

Brussels, **XXX**
COM(2025) 101/2

2025/0059 (COD)
SENSITIVE*
UNTIL ADOPTION

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 the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC

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EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The European Union is putting in place an integrated, sustainable and comprehensive EU migration policy, one that is both fair and firm. The Pact on Migration and Asylum¹ ('the Pact') agreed between the European Parliament and the Council in 2024 equips the EU with the legal framework and tools to further enhance the effective management of its external borders and set up fast and efficient procedures for asylum. Work is progressing at full speed to ensure its comprehensive implementation by mid-2026.

Establishing an effective and common EU system for returns is a central pillar of the Pact on Migration and Asylum. For any migration management system to function, it must have a credible and effective policy on return. When people with no right to stay remain in the EU, the entire migration and asylum system is undermined. It is unfair to those who have played by the rules, it undercuts Europe's drive to attract and retain talent and ultimately erodes public support for open and tolerant societies. It incentivises illegal arrivals and exposes those staying illegally to precarious conditions and exploitation by criminal networks. At present, only around 20% of third-country nationals ordered to leave the Union actually do. Persons ordered to leave frequently escape the authorities, often moving on to other Member States. In addition, the current patchwork of 27 different national return systems, each with its own approach and procedures, undermines the effectiveness of returns at the Union level. This calls for a thorough overhaul of the way return policy is legislated in the EU.

President von der Leyen's 2024-2029 Political Guidelines² announced the intention to put forward a new common approach on returns, with a new legislative framework aimed at speeding up and simplifying the return process.

The European Council has consistently emphasised the need for a unified, comprehensive, and effective policy on return and readmission³. In October 2024, it invited the Commission to submit a new legislative proposal on returns, as a matter of urgency⁴. In the framework of the Pact, asylum applications will be processed more quickly and more efficiently. For this to be sustainable, returns need to follow promptly, to prevent our systems from being overwhelmed, stop people being left in limbo and obstruct attempts at onward movement within the EU.

At EU level, return policy is regulated by Directive 2008/115/EC⁵ ('the Return Directive'). Several challenges currently undermine the efficiency and effectiveness of returns, ranging

¹ The New Pact on Migration and Asylum available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0609>.

² [Political Guidelines for the Next European Commission 2024-2029 'A Union that Strives for More. My Agenda for Europe'](#).

³ Conclusions of the European Council of 9 February 2023, EUCO 1/23; Conclusions of the European Council of 17 October 2024, EUCO 25/24.

⁴ Conclusions of the European Council of 9 February 2023, EUCO 1/23; Conclusions of the European Council of 17 October 2024, EUCO 25/24.

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.

from inefficient procedures at national level to insufficient cooperation from third countries in readmitting their own nationals. The return process often involves many authorities and actors and has become very complex in many Member States. The current Return Directive leaves significant room for national legislation to implement the EU rules and for national courts to interpret them. Member States report issues linked to a lack of clarity of the rules and protracted administrative proceedings, which undermine due process. This creates ambiguity and uncertainty for the third-country nationals concerned, as well as for the authorities managing the returns. The lack of cooperation of third-country nationals, who may resist, flee or otherwise frustrate return efforts, makes it difficult to enforce return decisions. Member States face challenges in keeping track of third-country nationals during the different phases of the return procedures, which slows down or prevents progress.

While there has been progress in the uptake of voluntary return, these efforts are hampered by a lack of a credible forced return policy. In addition, third-country nationals ordered to leave in one Member State and fleeing to another currently face few consequences: in most Member States, the return process starts over with a new return decision instead. This undermines decisions taken with due process in the first Member State, with a circumvention in practice of the return system.

National systems and practices lack coherence, and there is currently no systematic structured process to identify and speed up the return of third-country nationals posing security risks.

The many divergences between Member State practices also include different approaches to the readmission process. This has a direct impact on the coherence of the EU and Member States' approach to readmission towards third countries.

Reforming the EU's return rules is an essential component of the Union's ongoing efforts to reform migration management rules. More than this, effective, modern procedures for returning unsuccessful asylum claimants and visa-overstayers are fundamental to safeguard the EU's free movement space without internal borders.

Since the adoption of the Return Directive in 2008, the area of freedom, security and justice and the Union's migration policy has seen a major reform. EU law in the area of migration has moved from legislation with minimum standards to bringing Member States' practices closer, including the development of operational and practical actions and concrete support to a more coherent approach at EU level. The Commission has proactively sought to streamline practices to improve effectiveness of returns, including through Recommendations in 2017⁶ and 2023⁷, and the 2021 EU Strategy on Voluntary Return and Reintegration⁸. The Commission appointed a Return Coordinator supported by a High-Level Network for Return.

Reforming the return rules has been a political priority and objective since 2018, when the Commission presented its proposal to recast the current Return Directive⁹. While the new

⁶ 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. C/2017/6505. OJ L 339, 19.12.2017, pp. 83–159.

⁷ Commission Recommendation (EU) 2023/682 of 16 March 2023 on mutual recognition of return decisions and expediting returns when implementing Directive 2008/115/EC C/2023/1763. OJ L 86, 24.3.2023, pp. 58–64.

⁸ Communication from the Commission: The EU Strategy on Voluntary Return and Reintegration. Brussels, 27.4.2021. COM(2021) 120 final.

⁹ Proposal for a Directive 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).

Return Border Procedure Regulation¹⁰ entered into force as part of the Pact legislation, the general return rules are still governed by the 2008 Return Directive, which is no longer fit for purpose. This proposal replaces the Commission's proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country national, COM(2018) 63 final, 2018/0329 (COD), as adopted by the Commission on 12.9.2018, which is withdrawn. The remaining parts of the 2018 initiative did not receive sufficient support for negotiations to be successfully pursued by the co-legislators and should therefore be withdrawn.

This proposal aims at increasing the efficiency of the return process by providing Member States with clear, modern, simplified and common rules for managing returns effectively. It seeks to ensure cooperation with the authorities by third-country nationals through a combination of obligations, incentives and consequences for non-cooperation. The proposal also seeks to prevent circumvention of the rules and suppress unauthorised onwards movement within the Schengen area. The proposal seeks to ensure that when someone is ordered to leave the EU, they will leave the EU, either forcibly or voluntarily if the conditions allow, while respecting fundamental rights. In addition, the proposal seeks to equip Member States with common rules for identifying and speeding up the return of third-country nationals posing a security risk. It also embeds for the first time readmission as part of the return process. Furthermore, the proposal safeguards the fundamental rights of returnees through clear procedural safeguards, ensuring that return decisions are subject to scrutiny, including the right to appeal and the prohibition of refoulement, with due attention paid to vulnerable persons and the best interests of the child. By closing loopholes in the process, the proposal will prevent situations in which a return decision issued in one Member State can be circumvented or significantly prolonged by moving to another Member State. A mechanism for the recognition of return decisions introduced in the proposal will support this objective.

A robust and modern legal framework that is firm but fair, that respects fundamental rights, that equips the Union and Member States with the necessary tools to effectively return third-country nationals with no right to stay, is a necessary part of a truly European migration system.

- **Consistency with existing policy provisions in the policy area**

This proposal is part of the comprehensive approach to managing migration as set out in the Asylum and Migration Management Regulation¹¹ and complements the legislative framework of the Pact adopted in May 2024. A key aspect of the Pact legislation is to bring asylum and return procedures closer, with the Asylum Procedure Regulation and the Return Border Procedure Regulation. This proposal complements the reform by adding common rules for the return of third-country nationals with no right to stay to the Union's legislative framework.

This proposal aligns with some of the key novelties provided for in the legal acts composing the Pact. In doing so, it seeks to ensure a fair and transparent process for both third-country nationals and national authorities. For instance, age assessment of minors in this proposal mirrors the solution adopted in the Asylum Procedure Regulation. The proposal also provides for the appointment of a representative for unaccompanied minors to ensure that minors are appropriately treated throughout the migration process and receive appropriate support.

¹⁰ Regulation (EU) 2024/1349 of 14 May 2024 establishing a return border procedure, and amending Regulation (EU) 2021/1148. PE/17/2024/REV/1. OJ L 2024/1349, 22.5.2024.

¹¹ Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013. OJ L 2024/1351, 22.5.2024.

Moreover, the obligation of the third-country national to cooperate, as well as consequences for non-cooperation are balanced with a right for the third-country national concerned to be informed of these obligations. This creates a process that is clear and fair for the third-country nationals and for national authorities.

This proposal also aligns with the reinforced rules of the legal acts composing the Pact concerning third-country nationals with no right to stay posing a security risk to ensure that all tools at Union level are used to the fullest to correctly identify such third-country nationals and ensure their swift and effective return.

Regarding absconding, this proposal builds on some of the legislative solutions that are part of the new Reception Conditions Directive¹², adapted to the return context to ensure a more coherent approach to countering absconding.

The proposal provides for more options for Member States to jointly manage irregular movements between Member States in order to safeguard the area without internal border controls.

This proposal aims at bringing the return rules to the same level of ambition as the rest of the legal framework for migration and border management, to create a seamless link and continuity between the different stages of the migration management process in the Union.

