals who:

a. are subject to a refusal of entry at external borders in accordance with Article 14 of Regulation (EU) 2016/399 or in accordance with equivalent national law in the case of Member States not bound by that Regulation;

b. are apprehended or intercepted by the competent authorities in connection with the illegal border crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State;

c. are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law;

d. are the subject of an extradition procedure;

5. A Member State may decide to apply this Regulation to one or more of the categories of third country nationals referred to in paragraph 4, points a, b and c. In such cases, this Regulation shall apply to those categories of third-country nationals as from the date when the Member State notifies its decision to the other Member States and the Commission.

6. When a Member State decides to apply this Regulation to third country nationals which are subject to return as a criminal law sanction, Articles 7, 9 and 10 shall not apply.

7. With regard to third-country nationals that are excluded from the scope of this Regulation in accordance with paragraph 4, point a and b, Member States shall ensure that their treatment and level of protection are no less favourable than as set out in Article 12(4) and (5), Article 14(2), Article 14(6), points (c)and (e), Article 34 (1) to (6), Article 35 and respect the principle of non-refoulement.

~~Article 3~~

~~Derogations~~

~~1. Member States may derogate from the provisions of this Regulation for the following third-country nationals:~~

~~a. those subject to a refusal of entry at external borders in accordance with Article 14 of Regulation (EU) 2016/399;~~

~~b. those who are apprehended or intercepted by the competent authorities in connection with the illegal border crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State.~~

~~2. When Member States apply derogations pursuant to paragraph 1 of this Article, they shall rely on national law for the purpose of ensuring the return of these categories of third-country nationals and respect the principle of non-refoulement. The following Articles shall apply: Article 12(4) and Article 12(5), Article 14(2), Article 14(6), point (c), Article 14(6), point (e), Article 34 and Article 35.~~

Article 4

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 no longer fulfils, the conditions of entry, as set out in Article 6 of Regulation (EU) 2016/399 or ~~other~~ ***equivalent*** conditions for entry, stay or residence in ~~that~~ ***accordance with national law in the case of*** Member ~~State~~ ***States not bound by that Regulation but who participate in this Regulation***;

(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 formal 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)~~, (b) and (g)~~ ***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 59(8) of Regulation (EU) 2024/1348;

(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 58(4) of Regulation (EU) 2024/1348;

(g) a third country***, other than the one referred to in points (a), (b) and (d),*** with which there is an agreement or arrangement on the basis of which the third-country national is accepted, in accordance with Article 17 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 imposing or stating an obligation to leave the ~~European Union~~ ***territory of the Member States***;

(4a) 'return' means an illegally staying third-country national:

(a) voluntarily returning, as referred to in point 6; or

(b) being removed by the competent authorities from the territory of the Member States and to a country of return as referred to in first paragraph, point 3;

(4b) 'decision ordering the removal' means an administrative or judicial act or decision stating or declaring that the third-country national can be removed to one or more countries of return as referred to in point 3;

(5) ‘removal’ means the enforcement of the return decision by the competent authorities through ~~the~~ physical transportation out of the territory of the Member ~~State~~ ***States***;

(6) ‘voluntary return’ means ~~compliance by the illegally staying third-country national with the obligation to leave~~ ***departure of*** the territory of the Member States ~~within the date set out in the return decision in accordance with Article 13 of this Regulation;~~ ***on his or her own, with or without assistance, and without resorting to removal, by:***

(a) an illegally staying third-country national against whom a return decision has not yet been issued; or

(b) an illegally staying third-country national complying with the obligation to leave within or after expiration of the voluntary departure period set out in the return decision;

(7) ‘absconding’ means the action by which the third-country national does not remain available to the competent administrative or judicial authorities~~, such as by leaving the territory of the Member State without permission from the competent authorities, for reasons which are not beyond the third-country national's control.~~***;***

(8) ‘entry ban’ means an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States ~~for a specified period~~;

~~(9) ‘readmission procedure’ means all steps conducted by a competent authority or, where relevant, by the European Border and Coast Guard Agency ('Frontex'), in relation to the confirmation of nationality of a third-country national, the issuance of a travel document for the third-country national and the organisation of a return operation;~~

~~(10) ‘readmission application’ means a request for the purpose of readmission submitted by a competent authority to a competent authority of a third country consisting of a request for confirmation of nationality and a request for issuance of a travel document, as relevant;~~

(11) ‘return operation’ means an operation that is organised or coordinated by a competent authority ***or supported by the European Border and Coast Guard Agency (“Frontex”)*** by which third-country nationals from one or more Member States are returned;

~~(12) ‘readmission instrument’ means a legally binding or non-binding instrument, containing provisions on the cooperation between a Member State or the Union and a third country on the readmission procedure, such as readmission or other international agreements and arrangements;~~

~~(13) ‘other authorisation offering a right to stay’ means any document issued by a Member State to a third-country national authorising the stay on its territory, which is not a residence permit within the meaning of Article 2, point 16, of Regulation (EU) 2016/399 or a long-stay visa within the meaning of Article 2, point 14, of Regulation (EU) 2018/1860 and with the exception of the document referred to in Article 6 of Directive (EU) 2024/1346 of the European Parliament and of the Council[26].~~

Article 5

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, ~~in particular~~***with*** the principle of non-refoulement, and with fundamental rights.

~~[26] 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 II
RETURN PROCEDURE

SECTION 1
START OF THE RETURN PROCEDURE

~~*Article 6*~~

~~**Detection and Initial checks**~~

~~1. Member States shall put in place efficient and proportionate measures to detect third-country nationals who are staying illegally on their territory in view of carrying out the return procedure and to carry out any additional verifications needed, including any vulnerability and security verifications.~~

~~2. For the purpose of paragraph 1, competent authorities shall rely upon previous checks carried out in relation to third-country nationals, including screening pursuant to Regulation (EU) 2024/1356 or equivalent checks under national law.~~

~~3. Where needed, additional security verifications for the purpose of carrying out the return procedure under this Regulation may be carried out based on a risk assessment and objective criteria set out in national law.~~

SECTION 2

PROCEDURE ORDERING RETURN

Article 7

~~Issuance of a~~ Return decision

1. A return decision shall be issued to any third-country national staying illegally on their territory by competent authorities of the Member ***State stating or imposing the obligation to leave the territory of the Member*** States, ~~without prejudice to the exceptions referred to in Article 8~~.

1a. The return decisions shall:

(a) state a departure period, which shall not exceed 30 days, by the end of which the third-country national shall at the latest 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 referred to in subparagraph (a) may be further specified in national law.

Member States may lay down in their national law when a third-country national is granted a voluntary departure period or is ordered to leave immediately.

1b. Member States may provide for a departure period pursuant to paragraph 1a that exceeds 30 days with due regard to the specific circumstances of the individual case.

1c. Member States may extend the departure period pursuant to paragraph 1a with due regard to the specific circumstances of the individual case, in particular participation in a programme supporting return and reintegration pursuant to Article 46(3) and compliance with the obligation to cooperate as set out in Article 21.

Member states may shorten the departure period pursuant to paragraph 1a in case of non-compliance with the obligation to cooperate as set out in Article 21.

1d. The departure period shall be counted from a date as defined under national law.

2. The return decision shall be issued in writing and give reasons in fact and in law ~~as well as information~~***.*** ***The third-country national shall be informed*** about available legal remedies and time-limits to seek those remedies. The return decision shall be notified to the third-country national ~~without undue delay~~ ***as soon as possible in accordance with national law of the Member State concerned***.

3. Competent authorities may decide not to provide or may decide to limit the information on reasons in fact, 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 a return decision is 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.***

4. ~~When a~~ ***The country or countries of return may be determined in the return decision. Where the third-country national decides to return voluntarily to another*** country of return ~~cannot be determined on the basis of the information available to the competent authorities at the time of issuing~~ ***other than the country or countries of return stated in*** the return decision, ***the issuance of a new*** ~~a return~~ decision ~~may indicate provisionally one or more countries~~ ***determining the country*** of return ***is not required***.

4a. Competent authorities shall not be precluded from issuing a return decision where there is a hindrance of removal, including due to the risk of refoulement.
Where the country of return has been determined in the return decision and a risk of refoulement has been identified, the return decision shall state that the removal to that country of return is postponed in accordance with Article 14, paragraph 1, point a.

5. The third-country national shall, upon request, be provided with a written or oral translation of the main elements of the return decision~~, as referred to in paragraph 2~~, including information on the available legal remedies in a language the third-country national understands or may reasonably be presumed to understand. ***Member States may use generalised information sheets or translations, including machine-generated translations.***

6. The return decision ~~pursuant to paragraph 2~~ 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 under Chapter IV and other relevant provisions of Union and international law.

7. Upon issuance of the return decision, ~~its main elements~~ ***Member States*** shall ~~be inserted into~~ ***make use of*** the form ('European Return Order') established pursuant to paragraph 8***. The form shall include the main elements of the return decision, and where relevant of the decision ordering the removal,*** and shall be made available through the Schengen Information System in accordance with Regulation (EU) 2018/1860 ~~or through information exchange pursuant to Article 38~~.