- **Consistency with other Union policies**

This proposal also gives effect to 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. According to the Strategic guidelines, the European Union and its Member States must ensure that those with no right to stay are effectively returned. To this end, the Strategic guidelines call for a more assertive and comprehensive approach to returns to be developed and implemented, by upgrading the legal framework as a matter of urgency, and our capacities, in combination with the use of the internal and external tools at our disposal. Finally, the Strategic guidelines recall that a successful return policy is a fundamental pillar of a comprehensive and credible EU asylum and migration system to which this Regulation seeks to give effect.

This proposal is also consistent with the Union action to prevent and counter illegal immigration, to manage the external borders of the Union and to preserve the Schengen area without internal border controls.

This proposal is in line with the EU approach of establishing balanced and comprehensive partnerships with third countries where migration should be built as a core issue, and to work closely with third countries on return, readmission and reintegration. By increasing the effectiveness of its return system, the EU will be able to make better use of improved readmission cooperation fostered with the use of all relevant policies and tools, including visa policy, trade, development and diplomacy.

¹² 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. PE/69/2023/REV/1. OJ L 2024/1346, 22.5.2024

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

In view of the content of the proposal, the legal basis is Article 79(2)(c) of the Treaty on the Functioning of the European Union.

With regard to variable geometry, this proposal follows a comparable regime to the current Return Directive.

According to Article 4 of Protocol 22 on the position of Denmark annexed to the Treaties, Denmark shall decide, within a period of six months after the Council has decided on the proposed Regulation, whether it will implement this proposal, which builds upon the Schengen *acquis*, in its national law.

With regards to Ireland, the current Return Directive presents a hybrid character, as reflected in its recitals. Following the same approach in the present proposal, both Protocol 19 on the Schengen *acquis* integrated in the framework of the European Union annexed to the Treaties, and Protocol 21 on the position of Ireland in respect of the area of freedom, security and justice annexed to the Treaties, apply to this proposal.

To the extent that the proposed Regulation constitutes a development of the Schengen *acquis*, its provisions are to apply to Iceland, Norway, Switzerland and Liechtenstein in accordance with the respective agreements associating those countries with the implementation, application and development of the Schengen *acquis*.

- **Subsidiarity**

The objective of the present proposal is to introduce a common procedure for return and to address key shortcomings and challenges encountered by Member States in returning third-country nationals with no right to stay in the Union. Preventing and countering illegal immigration and ensuring the return of those with no legal right to stay is a shared interest of Member States, which they cannot achieve alone. Currently, many of the shortcomings in the delivery of return policy are the consequence of a lack of interaction between national systems, which can only be effectively addressed at EU level.

The purpose is to equip all Member States with a seamless and efficient procedure, and to avoid movements between Member States that frustrate the return process.

The new procedure should be governed by the same rules, regardless of the Member State applying them, to ensure equity and a unified approach in the treatment of third-country nationals with no right to stay and clarity and legal certainty for the individual.

Furthermore, establishing rules at national level with the aim of reducing incentives for unauthorised movements between Member States with the purpose of frustrating return would not efficiently address the problem. Therefore, the objectives of this proposal cannot be sufficiently achieved by the Member States alone and can, by reason of the scale and effects of this Regulation, be better achieved at Union level. The Union must therefore act and may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

- **Proportionality**

In accordance with the principle of proportionality, as set out in Article 5 of the Treaty on the European Union, this Regulation does not go beyond what is necessary in order to achieve its objectives.

As regards the objective to establish a common return procedure, including a mechanism for the recognition and enforcement of return decision, enhanced rules on people posing security risks, and clarity of procedural safeguards, all elements of the proposal are limited to what is necessary to set up and enable such a common procedure, to streamline and simplify it, to ensure equality of treatment in terms of rights and guarantees in compliance with EU and international law for third-country nationals and avoid discrepancies in national procedures, which have the undesired consequence of encouraging unauthorised movements. The aim of these changes is to strike the right balance between treating third-country nationals fairly and ensuring that the system cannot be circumvented by third-country nationals who aim at preventing their removal from the Union. All necessary safeguards are in place to ensure that third-country nationals are treated in a humane and fair manner in full respect of the Charter.

- **Choice of the instrument**

The Commission is proposing a Regulation. Despite the presentation of the 2017 and 2023 Recommendations and periodic Schengen evaluations to encourage Member States to use all the flexibilities of the Return Directive, important procedural obstacles persist.

The efforts in improving the effectiveness of implementation have not proven sufficient to address differences in the types of procedures used, the rights and procedural guarantees for third-country nationals, and to ensure a coherent approach among Member States.

A Regulation establishing a common return system in the Union, whose provisions shall be directly applicable, provides the necessary degree of uniformity and effectiveness needed for a new common approach on returns. A Regulation ensures that key novelties introduced to increase effectiveness, such as procedural rules, obligations on the third-country nationals, and mutual recognition, are addressed coherently in all Member States, which will prevent distortive effects and loopholes in the functioning of the EU return system. Furthermore, this would align the rules on the return of illegally staying third-country nationals to the specific ones set in the Return Border Procedure Regulation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Expert level discussions in the Return Contact Group chaired by the Commission gathering Member State experts, the Fundamental Rights Agency and the European Border and Coast Guard Agency ('Frontex') have since the entry into force of the Return Directive analysed the interpretation of specific elements of the Directive. This has over the years allowed the Commission to have a clear overview of the most difficult elements when it comes to the interpretation and application of the Return Directive. The Readmission Expert Group and dedicated country working groups organised by Frontex have regularly discussed and analysed the challenges in the readmission process.

Periodic Schengen evaluations and the 2024 thematic Schengen evaluation on returns¹³ have provided a detailed picture of the current return system. Thanks to the peer-to-peer approach, a team composed of Member States and Commission experts, supported by EU agencies, evaluates every Member State and Schengen Associated Country fully applying the Schengen acquis at least once every seven years. These evaluations have often pointed to specific issues

¹³ Schengen thematic evaluation report – Bridging national gaps: towards an effective EU return system.

in national law transposing the Return Directive and have allowed the Commission to gain an overview of the key challenges linked to the implementation of the current Directive.

The proposal is also informed by the preliminary results of the study “Gaps and needs of EU law in the area of return”, commissioned by the Directorate-General for Migration and Home Affairs. The study led by a consortium of the ICF, in collaboration with the Migration Policy Institute (MPI), the European Policy Centre (EPC), and the Odysseus Network, has provided high quality analyses of possible options for the new legislative framework on return, based on in-depth consultations through surveys, workshops and interviews with key stakeholders. While the study will only conclude later in 2025, the ongoing consultation process in the context of the study and the preliminary results have been instrumental in informing the proposal.

The Commission maintains regular consultations with Member States’ practitioners, international organisations and non-governmental organisations through the European Migration Network Return Expert Group (EMN-REG). The ongoing work of EMN-REG has provided a valuable practical evidence base, ensuring that the proposal is grounded in real-world experience. The EMN-REG plays a vital role by facilitating continuous cooperation and sharing best practices in the field of return and reintegration. Through regular workshops and seminars, EMN-REG addresses key topics such as return counselling, voluntary return and reintegration, return of vulnerable groups, and alternatives to detention. The EMN-REG structure has allowed for continuous feedback, feeding into the policy options for this proposal.

The proposal has been informed by several EU-financed (ongoing) research projects in the field of return and irregular migration. In particular, Measuring Irregular Migration and related Policies (MirreM) on irregular migration in general and De-centring the Study of Migrant Returns and Readmission Policies in Europe and Beyond (GAPS), Motivations, experiences and consequences of returns and readmissions policy: revealing and developing effective alternatives (MORE) and Finding Agreement in Return (FAIR) on return, reintegration and readmission. These research projects bring together academics, civil society, governments and international organisations to, amongst other things, look into regularisation, barriers/enablers to international cooperation on return, motivations, experiences and consequences of returns and readmissions policy and human rights aspects in voluntary and forced return.

The substitute Impact Assessment of the recast Return Directive¹⁴ proposal made by the European Parliament and the European Parliament Implementation report on the Return Directive¹⁵ have been carefully considered when elaborating the new proposal.

A detailed account of the consultation process and evidence feeding into this proposal is set out in a Commission Staff Working Document that will be published soon.

- **Stakeholders consultations**

The proposal has been informed by consultations of a broad range of stakeholders, including Member States, European institutions, international organisations, non-governmental organisations (NGOs), civil society, research entities, and third countries.

Between October 2024 and February 2025, the Commission intensified the already close and ongoing consultation with key stakeholders ranging from Member States, experts and

¹⁴ [https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU\(2019\)631727](https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2019)631727).

¹⁵ [Texts adopted - Implementation report on the Return Directive - Thursday, 17 December 2020](#).

practitioners in the area of return and civil society. The consultations occurred at political, strategic, and technical level, to ensure that the realities and needs of all relevant parties have been considered. In that context, stakeholders shared with the Commission relevant resources and targeted input.