8. The Commission shall adopt ***at the latest six months after entry into force of this Regulation*** an implementing act to establish the form of the European Return Order referred to in paragraph 7. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 49(2).

9. ~~This Article shall not affect~~ ***At the latest, by the adoption of the implementing act referred to in paragraph 8, the*** Member States ***and the Commission and relevant EU agencies, such as eu-LISA,*** ~~' decisions to grant at any moment an autonomous residence permit, long-stay visa or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory. In such cases, an issued~~ ***shall start putting in place the necessary legal and technical arrangements, respectively, to make available the European*** Return ~~decision~~ ***Order through the Schengen Information System to facilitate the fulfilment of the obligation in paragraph 7. The Commission and relevant EU agencies, such as eu-LISA,*** shall ~~be withdrawn or suspended for the duration of the validity of the residence permit, long-stay visa or other authorisation offering a right to stay~~ ***support Member States as appropriate***.

9a. At the latest by the entry into application of this Regulation, the Commission and relevant EU agencies, such as eu-LISA, shall implement measures to ensure the possibility of the automated handling of the European Return Order with a view to make the application of Article 9 more efficient.

9b. Member States shall notify the Commission about the necessary legal and technical arrangements put in place to fulfil the obligation mentioned in paragraph 7 at the latest by the entry into application of this Regulation.

~~10. The Member State that issues a return decision in accordance with this Article shall take all necessary measures in accordance with this Regulation to ensure effective return.~~

Article 8

Exceptions from the obligation to issue a return decision

1. Competent Member States authorities may decide not to issue a return decision in one of the following cases where the 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 44;

c. a person whose illegal stay is detected in connection with border checks carried out at exit at the external border in accordance with Article 8 of Regulation (EU) 2016/399 or equivalent checks ***in accordance with*** ~~pursuant to~~ national law ***in the case of Member States not bound by that Regulation***~~, where justified on the basis of the specific circumstances of the individual case and in compliance with the principle of proportionality and the rights of defence, and~~ avoiding as much as possible to postpone 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~~ or is the subject of a pending procedure for renewing a residence permit, long-stay visa or other authorisation offering a right to stay in another Member State.~~**.**

3. In cases referred to in paragraph 2, the Member State shall require the third-country national to go to the territory of that 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, Member States may request cooperation from the other Member States pursuant to Article 44 or issue a return decision in accordance with Article 7.

4. A return decision shall not be issued in cases where the ~~third-country national is the subject of an enforceable return decision issued by another Member State. In this case, the~~ procedure~~ described~~ in Article 9 ~~shall apply~~ ***is applied***.

Article 9

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 the removal,*** issued to that third-country national by another Member State ('issuing Member State') pursuant to Article 7(1)~~,~~ ***and 12(2). The enforcement shall be*** based on ***the information available in*** the European Return Order referred to in Article 7(7)~~, and it~~ ***and*** shall ~~on this basis order the removal~~ ***be carried out in accordance with national rules and procedures*** pursuant to Article 12.

2. ~~By 1 July 2027, the Commission shall adopt an implementing decision for the application of paragraph 3, based on an assessment of whether the legal and technical arrangements put in place by the~~ Member States ~~to make available the European Return Order through the Schengen Information System referred to in Article 7(7) are effective. The Commission~~ shall ~~inform the European Parliament and the Council of the results of its assessment~~ ***not be required to take administrative decisions or acts for the purpose of recognition***. ***The recognition need not take the form of an administrative*** ~~The implementing decision shall be adopted in accordance with the~~ procedure ~~referred to in Article 49(2).~~

~~3. As of the publication of the implementing decision taken in accordance with paragraph 2, Member States shall recognise enforceable return decisions issued by other Member States pursuant to Article 7(1) to third-country nationals illegally present on their territory based on the European Return Order referred to in Article 7(7), and they shall order their removal in accordance with Article 12.~~

~~4. For the purposes of applying paragraph 3, a Member State may decide not to recognise or enforce a return decision of the issuing Member State where the enforcement is manifestly contrary to public policy in the enforcing Member State, or where the third-country national is to be removed to a different third country than indicated in the return decision of the issuing Member State.~~

5. Where a Member State does not recognise or enforce a return decision ***or decision ordering the removal*** pursuant to paragraph 1~~ or 3~~, that Member State shall issue a return decision ~~in accordance with~~ ***subject to the conditions of*** Article 7 ***or a decision ordering the removal pursuant to Article 12(2)***.

6. ~~The enforcing~~ ***Where a*** Member State ***recognises or enforces a return decision or a decision ordering the removal pursuant to paragraph 1, it*** shall suspend the ~~enforcement of return~~ ***removal*** where the effects of the return decision ***or decision ordering the removal*** in the issuing Member State are suspended ***and may issue a return decision subject to the conditions of Article 7***.

7. Where the issuing Member State ***suspends or*** withdraws the return decision or when the return decision is annulled by ~~a judicial~~ ***an administrative*** authority***, or court or tribunal***, the enforcing Member State shall issue a return decision subject to the conditions of Article 7.

8. The issuing Member State shall ***upon request*** provide the enforcing Member State with all available data and documents necessary for the purpose of ~~enforcing the~~ return ~~decision~~ ***or removal***, in accordance with Regulation (EU) 2018/1860 ~~or based on exchange of information between Member States pursuant to Article 38~~.

9. ~~The enforcing Member State may ask Frontex to support the enforcement of the return decision in accordance with Chapter II, Section 8, of Regulation (EU) 2019/1896. When the enforcement of the return decision is not supported by Frontex, and upon request of the enforcing Member State, the issuing Member State shall compensate the enforcing Member State with an amount that shall not exceed the actual costs incurred by the enforcing Member State. The Commission shall adopt an implementing decision to determine the appropriate criteria for determining the amount and practical arrangements for the compensation. That implementing act shall be adopted in accordance with the procedure referred to in Article 49(2).~~

9a. The application of Article 9 is without prejudice to the use of the exceptions set out in Article 8.

~~10. The Commission decision referred to in paragraph 2 shall be published in the Official Journal of the European Union.~~

11. Member States shall, by the adoption of the implementing act referred to in Article 7(8), start putting in place preparatory steps that could facilitate the recognition of return decisions or decisions ordering the 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.

12. By two years after the date of application 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 making the European Return Order available through the Schengen Information System pursuant to Article 7(7) 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 pursuant to Article 7(9) are put in place by the Member States;

c. the effectiveness of the recognition and enforcement of return decisions and decisions ordering the removal,

d. the burden on judicial and administrative national systems resulting thereof, and

e. results of relevant training and pilot project activities.

13. Based on the assessment referred to in paragraph 12, the Commission shall submit, as appropriate, legislative proposals, including any targeted amendments to ensure effective returns, with a view to introduce mandatory recognition and enforcement of enforceable return decisions and decisions ordering the removal issued by another Member State. Where the Commission does not submit a proposal, it shall explain the reason thereof.

14. Member States shall, at the request of the Commission, provide the necessary information for completing the assessment pursuant to paragraph 12 of this Article, in particular statistics on the number of third-country nationals removed or returned on the basis of recognised return decisions and, where relevant, decisions ordering the removal issued by another Member State within a specified period of time. The Commission shall, where possible, make use of the information made available under Regulation (EC) 862/2007 of the European Parliament and of the Council.

SECTION 3

ENTRY BAN

Article 10

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 12;

   b. the obligation to ~~return~~ ***leave the territory of the Member States*** has not been complied with within the time limits set in accordance with Article ~~13~~***7, paragraphs 1a-1c***;

   c. the third-country national poses a security risk in accordance with Article 16.

2. In cases other than those listed in paragraph 1, competent authorities ~~shall determine whether or not~~ ***may accompany*** a return decision ~~shall be accompanied by~~ ***or decision ordering the 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 the removal or*** separately in writing. ~~It~~***The entry ban*** shall be notified to the third-country national in a language that the third-country national understands or may reasonably be presumed to understand. ***Information of the effects of an entry ban may be notified in a generalised information sheet.***

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 equivalent checks in accordance with national law in the case of Member States not bound by that Regulation***~~, where justified on the basis of the specific circumstances~~***. The entry ban in these cases may be imposed and notified after the third-country national has departed from the territory*** of the ~~individual case and in compliance with the principle of proportionality and the rights of defence, and~~ ***Member States*** avoiding as much as possible to postpone the departure of the third-country national concerned.

4a. 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 such a return decision.

4b. 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.

5. Competent authorities may refrain from issuing an entry ban in individual cases for humanitarian reasons***, if the third-country national is a victim of human trafficking ,*** or if the third-country national duly cooperates with the competent authorities, ~~included~~ ***including*** by enrolling in a return and reintegration programme.

6. The length of the 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 16(3)(a), an entry ban may be issued for a maximum of 20 years with due regard to all relevant circumstances and in particular any duly substantiated reasons of the competent authorities for why it is necessary to further prevent the third-country national from entering the territory of the Member States.***

7. ~~The duration of the entry ban pursuant to paragraph 6 may be extended by successive periods of a maximum of 5 years. Such extension shall be based on an individual assessment with due regard to all relevant circumstances and in particular any duly substantiated reasons of competent authorities why it is necessary to further prevent the third-country national from entering the territory of the Member States.~~

8. 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 11

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

1. An entry ban may be withdrawn, suspended or its duration shortened ***by the issuing Member State*** where the third-country national~~:~~ ***demonstrates that he or she has returned voluntarily in compliance with a return decision.***

   a. ~~demonstrates that he or she has returned voluntarily in compliance with a return decision;~~

   b. ~~has not already been the subject of a return decision or removal order in the past;~~

   c. ~~has not entered the territory of a Member State while an entry ban was still in force.~~

2. ***The competent authority may at their discretion withdraw, suspend or shorten the duration of*** an entry ban ~~may also be withdrawn, suspended or its duration shortened~~ in justified individual cases, including for humanitarian reasons, taking into account all relevant circumstances.

3. The third-country national ~~shall be afforded the possibility to~~***may submit a well-grounded*** request ~~such~~ ***for*** withdrawal, suspension or shortening of the duration of an entry ban***, provided that the third-country national has complied with the return decision, 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 10(6) or Article 16(3)(a) may 10 years after his or her departure from 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 remains a security risk under Article 16, and whether the entry ban remains necessary to further prevent that third-country national from entering the territory of the Member States. The request for review shall be well-grounded.

5. Member States may subject the withdrawal of an entry ban to the reimbursement of the costs of the removal of the third-country national.

SECTION 4

ENFORCEMENT OF RETURN

Article 12

Removal

1. ***The Member States shall take all necessary measures to remove*** the third-country national ~~subject to a return decision shall be removed~~ when:

   -a. the third-country national has not complied with the obligation to leave the territory in accordance with Article 7;

   a. the third-country national ~~is refusing to~~ ***does not*** cooperate with the authorities ~~during the return process~~;

   b. ~~the third-country national moves to another Member State without authorisation, including during the period set in accordance with Article 13;~~

   c. the third-country national falls within the scope of Article 16;

   d. the third-country national ~~has not left the territory of~~***moves to another*** Member ~~States by the date~~ ***State without authorisation, including during the period*** set in accordance with Article ~~13.~~***7;***

   f. the Member State finds it necessary and proportionate, as provided for in national law, to remove the third-country national for other reasons than subparagraph (-a) to (d).

1a. Nothing in this regulation shall prevent Member States from permitting or facilitating voluntary return of a third country national, who is otherwise subject to removal pursuant to paragraph 1.

1b. Where a country of return has not previously been determined, the Member State shall determine one or more countries of return as referred to in Article 4, paragraph 3, prior to carrying out the removal.

2. ~~Member States'~~ ***A decision ordering the removal may be issued by*** competent authorities ***to any third-country national who is subject to return. Where a decision ordering the removal is issued, it shall be in writing and may be in the same decision as the return decision or as***~~may issue~~ a separate administrative or judicial decision ~~in writing ordering the removal~~ ***or act or as a part of another administrative or judicial decision***.

2a. Where a competent authority issues a decision ordering the removal, and where the country of return has not previously been determined, the decision ordering the removal shall state one or more countries of return as referred to in Article 4(3).

2b. Where a decision ordering the removal is issued, it shall give reasons in fact and in law. The third-country national shall be informed about available legal remedies and time-limits to seek those remedies. The decision ordering the removal shall be notified to the third-country national as soon as possible in accordance with national law of the Member State concerned.

2c. Where a decision ordering the removal is issued, the third-country national shall, upon request, be provided with a written or oral translation of the main elements of the decision ordering the removal, including information on the available legal remedies in a language the third-country national understands or may reasonably be presumed to understand. Member States may use generalised information sheets or translations, including machine-generated translations.

3. ***When the third country national indicates, or the authorities of the Member State become aware of, relevant indications that the removal would breach the principle of non-refoulement,*** the competent authorities shall ***refer the third-country national to the appropriate procedure, including the asylum procedure in accordance with Regulation 2024/1348, where applicable, or in accordance with national law*** assess ***whether the removal is in*** compliance with the principle of non-refoulement ~~by reference to the country of return. They may rely on an existing thorough assessment of all relevant circumstances in previous stages of the procedure. Changes in circumstances and new elements evidencing a risk shall be duly examined~~. The third-country national concerned shall bring forward as soon as possible any relevant ~~elements~~ ***information*** concerning ~~his or her~~ ***their*** own personal circumstances ***in order to substantiate their claim that the removal would breach the principle of non-refoulement***. ***The competent authorities may rely on or take into consideration any previous assessment of the risk of refoulement. An assessment of the risk of refoulement shall only be made if relevant information has been substantiated.***

3a. 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.

4. Coercive measures taken to ensure removal shall be necessary and proportionate and shall, in any case, 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.

5. 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**.**[27].

6. ~~In duly justified cases and when the third-country national is clearly cooperating, competent authorities may decide to indicate a date by which the third-country national shall leave the territory of the Member States in accordance with Article 13. In such cases, competent authorities shall closely monitor the compliance of the third-country national, including by organising transport assistance to the relevant point of departure from the Union.~~

~~*Article 13*~~

~~**Voluntary return**~~

1. ~~When the third-country national is not subject to removal in accordance with Article 12, the return decision shall indicate a date by which the third-country national shall leave the territory of the Member States and shall state the possibility for the third-country national to leave earlier.~~

2. ~~The date referred to in paragraph 1 shall be determined with due regard to the specific circumstances of the individual case. The date by which the third-country national shall leave shall not exceed 30 days from the date of notification of the return decision.~~

[27] 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. ~~Member States may provide for a longer period or extend the period to leave their territory in accordance with paragraph 1 taking into account the specific circumstances of the individual case, such as family links, the existence of children attending school, participation in a programme supporting return and reintegration pursuant to Article 46(3) and compliance with the obligation to cooperate as set out in Article 21. Any extension of the period to leave shall be provided in writing to the third-country national.~~

4. ~~The third-country national shall leave the territory of the Member States by the date determined pursuant to paragraph 1. If not, the third-country national shall be subject of removal in accordance with Article 12.~~

Article 14

Conditions for postponing removal

1. Removal pursuant to Article 12 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 12 may be postponed ~~for an appropriate period~~, taking into account the specific circumstances of the individual case.

3. If the third-country national requests postponement of removal, the request shall be duly substantiated.

4. ~~When taking a decision in accordance with paragraph 1 or paragraph 2,~~ Member States shall provide the third-country national concerned with a written confirmation ~~setting out the period of~~ ***of the*** postponement ~~and their rights during that period~~ ***in accordance with paragraph 1. A translation of the confirmation may be communicated orally to the third-country national in a language they understand or are reasonably presumed to understand, including with the use of interpretation services***.

5. The ~~decision to postpone~~ ***postponement of the*** removal in accordance with paragraph 1 or paragraph 2 shall be ~~regularly~~ reviewed~~, and at least every 6 months~~ ***in case of 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 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 length of their stay;

   e. special needs of vulnerable persons.

7. If the removal is postponed, the measures set out in ~~Article 31~~ ***Articles 21-23c and 29*** may be applied when the conditions are fulfilled.

Article 15

Monitoring of removal

1. Member States shall provide for an independent ***forced-return monitoring system*** ~~mechanism to monitor the respect of fundamental rights during removal operations. Member States shall equip the independent monitoring mechanism with appropriate means.~~

~~2. The independent monitoring mechanism shall select the removal operations to monitor based on a risk assessment and conduct its activities on the basis of desk review and on-the-spot checks which may be unannounced. Member States shall inform the monitoring body in advance about upcoming removal operations and ensure access to relevant locations. 3. Substantiated allegations of failure to respect fundamental rights during removal operations shall be communicated to the competent national authority by the monitoring mechanism. The competent authorities shall deal with such allegations effectively and without undue delay.~~

Article 16

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 when they are subject to an alert pursuant to Article 24 of Regulation 2018/1861 of the European Parliament and of the Council***;

   b. there are ~~serious grounds for believing~~ ***reasonable indications*** that they have committed a serious criminal offence as referred to in Article 2(2) of Council Framework Decision 2002/584/JHA[28] ***or have committed an offence carrying a penalty involving the deprivation of liberty of at least 1 year under national law***;

   ba. there are reasonable indications that the person is involved in any of the offences referred to in Directive (EU) 2017/541 of the European Parliament and of the Council;

   c. there are ~~clear~~ ***reasonable*** indications of ~~his or her~~ ***their*** intention to commit an offence pursuant to point (b) of this paragraph in the territory of a Member State.

   ca. there are reasonable indications that they pose any other security threat as identified under national law.

2. Third-country nationals falling within the scope of this Article shall be subject to removal ~~in accordance with Article 12~~.

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[28] 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).

2a. Member States may allow for voluntary return of third-country nationals falling within the scope of this Article, in particular where it is considered as leading to a faster and more effective return.