The ongoing work of EMN-REG has provided a valuable practical evidence base, ensuring that the proposal is grounded on concrete experiences and practices. Through regular workshops and seminars, EMN-REG has in the past year addressed topics such as mutual recognition, return counselling, voluntary return and reintegration, return of vulnerable groups, and alternatives to detention. The EMN-REG has since November 2024 been used also in a targeted manner to sound the views of the group, particularly with regards to vulnerable persons in the return process.

The High-Level Network for Return chaired by the EU Return Coordinator has also conducted targeted discussions in September 2024 and in January 2025, notably about different policy options and considerations for the proposal.

The Commission organised several dedicated sessions on the future legislation in the area of return at the European Migration Forum in November 2024, which allowed for a further sounding of views and ideas particularly from civil society.

The Commission expert group on migrants also held a dedicated discussion on the future return legislation on 15 January 2025.

In the past year, the Council under the leadership of the rotating Presidencies has organised numerous discussions on the future legislation in the area of return at technical, strategic and ministerial level.

An intense consultation process from November 2024 to February 2025 was organised in the context of the study “Gaps and needs of EU law in the area of return”, commissioned by the Directorate-General for Migration and Home Affairs. The study led by a consortium of the ICF, in collaboration with the Migration Policy Institute (MPI), the European Policy Centre (EPC), and the Odysseus Network, has allowed for in-depth consultations through surveys, workshops and interviews with key stakeholders.

Finally, as work on the proposal intensified, the Commission has received numerous position papers, notes and analyses pointing out challenges, problems and suggesting solutions, all of which have been duly considered and taken into account in the context of preparing the proposal.

A detailed account of the consultation process and evidence feeding into this proposal is set out in a Commission Staff Working Document that will be published soon.

- **Collection and use of expertise**

The Commission has made use of the expertise gathered from the many networks and expert groups active in the area of return including the European Migration Network Return Expert Group (EMN-REG), the Return Directive Contact Group, the Readmission Expert Group, the High-Level Network for return chaired by the EU Return Coordinator, the experts working in the context of the study "Gaps and needs of EU law in the area of return".

Moreover, the Commission has taken into account the many papers, position papers and research material that has been transmitted to the Commission particularly in the past months as work on the proposal intensified.

- **Impact assessment**

While no impact assessment was carried out, due to the urgency of proposing new rules in the area of return, the proposal is informed by the wide range of consultations, studies and evaluations as set out above.

A Commission Staff Working Document, setting out the consultation process leading up to the proposal, as well as an analysis of some of the key policy options considered, will be published soon.

- **Regulatory fitness and simplification**

The proposal seeks to simplify and streamline the current legal framework, which has been further developed by the jurisprudence of the Court of Justice of the European Union and national courts, including, resulting in a high level of complexity in the implementation of the rules.

The obligation to cooperate will reduce the administrative burden on Member States, as third-country nationals will be obliged to actively participate in the return process by providing all the necessary information and to remain continuously present and available. A mechanism for the recognition and enforcement of return decisions will avoid duplication of efforts across Member States and multiple assessments for the same third-country national. Furthermore, the EU Return Order will facilitate the exchange of information necessary to recognise other Member States' return decisions.

- **Fundamental rights**

This proposal respects fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union¹⁶, as well as the obligations stemming from international law, in particular from the Geneva Convention on the Status of Refugees¹⁷, the European Convention for the Protection of Human Rights and Fundamental Freedoms¹⁸, the International Covenant for Civil and Political Rights, the United Nations Convention against Torture¹⁹, and the United Nations Convention on the Rights of the Child²⁰.

This proposal ensures that returns are conducted in a manner that respects human dignity, the right to life, the prohibition of torture and of inhuman and degrading treatment or punishment, the right of liberty and security, the right to family and private life, including protection of personal data, protection in the event of removal and expulsion, notably the principle of *non-refoulement and protection against collective expulsions*, non-discrimination and the right to an effective remedy.

The right to liberty is protected through the strict circumscription of the provided recourse to detention: detention is justified only on specific grounds clearly defined in the Regulation, when it proves necessary and proportionate, on the basis of an individual assessment of each case subject to judicial review. The Regulation also frames the use of alternatives to detention as, while alternatives to detention are less invasive than detention, such measures nevertheless entail restrictions of liberty. The proposal guarantees that the best interests of the child should be of primary consideration when applying this Regulation. Special rules apply for minors in

¹⁶ Charter of Fundamental Rights of the European Union, OJ C 326, 26 October 2012, pp. 391-407.

¹⁷ Geneva Convention on the Status of Refugees, 1951, United Nations Treaty Series.

¹⁸ European Convention on Human Rights, 1950, Council of Europe.

¹⁹ International Covenant on Civil and Political Rights, 1966, United Nations.

²⁰ Convention on the Rights of the Child, 1989, United Nations.

the return process, especially as regards detention conditions. Moreover, some of the key novelties brought by the Pact legislation, notably when it comes to age assessment of minors and the practice of appointing a representative to accompany an unaccompanied minor, are now introduced also for the return procedure through this Regulation. The proposal also excludes unaccompanied minors and families with minors from return to countries where there is an agreement or arrangement in place. By reinforcing rules on third-country nationals posing security risks, the proposal also promotes the right to security.

4. BUDGETARY IMPLICATIONS

As set out in the accompanying legislative financial and digital statement, the investments required at the EU level and Member States level are compatible with the 2021-2027 Multiannual Financial Framework (MFF) and can be financed during the 2021-2027 MFF for the Home Affairs Funds, by making use of the Asylum, Migration and Integration Fund (AMIF)²¹. Funding beyond the year 2027 will fall within the negotiations of the next MFF. It is proposed to reinforce Frontex's return budget, if needed, in 2025, 2026 and 2027 by deploying resources internally within the Frontex budget depending on actual consumption.

Member States will be able to make use of the funds allocated under their national programmes under the Asylum, Migration and Integration Fund to support any investments needed in the infrastructure and procedures for the implementation of this Regulation. Frontex can support Member States with staff and activities within its mandate, such as coordinating return operations, including by covering costs related to return operations, chartering airplane or booking tickets for returns by commercial flights, for the same purpose.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will regularly monitor the application of the Regulation, including through the Schengen evaluation mechanism. The Commission should report on the implementation of the Regulation five years from the entry into force of the Regulation.

- **Detailed explanation of the specific provisions of the proposal**

The key objective of the proposal is to simplify the return process and make it clearer for national authorities and for the third-country nationals concerned.

The proposal takes the form of a Regulation and thereby ensures that the rules are of direct applicability in Member States and that returns are managed uniformly across the Union. This creates clarity and predictability and reduces the scope for circumventing the return system in one Member State by moving to another Member State.

Common procedural rules for the issuance of return-related decisions: the proposal includes common rules for the issuance of return decisions and imposition of entry bans. This ensures third-country nationals are treated equally in all Member States and helps ensure that divergences between Member States systems cannot be exploited. Definitions have been updated in the light of the practice since the adoption of the Return Directive and, where applicable, have been aligned with the definitions in the newly adopted legal acts composing the Pact, ensuring uniformity, clarity and predictability across the migration process. The fundamental rights of returnees are safeguarded through clear procedural safeguards, ensuring

²¹ To the extent that activities will be financed by the AMIF thematic facility, these may be implemented under the direct, indirect or shared management.

that return decisions are subject to scrutiny, including the right to appeal and the prohibition of refoulement, with due attention paid to unaccompanied minors and the best interests of the child.

Reinforcing forced and incentivising voluntary return: the proposal clarifies when the return decision should be enforced through removal, and defines voluntary return, thus creating clarity and predictability for both the authorities responsible and third-country nationals. This in turn strengthens voluntary returns, as forced return becomes a clear and credible instrument. The proposal clarifies the provisions on forced return monitoring.

Procedural safeguards: the rules in this proposal shall always be implemented in full respect of the Charter of Fundamental Rights, including respect for the principle of non-refoulement, right to liberty, the right to an effective remedy and the best interests of the child. Timeframes for lodging appeals against return decisions diverge significantly among Member States, ranging from a few days to one month or more. In compliance with fundamental rights, the timeframe needs to provide enough time to ensure access to an effective remedy, while not delaying return procedures. The proposal also harmonises the rules to provide, on request, free legal assistance and/or representation, in line with the newly adopted Pact rules. Finally, the proposal aligns with the rules in the asylum *acquis* on age assessment of minors, as well as on appointing a representative to accompany unaccompanied minors in the return process. By providing a link with the asylum process, the proposal ensures appropriate and coherent treatment of minors across the Union's migration management rules, bringing clarity, simplification and predictability.

Obligation to cooperate and right to information: lack of cooperation of the third-country national during the return procedures is a key issue obstructing return. This proposal therefore introduces an explicit obligation for third-country nationals to cooperate with national authorities at all stages of the return procedure, in particular for establishing and verifying their identity in view of obtaining a valid travel document, providing personal information, travel and biometric information. The proposed rules outline what the cooperation entails and the consequences in case of non-cooperation, coupled with incentives to ensure cooperation, including return counselling and support for voluntary return. To ensure that the third-country national is properly informed about what is expected of him or her in the return process, the proposal includes the right of the third-country national to information, building on some of the practices in Member States, and mirrors similar provisions introduced through the Asylum Procedure Regulation. The system provides for the opportunity to challenge certain decisions and access legal remedies.

Managing and preventing absconding and unauthorised movements between Member States: the proposal provides Member States with reinforced rules to ensure the availability of the third-country nationals subject to return by creating a system more capable of assessing and managing the risk of absconding. It introduces an exhaustive list to assess the risk of absconding, ensuring a coherent and uniform approach among Member States, and an exhaustive list of detention grounds. The rules that complement the obligation to cooperate, to ensure that the returnee remains available throughout the return process, mirror in parts the solutions agreed for the purpose of asylum provided for in the legal acts composing the Pact, for instance the possibility to require the third-country national to stay within a specific geographical location such as a region.

Returns of third-country nationals posing security risks: third-country nationals with no right to stay in the Union and posing a security risk must be quickly identified and swiftly returned. The proposal therefore includes a general obligation for the responsible authorities to carry out the necessary verifications early in the return process to support identification and

verify any possible security risk. The proposal defines certain categories of third-country nationals falling within the scope of the special procedural rules for individuals posing a security risks, for instance when a crime of a certain level of gravity has been committed. These third-country nationals will be subject to forced return, longer entry bans and a separate detention ground. These rules mirror and align the rules on return with the newly adopted Pact legislation, as well as the Schengen Borders Code, all of which include rules to specifically deal with migrants posing security risks. The proposal also provides clear safeguards to protect fundamental rights.

A European Return Order: while Member States will still issue their own return decisions, the proposal introduces a European Return Order, which will complement Member States' return decisions to provide clarity across Member States. The European Return Order, which is a common form that will include the key elements of the return decision, will be available through the Schengen Information System. Any technical changes required to facilitate the swift access to the European Return Order will be addressed in the context of any future considerations of changes to the Regulation (EU) 2018/1860 on the use of the Schengen Information System for the return of illegally staying third-country nationals. The European Return Order will be established through an implementing act.

A mechanism for recognition and enforcement of decisions issued by another Member State: this proposal introduces an important procedural simplification by providing for a mechanism to directly enforce a return decision issued by another Member State. Under the current rules, most Member States have the obligation to issue a new return decision to the individual, even in case another Member State has already issued a return decision. This proposal provides Member States with the tool to enforce the return decision previously issued by the other Member State. This would eliminate a step in the process and avoid duplication. By 1 July 2027, the Commission will review whether Member States have established appropriate legal and technical arrangements to effectively process European Return Orders through the Schengen Information System and adopt an implementing decision that will make it mandatory to recognise and enforce a return decision issued by another Member State. The proposal is complemented by limited derogations. Member States that issue a return decision are responsible for its enforcement and must use all appropriate means to ensure effective return. The mechanism for recognition of return decisions issued by another Member State is underpinned and facilitated by the European Return Order described above. The proposal also clarifies the process and relevant procedural safeguards and remedies based on the lessons learnt from the implementation of the 2023 Commission Recommendation on mutual recognition of return decisions.

Return to a country with which there is an agreement or arrangement for return: the proposal introduces the possibility to return third-country nationals who have been issued a return decision to a third country with which there is an agreement or arrangement for return ("return hubs"). The possibility to return irregular migrants to those countries should be subject to specific conditions to ensure the respect of the fundamental rights of the persons concerned. An agreement or arrangement can 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. Such agreement or arrangement must set out the modalities of transfer, as well as the conditions for the period during which the third-country national stays in the country, which may be in the short or longer term. Such agreement or arrangement shall be accompanied with a monitoring mechanism to assess the implementation and take into account any changing circumstances in the third country. Unaccompanied minors and families with minors are excluded from return to a country with which there is an agreement or arrangement for return.

Readmission as an integral part of the return process: The proposal embeds readmission as an integral part of the return process. It establishes a common procedural approach to the submission of readmission requests, including through a standard form for readmission requests and the systematic follow-up of return decisions with readmission requests. It increases transparency and coordination in the approach towards third countries on readmission, while maintaining flexibility for Member States. The proposal introduces elements for a more cohesive approach towards third countries, provides for a clear legal basis for the transfer of data to third countries for the purpose of readmission. It clarifies that communication with non-recognised third country entities for carrying out the readmission procedure does not amount to recognition.

Agence Europe

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 Committee²²,

Having regard to the opinion of the Committee of the Regions²³,

Acting in accordance with the ordinary legislative procedure,

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 in the Union based on a common procedure for return and readmission, a system for preventing and managing the risk of absconding 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 Council²⁴, a common system for effectively managing of the return of illegally staying third-country nationals should be put in place. That 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.

²² OJ C [...], [...], p. [...]

²³ OJ C [...], [...], p. [...]

²⁴ 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 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/EC²⁵ and Directive 2008/115/EC²⁶, is no longer corresponding to the needs of the Union migration policy. 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 Directive²⁷. The Commission has also sought to support Member States in using the flexibilities of Directive 2008/115/EC through Recommendations (EU) 2017/2338²⁸ and (EU) 2023/682²⁹. However, the limits of the current legal framework have been reached.
- (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 by unauthorised movements to other Member States.

²⁵ 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).

²⁶ 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>).

²⁷ 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).

²⁸ 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>).

²⁹ 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>.

- (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 Council³⁰. 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 Council³¹.
- (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 swiftly identify the third-country national 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.
- (13) Competent authorities 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. Any change in circumstances and any new element evidencing a risk should be examined.
- (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.
- (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 facts and circumstances.

³⁰ 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, ELI: <http://data.europa.eu/eli/reg/2024/1348/oj>).

³¹ 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>).

- (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 return decisions 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. 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 should be exercised in the issuing Member State.
- (19) From the date of application of this Regulation, Member States should put 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.
- (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 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.
- (21) Third-country nationals can be returned by coercive measures through removal or by voluntarily complying 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 voluntary return, reinforced rules on removal seek to ensure a direct and immediate consequence in case the third-country national does not respect the date by which they need to leave. Coercive measures should be subject to the principles of proportionality and effectiveness with regard to the means used and objectives pursued.
- (22) Common rules are necessary to ensure that 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 Council³². For third-country nationals posing security risks, removal should be the rule, and it should be possible to derogate from the general rules in order to provide for longer entry bans, longer detention periods and from the use of specialised detention facilities so that those who threaten the security of Union are swiftly removed.

- (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 the principle of *non-refoulement* are respected by the third country concerned. In particular, the agreement or arrangement should set out the modalities of transfer, the conditions for the stay in the country, the modalities in case of onward return to the country of origin, the consequences in case of violations 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.
- (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 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 be carried out. 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

³² 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>).

Council³³ should be followed. When carrying out age assessments, Member States should in particular take into account relevant guidelines from the European Union Agency for Asylum.

- (27) To reinforce the effectiveness of the return procedure, clear responsibilities for third-country nationals should be established. Third country-nationals should cooperate with the authorities at all stages of the return procedure. Third-country nationals should remain available and provide the necessary information to prepare the return. In case the obligations to cooperate are not respected, effective and proportionate consequences should be imposed, including for instance reduced benefits and allowances granted in accordance with national law, 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.
- (28) This Regulation should not affect the possibility for Member States to impose, where applicable, criminal sanctions 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 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.
- (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 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 the risk of absconding. Common rules should streamline the assessment of this risk in individual cases and seek to increase the use of efficient alternatives to detention 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 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 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. The authorities should act with due diligence and detention should be maintained only for as short a period as possible and may not exceed 24 months. 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.

³³ 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).

- (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 longer period, 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 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 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 by the consistent practice of States in implementing readmission agreements and arrangements, combined with their recognition of this principle as a necessary aspect of international cooperation in managing migration.
- (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 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 Council³⁴. 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, 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.
- (41) Regulation (EU) 2016/679 of the European Parliament and of the Council³⁵ 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, 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 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) 2018/1725³⁶, 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 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.
- (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.
- (44) The Union provides financial and operational support in order to achieve an effective implementation of this Regulation. To the extent that activities should be financed by

³⁴ 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>).

³⁵ 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>).

³⁶ 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>).

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 Council³⁷, 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 Council³⁸. 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.

- (45) The collection and analysis of reliable and comparable statistics on return, readmission, and reintegration are essential for monitoring the effectiveness of this Regulation and for identifying areas for improvement, as they provide valuable insights into the efficiency of return procedures, the cooperation of third countries, and the outcomes of reintegration efforts. 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 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 Council³⁹.
- (47) Directive 2001/40/EC, 2008/115/EC and Council Decision 2004/191/EC should be repealed.
- (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

³⁷ 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>).

³⁸ 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>).

³⁹ 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>).

fulfil the conditions of entry in accordance with Regulation (EU) 2016/399 of the European Parliament and of the Council⁴⁰ - 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.

- (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 provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC⁴¹; 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, is not bound by it or subject to its application. [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.]

- (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 latter's association with the implementation, application and development of the Schengen *acquis*⁴², 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

⁴⁰ 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>.

⁴¹ 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>).