3. 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 10 that exceeds the maximum duration referred to in Article 10(6) ~~by an additional maximum period of 10 years~~ ***or an entry ban for an indefinite duration where justified and proportionate to the security risk posed by the third-country national***;

   b. detained in accordance with Article 29(3), point (c);

   c. detained in prisons ~~and be kept separated from ordinary prisoners~~;

   d. subject to detention for ~~a period~~ ***additional periods*** that exceeds the maximum duration referred to in Article 32(3) and that is determined by a ~~judicial~~ ***competent*** authority taking into account the circumstances of the individual case, and that is subject to a review by a ~~judicial authority~~ ***court or tribunal*** at least every three months.

3a. A third-country national, who has been issued an entry ban in accordance with paragraph 3(a), may request the issuing Member State to review whether to withdraw, suspend or shorten the entry ban in accordance with Article 11(4).

4. ~~By way of derogation from the provisions of Article 28(2) and (3)~~***When the threat to public policy***~~, the enforcement of a return decision issued to a third-country~~ ***to public security or to*** national ~~falling within the scope of~~ ***security posed by third country nationals referred to in paragraph 1(a) cannot be effectively addressed pursuant to*** this Article***, Member States may provide for other measures under national law. When taking the relevant decision, the Member State*** shall ~~not be suspended unless there is a risk to breach the principle of non-refoulement~~ ***ensure that the measure is necessary and proportionate having regard to the severity of the threat to public security, or the danger posed by the person concerned***.

Article 17

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

1. Return within the meaning of Article 4, first paragraph, point (3)(g) of illegally staying third-country nationals requires an agreement or arrangement to be concluded with a 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 pursuant to paragraph 1 shall set out the following:

   a. the procedures applicable to the ~~transfer~~ ***return*** of illegally staying third-country nationals from the territory of the Member States to the third country referred to in paragraph 1;

   b. the conditions for the stay of the third-country national in the third country referred to in paragraph 1~~, including the respective obligations and responsibilities of the Member State and of that third country~~;

c. ~~where applicable, the modalities of onward return to the country of origin or to another country where the third-country national voluntarily decides to return, and the consequences in the case where this is not possible;~~

d. the obligations of the third country referred to in the second sentence of paragraph 1;

e. ~~an independent body or mechanism to monitor the effective application of the agreement or arrangement;~~

f. the consequences to be drawn in case of violations of the agreement or arrangement ~~or significant change adversely impacting the situation of the third country~~.

2a. Where an agreement or arrangement pursuant to paragraph 1 sets out the modalities of onward return to a country of return referred to in Article 4(3)(a)-(f), the agreement or arrangement shall in addition to paragraph 2 set out the following:

a. the consequences in case onward return is not possible;

b. the respective obligations and responsibilities of the Member State or the Union and of that third country;

c. the consequences to be drawn in case of significant change adversely impacting the situation of the third country;

d. an independent body or mechanism to monitor the effective application of the agreement or arrangement.

The agreement or arrangement pursuant to the first subparagraph may include the conditions for detention in the third country.

3. ~~Prior to concluding~~ ***Member States shall, at an appropriate time, inform the relevant Member States of negotiations on*** an agreement or arrangement ~~pursuant to~~ ***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.***

4. Unaccompanied ~~minors and families with~~ minors shall not be returned to a third country referred to in paragraph 1.

SECTION 5

RETURN OF MINORS

Article 18

Best interests of the child

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

Article 19

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 ~~a multi-disciplinary assessment, including a psychosocial assessment, which shall be carried out by qualified professionals, to determine the third-country~~ ***an age-assessment in accordance with*** national~~'s age~~ ***law***. Article 25 of Regulation (EU) 2024/1348 ~~shall~~ ***may*** apply by analogy to such assessment.

2. The competent authority may rely on an existing age-assesment conducted in previous stages of the return procedure or in other relevant procedures.

3. A Member State may recognise age-assessment decisions taken by other Member States where the age assessments were carried out in compliance with Union law.

Article 20

Return of unaccompanied minors

1. ~~Before deciding to issue a return decision in respect of an unaccompanied minor,~~ 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 ~~trained~~ ***designated*** to safeguard the best interest 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 ~~speak~~ ***can communicate in*** a language that the minor understands ***or may reasonably be presumed to understand***. That person ~~shall~~ ***may*** be the person designated to act as a representative under Directive (EU) 2024/1346 where the person has been designated in accordance with Article 27 of that Directive. ***Communication may be provided with the use of interpretation services.***

3. The unaccompanied minor shall be heard, either directly or through the representative or ~~trained~~ ***designated*** 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.

Chapter III
OBLIGATIONS OF THE THIRD-COUNTRY NATIONAL

Article 21

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 and readmission procedures and comply with the obligation to leave the territory of the Member States. Third-country nationals shall provide competent authorities with information on any relevant changes in his or her individual situation relevant for the purpose of Article 5, without undue delay~~ ***where they are subject to the application of this Regulation.***

1a. Third-country nationals shall provide competent authorities with information on any relevant changes in his or her individual situation relevant for the purpose of this regulation, without undue delay.

2. ***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 ~~national is~~ ***nationals are*** the subject ~~and~~***,*** 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. provide~~, where requested by competent authorities and~~ without undue delay, all information and ~~physical~~ documentation***, including copies and electronic records, relevant*** ~~necessary~~ for establishing or verifying identity or ***nationality or*** otherwise relevant within the return ~~and readmission~~ procedure that they possess ***or are reasonably presumed to be able to obtain***;

ba. provide without undue delay the competent authorities with an identity or travel document or cooperate on obtaining an identity or travel document;

c. not destroy or otherwise dispose of ~~such~~ documents***, information and documentation, referenced in (b) and (ba) of this paragraph***, use aliases with fraudulent intent, provide other false information in an oral or written form, or otherwise fraudulently oppose the return ~~or readmission~~ procedure;

d. provide an explanation in case they are not in possession of an identity or travel document;

e. provide information on the third countries transited ***and travel route***;

f. provide biometric data as defined in ***national and Union law, including*** Article 2(1), point (s), of Regulation (EU) 2024/1358 of the European Parliament and of the Council[29];

[29] 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).

fa. comply with the travel requirements of carriers and entry requirements of third-country authorities, including health requirements, when such requirements are generally imposed on international travelers;

g. provide***, when requested,*** precise contact details, including current place of residence, address, telephone number where they may be reached and~~, where available,~~ an electronic mail address;

h. provide~~,~~ without undue delay, information on any changes to the contact details referred to in point (g);

i. ~~remain available in accordance with~~ ***comply with any measure imposed under*** Article 23***, paragraph 1, and Article 23c, paragraph 1,*** throughout the return ~~and readmission procedures, and in particular appear for the departure for the transportation for return~~ ***procedure***;

j. 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;

k. ~~when necessary,~~ appear in person or ~~when difficult~~ by means of videoconference***, as required by the competent authorities***, before the competent national ~~and~~ ***or*** third-country authorities at the location indicated by such authorities ~~where necessary to establish his or her~~ ***for the purpose of acquiring travel documents and establishing their identity or*** nationality;

ka. not physically or verbally oppose the return;

l. where required by competent authorities, participate in return and reintegration counselling ~~.~~***;***

m. 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.

3. The information and ~~physical~~ documentation or, where not available, copies thereof, referred to in paragraph 2, point (b) ***and (ba)***, shall include in particular the 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 the third-country national is stateless;

b. their family members and other personal details of the third-country national if relevant for carrying out the return ~~or readmission~~ 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 ~~or readmission~~ 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 the removal, or entry ban*** issued by another Member State;

f. country or countries and place or places of previous residence, travel routes and travel documentation.

4. Where the competent authorities decide to retain any document necessary for the purpose of ~~preparing~~ return as referred to in paragraph 2, point (b), they shall ensure that the third-country national ~~immediately~~ receives photocopies ~~or, at the person's choice~~, electronic records of the originals~~. In the context of~~***, or a confirmation of retention of the document. In case of voluntary*** return ~~pursuant to Article 13~~, 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.

5. The third-country national shall ~~accept any~~ ***be reachable by any means of*** communication ~~from the competent authorities, be it by telephone, electronic mail or mail, using the most recent contact details indicated by himself or herself to the competent authorities~~ ***as defined by the Member State*** in accordance with ~~paragraph 2, points (g) and (h)~~ ***national law***. Member States shall either 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.

~~6. A third-country national may be searched or his or her personal belongings may be searched, where it is necessary and duly justified for the purpose of the return or readmission procedure and without affecting any search carried out for security reasons. Any search of the third-country national under this Regulation shall respect fundamental rights, in particular the principles of human dignity and of physical and psychological integrity and be subject to the safeguards and remedies provided for in national law.~~

Article 21a

Risk of absconding

1. *There is a risk of absconding, in an individual case, unless proven otherwise, where one of the following criteria regarding the illegally staying third-country national concerned is fulfilled:*

   a. *the third-country national has entered or moved without authorisation to the territory of a Member State, including following a 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 the person is currently staying illegally, including as detected through the alerts entered in 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 23, paragraph 1, and Article 23a, paragraph 1, 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 assessment of the circumstances of the individual case. The assessment shall include 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 7, paragraph 1a, point (a)

c. when departure is imminent and there are reasons to believe that the third-country national intends to violate the obligation to cooperate as set out in Article 21, paragraph 2, 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. the third-country national has a lack of social anchoring, in particular the absence of family ties, engagement of illegal employment and insufficient means of subsistence;

g. non-compliance with the obligations under Article 21, paragraph 2, points (a)-(c), (e), (fa) and (i)-(ka), including lack of cooperation in obtaining travel documents;

h. other criteria than (a) to (f) where provided for in national law.