⁴² OJ L 176, 10.7.1999, p. 36, ELI: [http://data.europa.eu/eli/agree_internation/1999/439\(1\)/oj](http://data.europa.eu/eli/agree_internation/1999/439(1)/oj).

of the Schengen acquis⁴³, 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/EC⁴⁴.

- (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/EU⁴⁵.
- (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 [...].

HAVE ADOPTED THIS REGULATION:

Chapter I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Regulation establishes a common system for the return of third-country nationals staying illegally in the Union, in accordance with fundamental rights recognised in particular by the Charter of Fundamental Rights of the European Union (the 'Charter') as well as applicable obligations under international law, including on refugee protection and human rights.
2. The objective of this Regulation is to ensure the effective return and readmission of illegally staying third-country nationals in line with the comprehensive approach as set

⁴³ OJ L 53, 27.2.2008, p. 52.

⁴⁴ 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>).

⁴⁵ 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>).

out in Articles 3, Article 4, point (h), and Article 5, point (e), of Regulation (EU) 2024/1351.

Article 2

Scope

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

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 conditions for entry, stay or residence in that Member State;
- (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), 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 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 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;
 - (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;
 - (6) ‘voluntary return’ means compliance by the illegally staying third-country national with the obligation to leave the territory of the Member States within the date set out in the return decision in accordance with Article 13 of this Regulation;
 - (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 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 Council⁴⁶.

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 the principle of non-refoulement, and with fundamental rights.

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 States, without prejudice to the exceptions referred to in Article 8.
2. The return decision shall be issued in writing and give reasons in fact and in law as well as information 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.

⁴⁶ 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>).

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.
4. When a country of return cannot be determined on the basis of the information available to the competent authorities at the time of issuing the return decision, a return decision may indicate provisionally one or more countries of return.
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.
6. The return decision pursuant to paragraph 2 shall be issued in the same act or at the same time and together with the decision ending a legal stay of a third-country national, 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 shall be inserted into the form ('European Return Order') established pursuant to paragraph 8 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 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 Member States' 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 return decision 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.
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 pursuant to national law, 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.

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 an enforceable return decision issued to that third-country national by another Member State ('issuing Member State') pursuant to Article 7(1), based on the European Return Order referred to in Article 7(7), and it shall on this basis order the removal 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. 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 pursuant to paragraph 1 or 3, that Member State shall issue a return decision in accordance with Article 7.
6. The enforcing Member State shall suspend the enforcement of return where the effects of the return decision in the issuing Member State are suspended.
7. Where the issuing Member State withdraws the return decision or when the return decision is annulled by a judicial authority, the enforcing Member State shall issue a return decision subject to the conditions of Article 7.
8. The issuing Member State shall provide the enforcing Member State with all available data and documents necessary for the purpose of enforcing the return decision, 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).
10. The Commission decision referred to in paragraph 2 shall be published in the *Official Journal of the European Union*.

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 has not been complied with within the time limits set in accordance with Article 13;
 - 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 a return decision shall be accompanied by 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 separately in writing. It shall be notified to the third-country national in a language that the third-country national understands or may reasonably be presumed to understand.

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, 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.
5. Competent authorities may refrain from issuing an entry ban in individual cases for humanitarian reasons or if the third-country national duly cooperates with the competent authorities, included 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.
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 where the third-country national:
 - 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. 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 request such withdrawal, suspension or shortening of the duration of an entry ban.

SECTION 4 ENFORCEMENT OF RETURN

Article 12

Removal

1. The third-country national subject to a return decision shall be removed when:
 - a. the third-country national is refusing to 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 Member States by the date set in accordance with Article 13.
2. Member States' competent authorities may issue a separate administrative or judicial decision in writing ordering the removal.
 3. The competent authorities shall assess 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 concerning his or her own personal circumstances.
 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/EC⁴⁷.
 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.
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.

⁴⁷ 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>).

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 postponement and their rights during that period.
5. The decision to postpone removal in accordance with paragraph 1 or paragraph 2 shall be regularly reviewed, and at least every 6 months.
6. The following shall be taken into account concerning the situation of the third-country national 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 may be applied when the conditions are fulfilled.

Article 15

Monitoring of removal

1. Member States shall provide for an independent 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;
 - b. there are serious grounds for believing that they have committed a serious criminal offence as referred to in Article 2(2) of Council Framework Decision 2002/584/JHA⁴⁸;
 - c. there are clear indications of his or her intention to commit an offence pursuant to point (b) of this paragraph in the territory of a Member State.
2. Third-country nationals falling within the scope of this Article shall be subject to removal in accordance with Article 12.
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;
 - 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 that exceeds the maximum duration referred to in Article 32(3) and that is determined by a judicial authority taking into account the circumstances of the individual case, and that is subject to a review by a judicial authority at least every three months.
4. By way of derogation from the provisions of Article 28(2) and (3), the enforcement of a return decision issued to a third-country national falling within the scope of this Article shall not be suspended unless there is a risk to breach the principle of non-refoulement.

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:

⁴⁸ 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).

- a. the procedures applicable to the transfer 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.
3. Prior to concluding an agreement or arrangement pursuant to paragraph 1, Member States shall inform the Commission and the other Member States.
 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

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 national's age. Article 25 of Regulation (EU) 2024/1348 shall apply by analogy to such assessment.

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 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 a language that the minor understands. That person shall 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.

3. The unaccompanied minor shall be heard, either directly or through the representative or trained person referred to in paragraph 2, including in the context of the determination of the best interests of the child. 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 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.
2. Third-country nationals shall:
 - a. remain on the territory of the Member State competent for the return procedure of which the third-country national is the subject and not abscond to another Member State;
 - b. provide, where requested by competent authorities and without undue delay, all information and physical documentation necessary for establishing or verifying identity or otherwise relevant within the return and readmission procedure that they possess;
 - c. not destroy or otherwise dispose of such documents, 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;
 - f. provide biometric data as defined in Article 2(1), point (s), of Regulation (EU) 2024/1358 of the European Parliament and of the Council⁴⁹;

⁴⁹ 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

- g. provide 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 Article 23 throughout the return and readmission procedures, and in particular appear for the departure for the transportation for return;
 - 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, before the competent national and third-country authorities at the location indicated by such authorities where necessary to establish his or her nationality;
 - l. where required by competent authorities, participate in return and reintegration counselling.
3. The information and physical documentation or, where not available, copies thereof, referred to in paragraph 2, point (b), 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 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 return pursuant to Article 13, the

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>).

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 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 in accordance with paragraph 2, points (g) and (h). 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 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 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.

Article 23

Availability for the return process

1. To ensure a swift, efficient and effective return, third-country nationals shall, for the duration of the return procedure, be subject to one or more of the following measures:
 - a. allocation to a geographical area within the Member State's territory in which they are able to move freely;
 - b. residence at a specific address;
 - c. reporting to the competent authorities at a specified time or at reasonable intervals.

2. Paragraph 1 shall only be applied to the extent that it is compatible with the special needs of vulnerable persons and the best interests of the child.
3. Upon request, competent authorities may grant the third-country national permission to:
 - 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 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 granted.
5. The third-country national shall not be required to request permission to attend appointments with authorities and courts if the attendance of that third-country national is necessary. The third-country national shall notify the competent authorities of such appointments.
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.

Chapter IV

SAFEGUARDS AND REMEDIES

SECTION 1

PROCEDURAL SAFEGUARDS

Article 24

Right to information

1. Third-country nationals subject to the return procedure shall be 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, 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 to understand, including through written or oral translation and interpretation as necessary. That information shall be provided by means of standard information sheets, either in paper or in electronic form. In the case of minors, the information shall be provided in a child-friendly and age-appropriate manner with the involvement of the holder of parental responsibility or the representative 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 in accordance with Article 27, Member States shall, at the request of the third-country national, ensure that free legal assistance and representation is made available as necessary to ensure the right to an effective remedy and fair trial.
2. Unaccompanied minors shall automatically be provided with free legal assistance and representation.
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 the third-country national.
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 disclose his or her 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 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 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 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, Article 10 and Article 12(2) before a competent judicial authority.
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 compliance with the requirements arising from the principle of non-refoulement is verified by the competent judicial authority, at the request of the third-country national or *ex officio*.

Article 27

Appeal before a competent judicial authority

1. For the purpose of ensuring the right to an effective remedy in accordance with Article 26, 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 of first instance shall not exceed 14 days.
2. Time limits referred to in paragraph 1 shall start to run from the date when any of the decisions referred to in Article 7, Article 10 and Article 12(2) are notified to the third-country national, or from another date to be determined by 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 is issued together with a return decision as referred to in Article 7, it shall be appealed against jointly with that return decision, before the same judicial authority and within the same judicial proceedings and the same time limits. Where an entry ban 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. The enforcement of the decisions issued pursuant to Article 7, Article 10 and Article 12(2) shall be suspended until 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.
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 enforcement of a return decision shall not be suspended unless the third-country national requests suspension and a competent judicial authority decides to grant it, taking due account of the specific circumstances of the individual case.
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 preparing the return 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;
 - b. the third-country national avoids or hampers 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 Article 31.
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 to the third-country national in a language that the third-country national understands or may reasonably be presumed to understand.
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, 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 laid down in Article 29 are fulfilled and it is necessary to ensure successful return.