Article 22

Consequences in case of non-compliance with the obligation to cooperate

In case of non-compliance with the obligations set out in Article 21(2), points (a) to (k), Member States shall provide for a possibility to impose, following an individual assessment, effective, proportionate and dissuasive measures on the third-country national, out of the following:

(1) refusal or reduction of certain benefits and allowances granted under Member State law to the third-country nationals concerned unless this would lead to the persons' inability to make provision of their basic needs;

(2) refusal or reduction of incentives granted to promote voluntary return in accordance with Article 13 or reduced assistance in return and reintegration programmes pursuant to Article 46(3);

(3) seizure of identity or travel documents provided that the third-country national receives a copy;

(4) refusal or withdrawal of work permit, pursuant to national law;

(5) extension of the duration of an entry ban in line with Article 10(7);

(6) financial penalties.

Chapter IIIa

MEASURES TO PROMOTE RETURN AND ALTERNATIVES TO DETENTION

Article 23

~~Availability for the~~ ***General measures to promote*** **return ~~process~~**

1. ~~To ensure a swift, efficient and~~ ***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 ~~nationals shall, for the duration of the return procedure, be subject to~~ ***national*** one or more of the following measures:

   a. ~~allocation to~~ ***the obligation to remain within*** a geographical area within the Member State's territory in which they are able to move freely;

   b. ~~residence~~ ***the obligation to reside*** at a specific address ***or place designated by the competent authorities***;

   c. ~~reporting~~ ***the obligation to report*** to the competent authorities at ~~a~~ ***specified times in person or by other means as*** specified ~~time or at reasonable intervals.~~***in national law;***

   d. other measures than those referred to in (a) to (c), where provided for in national law.

2. ***Any measures under*** 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.

2a. The measures set out 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.

3. Upon request, competent authorities may grant the third-country national permission to~~:~~ ***temporarily not comply with a measure as referred to in paragraph 1.***

~~a. temporarily leave the geographical area for duly justified urgent and serious family reasons or necessary medical treatment which is not available within the geographical area;~~

~~b. reside temporarily outside the place designated in accordance with paragraph 1, point (b);~~

~~c. temporarily not comply with the reporting obligation.~~

4. ~~Decisions regarding the permissions listed in~~ ***The third-country national shall be informed whether or not the permission in accordance with*** paragraph 3~~, first subparagraph, shall be taken objectively and impartially on the merits of the individual case and reasons shall be given if such permission is not~~ ***is*** granted.

5. The third-country national shall not be required to request permission ***pursuant to paragraph 3*** to attend appointments with authorities and courts***, where it would otherwise have violated the obligations of paragraph 1, and where*** ~~if~~ the attendance of that third-country national is necessary. The third-country national shall notify the competent authorities of such appointments ***in advance***.

6. 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.

7. The third-country national shall be informed of any decision to apply measures referred to in paragraph 1 of this Article and about the consequence of non-compliance with that decision, including detention under Article 29.

Article 23a

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 his or her place of residence or other relevant premises;

b. search and seize personal belongings, electronic devices, and other items of relevance;

c. impose other investigative measures, where provided for in national law.

2. Any investigative measures under paragraph 1, points (a)-(c), of this Article 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)-(c), of this Article shall respect the fundamental rights and be subject to the safeguards and remedies provided for in Union and national law.

Article 23b

Consequences of non-compliance with the obligation to cooperate

1. In case of non-compliance with the obligations as set out in Article 21, paragraph 1 and the requirements under Article 21, paragraph 2, Member States shall impose on the third-country national concerned one or more of the measures set out in Article 23, paragraph 1, and may impose one or more of the following measures which shall be effective and proportionate:

a. means to record biometric data, including fingerprints, which could include possibility to use coercion as a last resort where a third-country national does not provide biometric data in compliance with Article 21, paragraph 2, point (f);

b. refusal or reduction of certain benefits and allowances, where provided for by national law, unless this would lead to the persons' inability to make provision of their basic needs;

c. refusal or reduction of incentives granted to promote voluntary return including refusal or reduction of assistance in return and reintegration programmes pursuant to Article 46(3);

d. refusal or withdrawal of work permit, where provided for in national law;

e. extension of the duration of an entry ban up to the maximum duration in Article 10(6);

f. criminal sanctions, including imprisonment, where provided for in national law;

g. financial penalties;

h. other measures or consequences than the above-mentioned, where provided for in national law.

Article 23c

Alternatives to detention for preventing absconding

1. *In case of a risk of absconding as set out in Article 21A, paragraphs 1 and 2, Member States may impose on the third-country national one or more of the following measures:*

   a. *deposit of an adequate financial guarantee;*

   b. *the use of electronic monitoring;*

   c. *other measures than (a) and (b) where provided for in national law.*

2. *A decision to apply measures referred to in paragraphs 1 of this Article shall state the relevant reasons in fact and in law.*

3. *Third-country nationals shall be informed of any decision to apply measures referred to in paragraph 1 of this Article and the consequence of non-compliance with that decision, including detention under Article 29.*

Chapter IV
SAFEGUARDS AND REMEDIES

SECTION 1
PROCEDURAL SAFEGUARDS

Article 24

Right to information

1. ***Member States shall ensure that*** third-country nationals subject to ~~the~~ return ~~procedure shall be~~ ***are*** informed ~~without undue delay~~ about the following:

   a. the purpose~~, duration and steps~~ of the ~~return~~ procedure ~~as well as information on the available legal remedies and the time-limits to seek those remedies~~;

   b. the ~~rights and~~ obligations of third-country nationals ~~during the return procedure~~ as set out in Article 21 and Article 23, the consequences of non-compliance pursuant to ~~Article 22~~ ***Articles 23b and 29, paragraph 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 issued by another Member State in accordance with Article 9;

   c. return and reintegration counselling and programmes pursuant to Article 46;

   d. their procedural rights ~~and obligations throughout the return procedure~~ in accordance with this Regulation and national law, in particular the right to legal assistance and representation pursuant Article 25.

2. The information provided shall be given ~~without undue delay in simple and accessible language and~~ in a language which the third-country national understands or is reasonably ~~supposed~~ ***presumed*** to understand~~, including through written or oral translation and interpretation as necessary. That~~***.*** ***The*** information ~~shall~~ ***may*** be provided by means of standard information sheets, either ~~in~~***on*** paper or in electronic ~~form~~ ***format, and, where necessary, orally, using translation and interpretation services***. In the case of ***unaccompanied*** minors, the information shall be provided in ~~a child-friendly and~~ ***an*** age-appropriate manner with the involvement of the ~~holder of parental responsibility or the~~ representative ***or the person designated to assist the minor*** referred to in Article 20(2). ~~The third-country national shall be given the opportunity to confirm that he or she has received the information.~~

Article 25

Legal assistance and representation

1. In the case of an appeal or a review before a ~~judicial authority~~ ***court or tribunal*** in accordance with Article 27, Member States shall, at the request of the third-country national, ensure that ***they are provided with necessary*** free legal assistance and representation ~~is made available as necessary to ensure the right to an effective remedy and fair trial~~.

2. ***The competent authorities shall ensure that*** unaccompanied minors ~~shall automatically be provided with free legal assistance and representation~~ ***are represented and assisted in such a way so as to enable them to benefit from the rights and comply with the obligations under this Regulation***.

3. ~~The legal assistance and representation shall consist of the preparation of the appeal or request for review, including, at least, the preparation of the procedural documents required under national law and, in the event of a hearing, participation in that hearing before a judicial authority to ensure the effective exercise of the right of defence. Such assistance shall not affect any assistance provided for under Regulation (EU) 2024/1348.~~

4. Free legal assistance and representation shall be provided by legal advisers or other suitably qualified persons, ~~as~~ admitted or permitted under national law~~, whose interests do not conflict or could not potentially conflict with those of~~ ***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***.

5. 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.

6. The third-country national requesting free legal assistance and representation ~~shall~~ ***may be required to*** disclose ~~his or her~~ ***their*** financial situation.

7. ~~With the exception of any assistance provided to unaccompanied minors, and in line with the respect of the essence of the right to an effective remedy,~~ 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 ~~nor undermine the exercise of the right of defence~~;

   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.

8. 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 or a review 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.

9. Where a decision not to grant free legal assistance and representation is taken by an authority which is not a ~~judicial authority~~ ***court or tribunal*** on the grounds that the appeal is considered to have no tangible prospect of success or to be abusive, the applicant shall have the right to an effective remedy before a ~~judicial authority~~ ***court or tribunal*** against that decision. ~~For that purpose, the applicant shall be entitled to request free legal assistance and representation.~~

10. 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 ~~7~~ ***7(1)***, Article 10 and Article 12(2) before ~~a~~ ***the court or tribunal*** competent ~~judicial authority~~ ***according to national law***.

2. The effective remedy shall provide for a full ~~and ex nunc~~ examination of both points of facts and points of law.

3. ~~Member States shall ensure that~~ ***Where material in the file brought to the attention of the court or tribunal in charge of the remedy against the return decision or the decision ordering the removal, as supplemented or clarified following adversarial proceedings, suggests that the principle of non-refoulement might be undermined,*** compliance with the requirements arising from the principle of non-refoulement ~~is~~ ***shall be*** verified ~~by the competent judicial authority, at the request of the third-country national or ex officio.~~**.**

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 ~~judicial authority~~*court or tribunal*

1. For the purpose of ~~ensuring the right to an effective remedy in accordance with Article 26~~ ***applying this Regulation***~~, Member States shall lay down in their national law reasonable time limits for the competent judicial authority of first instance to examine the decisions referred to in Article 7, Article 10 and Article 12(2), providing for an adequate and complete examination of the appeal.~~ the period for lodging an appeal before a ~~judicial authority~~ ***court or tribunal*** of first instance shall not exceed 14 days***, unless a longer period of no more than 30 days is provided for in national law***.

2. ***The time limit*** ~~Time limits~~ referred to in paragraph 1 shall start to run from the date when any of the decisions referred to in Article ~~7~~ ***7(1)***, Article 10 and Article 12(2) are notified to the third-country national, or ~~from another date to be determined by~~ ***considered notified under*** national law~~, notably when the third-country national concerned has absconded~~.

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 ***and/or decision ordering the removal*** is issued together with a return decision as referred to in Article 7, ~~it~~ ***they*** shall be appealed against jointly with that return decision, before the same ~~judicial authority~~ ***court or tribunal*** and within the same ~~judicial~~ proceedings and the same time limits. Where an entry ban ***and/or decision ordering the removal*** is issued separately from the return decision or is the only decision to be challenged, it may be appealed against separately. ~~The time limits to bring such separate judicial proceedings shall be the same as those laid down in case where the entry ban is jointly appealed against with the return decision.~~

~~5. Where the documents are not submitted in due time, as determined by the competent judicial authority, in the event that the translation is to be provided by the applicant, or where documents are not submitted in time for the judicial authority to ensure that they are translated in the event that the translation is ensured by the competent judicial authority, the judicial authority may refuse to take those documents into account.~~

Article 28

Suspensive effect

1. ***Prior to*** the enforcement of the decisions issued pursuant to Article 7~~, Article 10~~ and Article 12(2) ***Member States*** shall ***ensure that removal can*** be suspended ~~until the time limit within which they can exercise their right to an effective remedy before a judicial authority~~ ***upon request or ex officio during the period for lodging the appeal in Article 27 or the period pending the outcome of the appeal, by the competent court or tribunal*** of first instance***, unless national law already provides for provisions according to which first instance remedies have a suspensive effect. Member States may, in full respect of*** ~~referred to in~~ Article ~~27 has expired~~ ***47 of the Charter, determine under national law whether the suspension shall be granted upon request or ex officio***.

2. ~~Third-country nationals shall be granted the right to submit an application to suspend the enforcement of a return decision before the time limit within which they can exercise their right to an effective remedy before a judicial authority of first instance referred to in Article 27 has expired. A judicial authority shall have the power to decide, following an examination of both facts and points of law, whether or not the enforcement of the return decision should be suspended pending the outcome of the remedy. The enforcement of the return decision shall be suspended where there is a risk to breach the principle of non-refoulement.~~

3. Where a further appeal against a first or subsequent appeal decision is lodged, ***the removal*** ~~the enforcement of a return decision~~ shall not be suspended unless the third-country national requests suspension and a competent ~~judicial authority~~ ***court or tribunal*** decides to grant it, taking due account of the specific circumstances of the individual case. ***This shall be without prejudice to provisions in national law.***

~~4. A decision on the application for suspension of the enforcement of a return decision shall be taken within 48 hours. In cases involving complex issues of fact or law, that time-limit may be exceeded.~~

Chapter V

~~PREVENTION OF ABSCONDING AND~~ 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, and*** ~~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. risk of absconding determined in accordance with Article ~~30~~ ***21A***;

   b. the third-country national avoids or hampers ***readmission,*** the preparation of the return***,*** or the removal ~~process~~;

   c. the third-country national poses security risks in accordance with Article 16;

   d. to determine or verify his or her identity or nationality;

   e. non-compliance with the ~~measures ordered pursuant to~~ ***obligations under*** Article ~~31.~~ ***21, paragraph 2, points (a)-(c), (e), (fa) and (i)-(ka), including lack of cooperation in obtaining travel documents;***

   f. other relevant grounds related to return, provided for in national law, to ensure effective return procedures, that are necessary and proportionate.

~~4. Those detention grounds shall be laid down in national law.~~

5. Detention shall be ordered by administrative or judicial authorities. Detention shall be ordered by a written decision giving the reasons in fact and in law on which it is based as well as information about available legal remedies. The decision shall be ~~notified~~ ***communicated orally or in writing*** to the third-country national in a language that the third-country national understands or may reasonably be presumed to understand***, including with the use of interpretation or translation services***.

6. When detaining a third-country national pursuant to paragraph 2, Member States shall take into account ~~any visible signs, statements or behaviour related to, or made or shown by,~~***whether*** the third-country national ~~indicating that he or she~~ is a vulnerable person.

~~*Article 30*~~

~~Risk of absconding~~

~~1. There is a risk of absconding in an individual case, unless proven otherwise, when one of the following criteria is fulfilled:~~

~~a. the third-country national has moved without authorisation to the territory of another Member State or other Member States, including following a transit through a third country, or attempts to do so;~~

~~b. the third-country national is subject to a return decision or enforcing decision issued by a Member State other than the one on the territory of which the person is currently staying illegally, including as detected through the alerts entered in the Schengen Information System pursuant to Regulation (EU) 2018/1860;~~

~~c. non-compliance with the measures pursuant to Article 23.~~

2. In cases not covered by paragraph 1, the risk of absconding shall be determined on the basis of an overall assessment of the specific circumstances of the individual case and where one of the following criteria regarding the third-country national concerned is met:

a. lack of residence, fixed abode or reliable address;

b. explicit expression of intent of non-compliance with return-related measures applied by virtue of this Regulation, or actions clearly demonstrating intention not to comply with such measures;

c. non-compliance with the obligations of a return decision until the date by which the third-country national is to leave the territory of the Member States as set out in Article 13;

d. non-compliance with the obligation to cooperate with the competent authorities of the Member States at all stages of the procedures pursuant to this Regulation, as referred to in Article 21(2), points (a) to (k);

e. when departure is imminent and there are serious reasons to believe third-country national intends to violate the obligation to cooperate as set out in Article 21(2), point (l);

f. 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;

g. opposing the return procedure violently;

h. re-entering the Union in violation of a valid entry ban.

Article 31

Alternatives to detention

1. Member States shall provide for alternative measures to detention in national law. Such measures shall be ordered taking into account the individual circumstances of the third-country national concerned, including any vulnerabilities, and be proportionate to the level of the risk of absconding assessed in accordance with Article 30.

2. For that purpose, Member States shall provide for any of the following measures:

a. the obligation to regularly report to competent authorities with a frequency of up to 3 days, based on the individual circumstances;

b. the obligation to surrender identity or travel documents to the competent authorities;

c. the obligation to reside in a place designated by competent authorities;

d. deposit of an adequate financial guarantee;

e. the use of electronic monitoring, including guarantees and procedures provided for under national law.

3. A decision to apply measures referred to in paragraph 2 shall state the relevant reasons in fact and in law.

~~4. Third-country nationals shall be notified of any decision to apply measures referred to in paragraph 2 of this Article and shall be informed about the consequence of non-compliance with that decision, including pursuant to Article 29(3), point (e), and the legal remedies referred to in paragraph 5 of this Article.~~

~~5. Member States shall ensure that the decisions taken in accordance with paragraph 2 of this Article are reviewed speedily by a judicial authority on application by the person concerned or ex officio, and at the latest within two months.~~

Article 32

Detention period

1. Detention shall be maintained for as short a period as possible and for as long as the ~~conditions~~ ***grounds*** laid down in Article 29 are fulfilled and it is necessary to ensure successful return.

2. When it appears that the ~~conditions~~ ***grounds*** laid down in Article 29 are no longer fulfilled, ~~detention shall cease to be justified and~~ the third-country national shall be released ***from detention pursuant to this Regulation***. Such release shall not preclude the application of measures ~~to prevent the risk of absconding~~ in accordance with ~~Article 31~~ ***Articles 23-23c***.

3. The detention shall not exceed 12 months in a ~~given~~ Member State. ~~Detention may be extended for a period not exceeding a further 12 months in a given 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***, 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 conduct constitutes a ground for detention as referred in Article 29(3), a new period of detention shall apply.

3a. Detention may, after the expiry of the maximum detention period of 24 months pursuant to paragraph 3, be applied for additional periods of up to 6 months, whenever there is a risk of absconding and where a reasonable prospect of removal has emerged due to one or more of the following changes in circumstances:

a. there is new significant information on the third-country national's identity;

b. 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 has improved.