2. When it appears that the conditions laid down in Article 29 are no longer fulfilled, detention shall cease to be justified and the third-country national shall be released. Such release shall not preclude the application of measures to prevent the risk of absconding in accordance with Article 31.
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.
4. The expiry of the maximum detention period in accordance with paragraph 3 does not preclude the application of measures in accordance with Article 31.

Article 33

Review of detention orders

1. Detention shall be reviewed at regular intervals of time and at least every three months either on application by the third-country national concerned or *ex officio*.
2. Detention of unaccompanied minors shall be reviewed *ex officio* at regular intervals of time and at least every three months.
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 judicial review of the lawfulness of detention be concluded as speedily as possible after the beginning of the detention, and no later than 15 days thereafter; or
 - b. the third-country national concerned be granted the right to initiate proceedings by means of which the lawfulness of detention is subject to judicial review, to be concluded as speedily as possible 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 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 be kept separated from ordinary prisoners.
2. Detained third-country nationals shall have access to open-air space.
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

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.

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. 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 minors and families

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 shall 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 and of their gender, including appropriate hygiene, food, health services and other infrastructure.
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 in the format most appropriate to the length of their detention.

Chapter VI READMISSION

Article 36

Readmission procedure

1. Upon issuance of an enforceable return decision and notwithstanding Article 28, competent authorities, with the support of Frontex where applicable, shall systematically and without undue delay initiate the readmission 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) 2016/1953⁵⁰.

⁵⁰ 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,

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.

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 communicate to each other, on request, information concerning a person within the scope of this Regulation for the purpose of carrying out the return procedure, the readmission procedure and providing 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

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>).

the European Parliament and of the Council⁵¹ or through supplementary information in compliance with Regulation (EU) 2018/1860, such information shall be exchanged only through those means.

5. The requested data shall be adequate, relevant, accurate, limited to what is necessary for the intended purpose and shall set out the grounds on which it is based.
6. The information referred to in paragraph 3 shall 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 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 residence documents or visas 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 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;
 - 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 weeks.

⁵¹ 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>).

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.

Article 39

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

1. Without prejudice to Articles 40 and 41, data referred to in Article 38(6), points (a) to (h) may be processed and transferred by a competent authority and, where applicable, Frontex to a third country's competent authority 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 third country provided it is necessary for the purposes of carrying out the readmission 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 readmission and reintegration

1. 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 country's competent authority 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 Council⁵² if it is punishable by a custodial sentence or a

⁵² 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>).

- 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 carrying out the readmission procedure referred to in Article 36;
 - 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;
 - 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;
 - e. prior to the transfer, the competent authority and, where applicable, Frontex, has satisfied itself 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 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 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 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;
 - 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;
 - f. 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, 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 Council⁵³ 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.
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

⁵³ 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>).

1. Cooperation and assistance between competent authorities designated in accordance with Article 43 shall 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;
 - c. leading or supporting the policy dialogue and exchanges with the authorities of third countries for the purpose of facilitating readmission;
 - 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;
 - 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.

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 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.

Article 46

Support for return and reintegration

1. Member States shall establish return and reintegration counselling structures to provide third-country nationals with information and guidance about return and reintegration options, including programmes referred to in paragraph 3, as early in the return process as possible. Return and reintegration counselling may be combined with other counselling in the context of other migration procedures in the Member State.
2. Member States shall ensure that information about return and reintegration is 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 return and reintegration and shall, as a general rule, make use of the programmes provided by the Union. National programmes and reintegration assistance provided by the Union shall consist of logistical, financial and other material or in-kind assistance or incentives,

including reintegration assistance in the country of return, provided to a third-country national.

4. Reintegration assistance shall not be an individual right and shall not constitute a prerequisite for the readmission procedure.
5. The assistance provided through the programmes for return and reintegration shall reflect the level of cooperation and compliance of the third-country national and may decrease over time. The following criteria shall 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.
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 33(3) and 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 Council⁵⁴, 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;
 - 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

⁵⁴ 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>).

1. By [date] 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 for drawing up its report no later than nine months before the time limit expires.

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) 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.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

[...] [...]

LEGAL, FINANCIAL AND DIGITAL STATEMENT

1.	FRAMEWORK OF THE PROPOSAL/INITIATIVE.....	3
1.1.	Title of the proposal/initiative.....	3
1.2.	Policy area(s) concerned	3
1.3.	Objective(s).....	3
1.3.1.	General objective(s).....	3
1.3.2.	Specific objective(s).....	3
1.3.3.	Expected result(s) and impact	3
1.3.4.	Indicators of performance	3
1.4.	The proposal/initiative relates to:.....	4
1.5.	Grounds for the proposal/initiative	4
1.5.1.	Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative	4
1.5.2.	Added value of EU involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this section 'added value of EU involvement' is the value resulting from EU action, that is additional to the value that would have been otherwise created by Member States alone.	4
1.5.3.	Lessons learned from similar experiences in the past.....	4
1.5.4.	Compatibility with the multiannual financial framework and possible synergies with other appropriate instruments.....	5
1.5.5.	Assessment of the different available financing options, including scope for redeployment.....	5
1.6.	Duration of the proposal/initiative and of its financial impact	6
1.7.	Method(s) of budget implementation planned	6
2.	MANAGEMENT MEASURES.....	8
2.1.	Monitoring and reporting rules	8
2.2.	Management and control system(s)	8
2.2.1.	Justification of the budget implementation method(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed.....	8
2.2.2.	Information concerning the risks identified and the internal control system(s) set up to mitigate them.....	8
2.2.3.	Estimation and justification of the cost-effectiveness of the controls (ratio between the control costs and the value of the related funds managed), and assessment of the expected levels of risk of error (at payment & at closure).....	8
2.3.	Measures to prevent fraud and irregularities.....	9
3.	ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE.....	10
3.1.	Heading(s) of the multiannual financial framework and expenditure budget line(s) affected.....	10

3.2.	Estimated financial impact of the proposal on appropriations.....	12
3.2.1.	Summary of estimated impact on operational appropriations.....	12
3.2.1.1.	Appropriations from voted budget.....	12
3.2.1.2.	Appropriations from external assigned revenues.....	17
3.2.2.	Estimated output funded from operational appropriations.....	22
3.2.3.	Summary of estimated impact on administrative appropriations.....	24
3.2.3.1.	Appropriations from voted budget.....	24
3.2.3.2.	Appropriations from external assigned revenues.....	24
3.2.3.3.	Total appropriations.....	24
3.2.4.	Estimated requirements of human resources.....	25
3.2.4.1.	Financed from voted budget.....	25
3.2.4.2.	Financed from external assigned revenues.....	26
3.2.4.3.	Total requirements of human resources.....	26
3.2.5.	Overview of estimated impact on digital technology-related investments.....	28
3.2.6.	Compatibility with the current multiannual financial framework.....	28
3.2.7.	Third-party contributions.....	28
3.3.	Estimated impact on revenue.....	29
4.	DIGITAL DIMENSIONS.....	29
4.1.	Requirements of digital relevance.....	30
4.2.	Data.....	30
4.3.	Digital solutions.....	31
4.4.	Interoperability assessment.....	31
4.5.	Measures to support digital implementation.....	32

Agence Europe



1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

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 European Union.

1.2. Policy area(s) concerned

Migration

1.3. Objective(s)

1.3.1. General objective(s)

The general objective of this proposal is to increase the efficiency of the return process by providing Member States with clear, modern, simplified and common rules for managing effectively returns and make the process clearer both for the competent authorities and the third-country national concerned.

1.3.2. Specific objective(s)

Specific objective No 1

Create a more unified approach among Member States rules on returns, overcome divergent practices by establishing a common EU system for returns and avoid that return rules can be circumvented by a third-country nationals.

Specific objective No 2

Streamline the return procedure, make return rules easy and efficient to apply, while improving clarity, including on procedural safeguards.

Specific objective No 3

Incentivise cooperation by the third-country nationals concerned through a combination of obligations, incentives to cooperate and consequences for non-cooperation.

1.3.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

An improved legal architecture designed to expedite and streamline return processes while safeguarding fundamental rights. The proposal seeks to enhance procedural efficiency through common rules and to introduce procedural simplification, and facilitating the recognition and enforcement of return decisions issued by other Member States, fostering greater coherence and clarity in implementation. It is expected to speed up the return process with an end result of increasing the number of returns.

The REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common system for the return of third-country nationals staying illegally in the European Union responds to the political calls for a new approach to manage returns in the EU.

It will ensure that key novelties such as the obligation to cooperate, assessing the risk of absconding, detention and alternatives to detention are coherently addressed in all Member States. While in the short-term this will require adaptation in some Member

States' practices, significant efficiency gains are expected over time with better clarity of the rules.

The initiative envisages that the key elements of Member States' return decisions shall be inserted in a common form called 'European Return Order' to support the recognition of return decisions and sending a strong signal to third country nationals and contributing to addressing secondary movements.