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

4. The expiry of the maximum detention ~~period~~ ***periods*** in accordance with paragraph 3 ***and 3a*** does not preclude the application of measures in accordance with Article ~~31~~ ***23-23c***.

5. Where a third-country national is cooperating on their 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 respect of paragraphs 3 and 3a.

Article 33

Review of detention orders

1. ***Member States shall ensure that*** detention ~~shall be~~ ***is*** reviewed ~~at regular intervals of time and~~ at least every ~~three~~ ***six*** months either on application by the third-country national concerned or ex officio.

2. ***Member States shall ensure that*** detention of unaccompanied minors ~~shall be~~ ***is*** reviewed ~~ex officio at regular intervals of time and~~ at least every three months ***either on application by the third-country national concerned or ex officio***.

3. Where detention has been ordered or extended by administrative authorities, Member States shall ~~ensure that all relevant facts, evidence and observations submitted during the proceedings are subject to judicial review, by providing that~~:

   a. ~~any~~ ***provide for a*** judicial review of the lawfulness of detention ***to be decided on*** ~~be concluded~~ as speedily as possible ***within a period that is laid down in national law*** after the beginning of the detention~~, and no later than 15 days thereafter~~; or

   b. ***grant*** the third-country national concerned ~~be granted~~ the right to initiate proceedings by means of which the lawfulness of detention ~~is~~ ***shall be*** subject to judicial review~~,~~ to be ~~concluded~~ ***decided on*** as speedily as possible ***within a period that is laid down in national law*** after the launch of the relevant proceedings~~, and no later than 15 days thereafter~~. In such cases Member States shall immediately upon detention inform the third-country national concerned about the possibility of initiating such proceedings.

Article 34

Detention conditions

1. Detention shall ***generally*** take place~~, as a rule,~~ 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***, when 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, on request, to establish in due time contact with legal representatives, family members and competent consular authorities.

4. Particular attention shall be paid to~~, and special accommodation provided for,~~ 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***, at the request of the third-country national,*** 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 of an appropriate security clearance issued by a competent authority 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 ~~in writing~~ with information which explains the rules applied in the facility and sets out their rights and obligations ~~in plain intelligible language and~~ in a language they ***understand or may reasonably be 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.

Article 35

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. ~~Families and~~ Unaccompanied minors ~~detained in preparation for return~~ ***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 ~~persons of their age~~ ***minors*** and of their ~~gender, including appropriate hygiene, food, health services and other infrastructure~~ ***age***.

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 length of their detention.

Chapter VI
READMISSION

Article 36

Readmission ~~procedure~~

1. ~~Upon issuance of an enforceable~~ ***After issuing a*** return decision ~~and notwithstanding Article 28~~, competent authorities ***shall where relevant***, with the support of Frontex where ~~applicable~~ ***relevant***, ~~shall systematically and without undue delay~~ initiate ~~the~~ readmission***, in particular where it is necessary to establish or verify the identity or nationality of the person concerned or obtain travel documents enabling him or her to return*** ~~procedure~~.

~~2. When a travel document needs to be obtained from the third country authorities, the competent authorities shall submit a readmission application. Such readmission application shall include, as relevant, a request for confirmation of nationality and a request for issuance of travel document. Readmission applications shall be submitted without delay and where possible using a standard form pursuant to paragraph 6.~~

3. ~~The competent authorities may submit the request for travel document separately where it is preferable for legal or operational reasons, including due to the duration of the validity of the travel document to be issued and the non-availability of the third-country national to receive the travel document immediately after the confirmation of nationality.~~ Where applicable, the European travel document for return shall be used in compliance with the applicable readmission instrument and Regulation (EU) 2016/1953[30].

[30] 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).

~~4. Information about the outcome of the request for confirmation of nationality and the travel document obtained shall be uploaded in the Schengen Information System by the competent authority concerned. Such information and travel document shall be made available to the competent authorities of other Member States upon request.~~

~~5. Member States may enter into appropriate arrangements for the purpose of facilitating the organisation of identification interviews in another Member State, including for the purpose of implementing Article 44.~~

~~6. The Commission shall be empowered to adopt an implementing act in accordance with Article 49(2) for the purpose of determining the standard form to be used to submit readmission applications referred to in paragraph 2. Such standard form shall set out:~~

~~a. the format for readmission applications;~~

~~b. the elements of a readmission application including the request for confirmation of nationality and the request for issuance of travel document.~~

7. The readmission ~~procedure~~ 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.

8. For monitoring of readmission cooperation with third countries, the Commission may every 12 months request the following data to be communicated to Frontex, regarding relevant third countries:

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, number of travel documents issued by the third-country authorities and number of negative replies concerning the request of travel documents;

9. Frontex shall grant the Commission access to the data referred to in this paragraph. The data referred to in letters 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.

10. Member States are not obligated to submit the requested data, where it is not available.

~~*Article 37*~~

~~Communication with non-recognised third-country entities~~

~~1. The competent authorities may communicate, as necessary, with non-recognised third country entities responsible for one or more of the steps of the readmission procedure.~~

~~2. Such communication shall be limited to what is necessary for carrying out the readmission procedure and shall not amount to diplomatic recognition of the entities concerned.~~

Chapter VII
SHARING AND TRANSFER OF PERSONAL DATA

Article 38

Information sharing between Member States

1. Member States shall make use of all appropriate means of cooperation and of exchanging information 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~~, on request,~~ ***available*** information concerning a person within the scope of this Regulation for the purpose of carrying out the return procedure~~, the readmission procedure~~ and providing ***return and*** reintegration assistance.

4. Where the information referred to in paragraph 3 can be exchanged through the EU Information Systems referred to in point 15 of Article 4 of Regulation (EU) 2019/818 of the European Parliament and of the Council[31] or through supplementary information in compliance with Regulation (EU) 2018/1860, such information shall***, as a general rule,*** be exchanged only through those means.

[31] 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, ELI: http://data.europa.eu/eli/reg/2019/818/oj).

5. The ~~requested data~~ ***request for information*** shall ~~be adequate, relevant, accurate, limited to what is necessary for the intended purpose and shall set out~~ ***include*** the grounds on which it is based.

6. The information referred to in paragraph 3 ~~shall~~ ***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~~, in particular surname(s); forename(s); where appropriate, former name(s) and other name(s) (alias(es), pseudonym(s)); date, place and country of birth; sex;~~

   b. information related to the biometric data taken of the third-country national in accordance with Regulation (EU) 2024/1358~~, in particular facial image(s); dactyloscopic data; the date on which the biometric data were taken; the Eurodac reference number used by the Member State of origin~~;

   c. information related to the nationality and ~~the~~ ***any*** travel document(s) of the third-country national~~, in particular current nationality(ies) and previous nationality(ies); type, number and country of issue of the travel document(s); the date of issue and the date of expiry of the travel document(s)~~;

   d. information related to the third-country national's places of residence, routes travelled, languages spoken and contact details (electronic mail address(es) and phone number(s));

   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 hereof,*** issued by a Member State or a third country;

f. information related to the return operation of the third-country national~~, in particular on flight details; other travel arrangements; indication of whether the third-country national is a particularly dangerous person requiring specific arrangements during the return operation; information relating to escorting~~;

g. information related to the ***return and, where relevant,*** reintegration of the third-country national~~, in particular family composition, marital status, contact information of family members in the country of return, work experience, education level, diplomas~~;

h. the grounds for any return decision taken concerning the third-country national;

ha. information on the compliance of the third-country national with the obligations under articles 21 and 23;

i. information as to whether the third-country national was detained or alternatives to detention were applied to the individual;

j. information related to the criminal records or related to the threat to public policy, public security or national security posed by the third-country national;

k. 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 ~~three~~***two*** weeks.

8. 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 ~~procedure~~ or the provision of reintegration assistance.

9. Member States shall upon request transfer to each other the original travel documents of a third-country national, where the travel document is necessary to ensure return.

Article 39

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

1. Without prejudice to Articles 40 and 41, data referred to in Article 38(6), points (a) to (h) ***and (k)*** may be processed and transferred by a competent authority and, where applicable, Frontex to a third country's competent authority ~~where the third-country national whose personal data is transferred has been informed that his or her personal data may be shared with the authorities of a~~ ***or*** third ~~country provided~~ ***parties competent for reintegration assistance or other tasks related to implementing the return, such as airlines or medical providers, and where*** it is necessary for the purposes of ~~carrying out the~~ ***return,*** readmission***, and reintegration*** ~~procedure~~.

~~2. Without prejudice to Articles 40 and 41, data referred to in Article 38(6), points (a), (c), (f) and (g), may be processed and transferred by a competent authority, and, where applicable, Frontex to third parties competent for reintegration assistance where the third-country national whose personal data is transferred has been informed that his or her personal data may be shared with third parties competent for reintegration assistance provided it is necessary for the purposes of providing reintegration assistance.~~

3. Member States and Frontex transferring personal data pursuant to paragraph 1 or 2 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~~, such a transfer shall be documented and the documentation shall, on 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.

Article 40

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 ~~several~~ ***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[32]~~if it is punishable by a custodial sentence or a detention order for a maximum period~~ ***or has committed an offence carrying a penalty involving the deprivation of liberty*** of at least ~~three years~~ ***1 year*** under the national law of the convicting Member State;

   b. the transfer of data is necessary for the purposes of ~~carrying out the~~ ***return,*** readmission ~~procedure referred to in Article 36~~***, and reintegration***;

   ~~c. the third-country national whose personal data is transferred has been informed that his or her personal data may be shared with the authorities of a third country for the purpose of carrying out the readmission procedure;~~

[32] 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. ~~prior to the transfer,~~ the competent authority and, where applicable, Frontex, has ~~satisfied itself~~ ***verified*** that the transfer of data does not risk breaching the principle of non-refoulement;

e. ~~prior to the transfer,~~ the competent authority and, where applicable, Frontex, has ~~satisfied itself~~ ***verified*** that the transfer of data does not risk breaching Article 50 of the Charter.

~~2. Data relating to one or several 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 party competent for reintegration assistance 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 if it is punishable by a custodial sentence or a detention order for a maximum period of at least three years under the national law of the convicting Member State;~~

~~b. the transfer of data is necessary for the purposes of providing a tailor-made and non-financial reintegration assistance referred to in Article 46;~~

~~c. the third-country national whose personal data is transferred has been informed that his or her personal data may be shared with a third party competent for reintegration assistance for the purposes of providing tailor-made and non-financial reintegration;~~

~~d. prior to the transfer, the competent authority and, where applicable, Frontex has satisfied itself that the transfer of data does not risk breaching the principle of non-refoulement.~~

3. Member States and Frontex transferring personal data pursuant to paragraph 1 or 2 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~~, such a transfer shall be documented and the documentation shall, on 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~~ and the personal data transferred.

Article 41

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 third-country national whose personal data is transferred has been informed that his or her personal data may be shared with the authorities of a third country for the purposes of carrying out the return operation;~~

   ~~c. prior to the transfer, the competent authority and, where applicable, Frontex has satisfied itself that the transfer of data does not risk breaching 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 46 that is tailored to the medical needs of the third-country national;

   b. the third-country national whose personal data is transferred has ~~been informed that his or her personal data may be shared with a third party competent for reintegration assistance, for such assistance to be tailored to his or her medical needs, and has~~ consented to such transfer.

3. Member States and Frontex transferring personal data pursuant to paragraph 1 or 2 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, such a transfer shall be documented and the documentation shall, on 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 and the personal data transferred.

Chapter VIII
COMMON SYSTEM FOR RETURNS

Article 42

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 in the ~~Union, including a common procedure for readmission as an integral part thereof~~ ***territory of the Member States***;

   b. a system of recognition and enforcement of return decisions among Member States;

   ~~c. the necessary resources and sufficient competent personnel in Member States for the implementation of this Regulation, including for detention;~~

   d. digital systems for managing the return~~, readmission~~ and reintegration of third-country nationals;

   e. cooperation between Member States;

   ea. a sufficient level of detention capacity as determined by the Member State taking into account actual needs;

   f. ***financial support by the Union and operational support by the*** Union bodies, offices and agencies ~~supporting pursuant to Article 43(4) and~~ in line with their respective mandates.

2. The Union and the Member States shall identify common priorities in the field of return~~,~~ ~~readmission~~ 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) ~~2024/1351~~***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) 810/2009 of the European Parliament and of the Council[33] and the Union readmission instruments and any other Union instrument relevant for the cooperation on readmission.

3. 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~~, taking into account their shared interest in the effective functioning of the Union's asylum and migration management policies~~.

Article 43

Competent authorities ~~and resources~~

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

~~2. Each Member State shall allocate the necessary resources to competent authorities, including appropriately trained staff who received guidance to fulfil their obligations set out in this Regulation.~~

[33] 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).

~~3. Member States shall ensure a sufficient level of detention capacity taking into account actual needs and expected returns in the next 12 months, particularly for the purpose of well-prepared systems and contingency planning pursuant to Article 7 of Regulation (EU) 2024/1351.~~

~~4. Member States may be supported by competent authorities of another Member State in accordance with Article 44 and relevant staff of Union Agencies, including in accordance with Article 45.~~

Article 44

Cooperation between Member States

1. Cooperation and assistance between competent authorities designated in accordance with Article 43 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~~, financial~~ or other material or in-kind assistance ***in connection with transit through their territory pursuant to (a)***;

   c. ~~leading or supporting the policy dialogue and exchanges with the authorities of third countries for the purpose of facilitating readmission~~ ***facilitating the transfer referred to in Article 8(1), point (b);***

   d. ~~contacting the competent authorities of third countries for the purpose of verifying the identity of third-country nationals and obtaining a valid travel document;~~ ***supporting the departure of a third-country national towards the Member State in which he or she has a right to stay in accordance with Article 8(3).***

~~e. organising, on behalf of the requesting Member State, the practical arrangement for the enforcement of return;~~

~~f. facilitating the transfer referred to in Article 8(1), point (b);~~

~~g. supporting the departure of a third-country national towards the Member State in which he or she has a right to stay in accordance with Article 8(1), first subparagraph.~~

2. Cooperation and assistance between competent authorities designated in accordance with Article 43 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;

Article 45

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 the Agency's support in ~~line with the Union priorities in the area of return, readmission and reintegration, the implementation of the return border procedure pursuant to~~ ***accordance with*** Regulation (EU) ~~2024/1349, the European Asylum and Migration Strategy pursuant to Article 8 of Regulation (EU) 2024/1351 and the priorities in the context of the regular assessment of readmission cooperation pursuant to Article 25a of Regulation (EC) 810/2009~~ ***2019/1896***.

Article 46

Support for return and reintegration

1. Member States shall ~~establish~~ ***ensure availability of*** return and reintegration counselling ~~structures~~ 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~~ ***may provide*** information about return and reintegration ~~is also provided~~ prior to issuing the return decision~~, in particular when Article 37 of Regulation (EU) 2024/1348 is applicable~~.

3. Member States shall ~~establish national programmes for supporting the~~ ***ensure the availability of*** return and reintegration ~~and shall, as a general rule, make use of the~~ ***programmes, supported or financed at national or Union level. Such*** programmes ~~provided by the Union. National programmes and reintegration assistance provided by the Union~~ shall ~~consist of~~ ***include*** logistical, financial***, or*** ~~and~~ 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 the programmes for return and reintegration ~~shall~~ ***may*** reflect the level of cooperation and compliance of the third-country national and may decrease over time. The following criteria ~~shall~~ ***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 21;

   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;

   d. whether the third country national has been convicted of a criminal offence;

   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 IX
FINAL PROVISIONS

Article 47

Emergency situations

1. In situations where an exceptionally large number of third-country nationals to be returned places an unforeseen 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 ~~for judicial review~~ longer than those provided for in ~~Article~~ ***Articles 27(1),*** 33(3) and ***38(7)*** to take urgent measures in respect of the conditions of detention derogating from those set out in Articles 34(1) and 35(2).

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 48

Statistics

1. Without prejudice to Regulation (EC) 862/2007 of the European Parliament and of the Council[34], Member States shall communicate to the Commission (Eurostat) on a quarterly basis the following data:

   a. number of third-country nationals subject to recognised return decisions issued by another Member State;

   b. number of third-country nationals subject to alternative measures to detention;

   c. number of third country nationals subject to detention.

2. The data communicated shall be disaggregated by age, sex and citizenship. The data shall relate to the reference period of one quarter. Member States shall supply to the Commission (Eurostat) data for three calendar months constituting one quarter within two months of the end of each quarter. The first reference period shall be [second quarter following entry into application of this Regulation].

3. Member States shall communicate to Frontex on a monthly basis the following data, as well as the corresponding datasets, regarding each third country:

   a. number of readmission applications submitted;

[34] 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. 23, ELI: http://data.europa.eu/eli/reg/2007/862/oj).

~~b. number of requests for confirmation of nationality and number of positive and negative replies received concerning confirmation of nationality requests;~~

~~c. number of requests for issuance of travel documents, number of travel documents issued by the third-country authorities and number of negative replies concerning the request of travel documents;~~

~~d. number of beneficiaries of reintegration assistance broken down by third-country.~~

~~Frontex shall grant the Commission access to the data referred to in this paragraph.~~

~~4. The data referred to in paragraphs 1 and 3, disaggregated by Member State, may be communicated to third countries for the purposes of monitoring the implementation of, and compliance with, the principle of readmission, including in the framework of Union readmission instruments.~~

Article 49

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 50

Reporting

1. By [~~date~~ ***Five years after the 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 it the necessary information***, if available,*** 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) 862/2007 of the European Parliament and of the Council.***

Article 51

Repeal

1. Directive 2008/115/EC is repealed for the Member States bound by this Regulation. Directive 2001/40/EC and Council Decision 2004/191/EC are repealed with effect from the publication of the implementing decision referred to in Article ~~9(2)~~***7(8)*** for the Member States bound by this Regulation.

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

Article 52

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. ***It shall apply from [two years from the date of entry into force]. However, Articles 4(3)(a), (b), (d) and (g), 7(8), 7(9) and 17 shall apply from the entry into force.***

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg,

For the European Parliament	*For the Council*
The President	*The President*