Obligations imposed on third-country nationals will be coherent in all Member States which will help to address some of the distortions in the current system where differences between Member States are being exploited by third-country nationals. The Regulation is expected to be the base for a more joined-up return system at EU-level, directly applicable and addressed to Member States, the Union, Agencies and the third-country nationals. The proposal will facilitate better and more joined-up and strategic use of Frontex support on return, for example, in the context of joint return operations. The initiative establishes a common procedural approach to the submission of readmission requests and increases transparency and coordination in the approach towards third countries on readmission. The proposal introduces the possibility of a standard readmission application form, specifying the format and the essential elements of a readmission application, notably the request for confirmation of nationality and the request for issuance of travel documents. This will foster a cohesive cooperation approach to third countries' authorities, thereby contributing to facilitating, and will facilitate and improve the quality of data collection, providing for better evidence for decision making. The Regulation aims to support the implementation of the Pact. It will reconcile the need for common EU rules on return and granting a certain degree of flexibility to the Member States. It will allow for adjustments to fit the national realities and the national contexts of migration management, particularly when it comes to obligation to cooperate, consequences of non-cooperation, choice and modalities of alternatives to detention and procedural aspects of the process, including the appeal.

This proposal fully respects human dignity, the right to life, the prohibition of torture and of inhuman and degrading treatment or punishment, the right of liberty and security, the right to protection of personal data, as well as protection in the event of removal notably the principle of *non-refoulement*, non-discrimination and the right to an effective remedy.

The right to liberty and freedom of movement is protected, given that detention is justified only on specific grounds clearly defined in the Regulation. The Regulation also frames the use of alternatives to detention, bearing in mind that alternatives to detention are less invasive than detention but nevertheless entail restrictions of liberty.

This Regulation foresees that the needs of vulnerable persons including minors shall be duly taken in to account in the return process. This Regulation guarantees that the best interests of the child shall be of primary consideration when applying this Regulation. Special rules apply for minors in the return process, especially as regards detention conditions. Moreover, some of the key novelties brought by the new Pact legislation, notably when it comes to age assessments of minors and the practice of appointing a representative to accompany an unaccompanied minor are now being introduced also for the return procedure through this Regulation.

1.3.4. *Indicators of performance*

Specify the indicators for monitoring progress and achievements.

By [date] 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.

The following main indicators will allow for the monitoring of the implementation and performance of the specific objectives.

Specific objective 1: Create a more unified approach among Member States rules on returns, overcome divergent practices and the need for interpretation by establishing a common EU system for returns and avoid that return rules can be circumvented by third-country nationals

- number of third-country nationals subject to recognised return decisions issued by another Member State;
- yearly share of joint return operations from the total return by charter operations organised with Frontex assistance.

Specific objective No 2: Streamline the return procedure, make return rules easy and efficient to apply, while updating improving definitions and provide more clarity, including on for the procedural safeguards.

statistical data on increased return rates.

Specific objective No 3: Incentivise cooperation by the third-country nationals concerned through a combination of obligations, incentives to cooperate and consequences for non-cooperation.

- yearly data on effective returns (breakdown by forced and voluntary)
- number of third-country nationals subject to alternative measures to detention.
- number of third country nationals subject to detention.

1.4. The proposal/initiative relates to:

- a new action
- a new action following a pilot project / preparatory action⁵⁵
- the extension of an existing action
- a merger or redirection of one or more actions towards another/a new action

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

Following the adoption of the proposal by the co-legislators (potential target in 2026), the roll-out of the implementation of the legislative initiative, requires technical and procedural measures at EU and national level, which should start when the legislation enters into force.

The implementation of the Regulation will require the adoption of two implementing acts within 3 to 6 months from the date of application of the Regulation - one to establish common form for the European Return Order and one to establish the standard form to be used to submit readmission applications.

⁵⁵

As referred to in Article 58(2), point (a) or (b) of the Financial Regulation.

Member States shall provide Frontex with the necessary information on planned needs for support to ensure that Frontex can strategically plan its support.

The relevant resources of Frontex – in particular human and financial resources – should be scaled up over time in line with the enhancement of the mandate and increase in demand for support on returns. Following entry into application, the implementation of the activities will be rolled-out in a gradual timeline, to follow the expected gradual increase of demands on Frontex’s services and activities, as well as necessary time for absorption of new resources.

- 1.5.2. *Added value of EU involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this section 'added value of EU involvement' is the value resulting from EU action, that is additional to the value that would have been otherwise created by Member States alone.*

Reasons for action at EU level (ex-ante)

The safe and dignified return of third-country nationals with no right to stay is an essential element of the EU’s comprehensive approach to asylum and migration. Effective return is crucial for upholding the credibility of migration and asylum policies. At EU level, return policy is regulated by Directive 2008/115/EC⁵⁶ (hereinafter 'the Return Directive'). Several challenges currently undermine the efficiency and effectiveness of return, ranging from inefficient procedures at national level to insufficient cooperation from third countries in readmitting their nationals. Despite substantial efforts at political and operational level, at present, return is falling well short of a satisfactory level of implementation: only around 20% of third-country nationals ordered to leave the Union, actually leave.

This Regulation seeks to equip all Member States with seamless, efficient procedures and to avoid that third-country nationals move between Member States for the purpose of frustrating the return process.

The new procedures would be governed by the same rules, regardless of the Member State applying them, to ensure their efficiency as well as to ensure clarity and legal certainty for the individual.

Member States cannot individually establish common rules to reduce incentives for unauthorised movements between them. Therefore, the objectives of this proposal cannot be sufficiently achieved by the Member States and can, by reason of the scale and effects of this Regulation, be better achieved at Union level. In accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union, the Union must therefore act and may adopt measures.

Expected generated EU added value (ex-post)

The Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common system for the return of third-country

⁵⁶ Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals

nationals staying illegally in the European Union will respond to the political calls for a new approach to manage returns in the EU.

It presents a revamped legal framework that updates the return legislation dating from 2008, aligns it with developments made in the migration field, including the Pact on Migration and Asylum, and makes it fit for today's needs and challenges. It seeks to bring simplification and enhance the efficiency of the return process while ensuring full adherence to fundamental rights, thereby reinforcing the EU's commitment to a balanced and credible migration policy. The proposal seeks to equip Member States with the necessary tools to ensure effective returns of third-country nationals with no legal right to stay in the Union, using the opportunities of EU-level cooperation to the full. Minimum safeguards for the rights of affected third-country nationals would also be harmonised, encouraging greater mutual trust in Member States' return systems. The fundamental rights of returnees are safeguarded through clear procedural safeguards, ensuring that return decisions are subject to scrutiny, including the right to appeal and ensuring the respect of the principle of non-refoulement, with due attention to vulnerable persons and the best interests of the child. The proposal is expected to speed up the return process with an end result of increasing the number of returns.

1.5.3. *Lessons learned from similar experiences in the past*

Since the adoption of the Return Directive in 2008, the area of freedom, security and justice and the Union's migration policy has seen major reform, shifting from establishing minimum standards to enhancing coherence and operational practice across the EU. In response, a 2018 proposal to revise the Return Directive⁵⁷ sought legal framework updates and efficiency improvements. However, while the Council reached a partial general approach in 2019⁵⁸, internal discussions within the European Parliament did not lead to an agreed position⁵⁹ and negotiations remained at a standstill during most of the last Commission's mandate.

In September 2020, the Commission proposed the Pact on Migration and Asylum⁶⁰. One of the key objectives of the Pact is the establishment of a common EU system for returns that ensures effective returns in full respect of fundamental rights. On 14 May 2024 the Pact legislation was adopted. One of the key objectives of the Pact is the establishment of a common EU system for returns that ensures effective returns in full respect of fundamental rights.

⁵⁷ 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), COM/2018/634 final

⁵⁸ Council of the European Union (2019), Migration Policy: Council Agrees Partial Negotiating Position on Return Directive, Council of the European Union, Brussels, <https://www.consilium.europa.eu/en/press/2019/06/07/migration-policy-council-agrees-partial-negotiating-position-on-return-directive>

⁵⁹ European Parliament, Proposal for a Recast of the Return Directive, Legislative Train Schedule, European Parliament, Brussels, <https://www.europarl.europa.eu/legislative-train/theme-a-new-era-for-european-defence-and-security/file-proposal-for-a-recast-of-the-return-directive>

⁶⁰ European Commission (2020), The Pact on Migration and Asylum, European Commission, Brussels, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en.

1.5.4. *Compatibility with the multiannual financial framework and possible synergies with other appropriate instruments*

The European Council of October 2024 called on the Commission to put forward a new return proposal as a matter of urgency.

The 2024-2029 Political Guidelines of President von der Leyen announced the presentation of a new legislative proposal on returns.

The proposal follows up on the Pact on Migration and Asylum which recognised returns as an essential part of the comprehensive approach to migration.

The investment required at the EU level and Member States' level are compatible with the 2021-2027 Multiannual Financial Framework. The investments required at EU level and Member States level are eligible under the Asylum and Migration Funds (AMIF) during the 2021-2027 multiannual financial framework (MFF). Funding beyond the year 2027 will fall within the negotiations of the next MFF.

1.5.5. *Assessment of the different available financing options, including scope for redeployment*

Within the current MFF, the investment required at the Member States' level can be met by redeployment within the existing programme AMIF. The costs covering the period after 2027 are indicative and do not prejudice the available budget for the initiative under the future MFF. However, the proposal will also create synergies with the activities of Union agencies, notably with the European Border and Coast Guard Agency. In the last years, the trend has been towards an exponential growth on the demand from Member States on Frontex assistance on returns, leading to yearly budget reinforcements above the levels initially programmed. Since the proposal will introduce important enhancement of the level of Frontex activities in the area of return the proposal needs to be backed by financial and human reinforcements. The appropriations needed to finance this enhancement have not been planned under the Frontex MFF allocation, as this is a new proposal for which amounts were not known at the time of the proposal. It is proposed to reinforce Frontex return budget, if needed, in 2025, 2026 and 2027 by deploying resources internally within the Frontex budget depending on actual consumption. Funding beyond the year 2027 will fall within the negotiations of the next MFF.

1.6 Duration of the proposal/initiative and of its financial impact

limited duration

- in effect from [DD/MM]YYYY to [DD/MM]YYYY
- financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

unlimited duration

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

1.7. Method(s) of budget implementation planned⁶¹

Direct management by the Commission

- by its departments, including by its staff in the Union delegations;
- by the executive agencies

Shared management with the Member States

Indirect management by entrusting budget implementation tasks to:

- third countries or the bodies they have designated
- international organisations and their agencies (to be specified)
- the European Investment Bank and the European Investment Fund
- bodies referred to in Articles 70 and 71 of the Financial Regulation
- public law bodies
- bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees
- bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees
- bodies or persons entrusted with the implementation of specific actions in the common foreign and security policy pursuant to Title V of the Treaty on European Union, and identified in the relevant basic act
- bodies established in a Member State, governed by the private law of a Member State or Union law and eligible to be entrusted, in accordance with sector-specific rules, with the implementation of Union funds or budgetary guarantees, to the extent that such bodies are controlled by public law bodies or by bodies governed by private law with a public service mission, and are provided with adequate financial guarantees in the form of joint and several liability by the controlling bodies or equivalent financial guarantees and which may be, for each action, limited to the maximum amount of the Union support.

⁶¹ Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: <https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx>.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The implementation and functioning of the Regulation will be reviewed and evaluated periodically through reporting.

Drawing on the statistics and information gathered from the structured processes and transparency mechanisms provided for under this Regulation, the Commission should carry out an evaluation of this Regulation within five years of the date of its entry into force, and then every 5 years thereafter. The Commission will report on the findings of the evaluation to the European Parliament and the Council.

Funding implemented under the direct and indirect management will be implemented under the AMF Thematic Facility, which also falls under the general monitoring and evaluation mechanism of AMF. Streamlined templates and rules will be established in order to collect indicators from the grant and contribution agreements' beneficiaries at the same pace as for the shared management, in order to ensure the disclosure of comparable data. When the Union contribution will be provided through shared management, the following rules shall apply: Funding implemented by Member States under shared management will follow the rules set out in Regulation (EU) 2021/1060 of 24 June 2021, referred further as the Common Provisions Regulation, in Regulation 2018/2016 (Financial Regulation) and in Regulation (EU) 2021/1147 of 7 July 2021 establishing the Asylum, Migration and Integration Fund, referred further as AMIF Regulation. In line with the Common Provision Regulation, each Member State has already established a management and control system for its programme to ensure the quality and the reliability of the monitoring system. Therefore, for shared management, a coherent and efficient reporting, monitoring and evaluation framework is in place. Member States are required to set up a monitoring committee to which the Commission may participate in advisory capacity. Monitoring committees will review all issues that affect programme progress towards achieving its objectives. For the HOME affairs funds, Member States submit to the Commission their annual performance reports on the implementation of the programme and the progress in achieving the milestones and targets. Such reports should also raise any issues affecting the performance of the programme and describe the action taken to address them.

As regards Frontex, the monitoring and reporting of the proposal will follow the principles outlined in European Border and Coast Guard Regulation⁶², Financial Regulation⁶³ and in line with the Common Approach on decentralised agencies. European Border and Coast Guard Agency must notably send each year to the Commission, the European Parliament and the Council a Single Programming Document containing multi-annual and annual work programmes and resources programming. The Document sets out the objectives, expected results and

⁶² 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

⁶³ Europol :
https://www.europol.europa.eu/sites/default/files/documents/decision_of_the_europol_management_board_on_the_adoption_of_the_financial_regulation_applicable_to_europol_.pdf

performance indicators to monitor the achievement of the objectives and the results. Frontex must also submit a Consolidated Annual Activity Report to the management board. This report notably includes information on the achievement of the objectives and results set out in the Single Programming Document. The report must also be sent to the Commission, the European Parliament and the Council.

2.2. Management and control system(s)

2.2.1. Justification of the budget implementation method(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

The control strategy will be based on the Financial Regulation and on the Common Procedures Regulation. For the part implemented through direct and indirect management under the thematic facility, the management and control system will build on the experience gained in the implementation of the current MFF.

For shared management, the Common Procedures Regulation builds on the management and control strategy in place for the 2014-2020 programming period but introduces some measures aimed at simplifying the implementation and reducing the control burden at the level of both beneficiaries and Member States.

Part of this proposal will be implemented via European Border and Coast Guard Agency budget, through indirect management.

Pursuant to the principle of sound financial management, the budget of European Border and Coast Guard Agency shall be implemented in compliance with effective and efficient internal control. European Border and Coast Guard Agency is therefore bound to implement an appropriate control strategy coordinated among appropriate actors involved in the control chain.

Regarding ex-post controls, European Border and Coast Guard Agency, as a decentralised agency, is notably subject to:

- internal audit by the Internal Audit Service of the Commission;
- annual reports by the European Court of Auditors, giving a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions;
- annual discharge granted by the European Parliament;
- possible investigations conducted by OLAF to ensure, in particular, that the resources allocated to agencies are put to proper use.

As partner DG to European Border and Coast Guard Agency, DG HOME will implement its Control Strategy on decentralised agencies to ensure reliable reporting in the framework of its Annual Activity Report (AAR). While decentralised agencies have full responsibility for the implementation of their budget, DG HOME is responsible for regular payment of annual contributions established by the EU Budgetary Authorities.

Finally, the European Ombudsman provides a further layer of control and accountability at European Border and Coast Guard Agency.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

For the shared management part, the general risks in relation to the implementation of the current programmes concerns the under-implementation of the Fund by the

Member States and the possible errors derived from the complexity of rules and weaknesses in management and control systems. The draft CPR simplifies the regulatory framework by harmonising the rules and management and control systems across the different Funds implemented under shared management. It simplifies also the control requirements (e.g. risk-based management verifications, possibility for proportionate control arrangements based on national procedures, limitations of audit work in terms of timing and/or specific operations).

For the budget implemented by European Border and Coast Guard Agency, a specific Internal Control Framework based on the Internal Control Framework of the European Commission is required. The Single Programming Document must provide information on the internal control systems, while the Consolidated Annual Activity Report (CAAR) must contain EN 59 EN information on the efficiency and effectiveness of the internal control systems, including as regards risk assessment.

Moreover, the European Data Protection Supervisor and Frontex's data protection officer - DPO (an independent function attached directly to the Management Board) supervise Frontex's processing of personal data.

Finally, as partner DG of European Border and Coast Guard Agency, DG HOME runs an annual risk management exercise to identify and assess potential high risks related to agencies' operations. Risks considered as critical are reported annually in DG HOME management plan and are accompanied by an action plan stating the mitigating action.

At operational level the following risks are identified:

- strained operational resources due to increasing operational needs of Member States;
- lack of adequate levels of financial and human resources to match operational needs.

2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio between the control costs and the value of the related funds managed), and assessment of the expected levels of risk of error (at payment & at closure)*

For the shared management part, the cost of controls is expected to potentially increase for Member States. With the risk-based approach to management and controls being introduced in the draft CPR coupled with enhanced drive to adopt simplified cost options (SCOs), the cost of controls for Member States is expected to be reduced. For European Border and Coast Guard Agency, the ratio of "control costs/value of the related funds managed" is reported on by the Commission. The 2023 AAR of DG HOME reports 0,08% for this ratio in relation to Indirect Management Entrusted Entities and Decentralised Agencies, including European Border and Coast Guard Agency.

2.3. Measures to prevent fraud and irregularities

DG HOME will continue to apply its Anti-Fraud Strategy in line with the Commission's Anti-Fraud Strategy (CAFS) in order to ensure inter alia that its internal anti-fraud related controls are fully aligned with the CAFS and that its fraud risk management approach is geared to identify fraud risk areas and adequate responses.

As regards shared management, Member States shall ensure the legality and regularity of expenditure included in the account submitted to the Commission. In this context, Member States shall take all required actions to prevent, detect and correct irregularities.

For indirect management, the measures related to combating fraud, corruption and any other illegal activities are outlined, inter alia, in article 117 of European Border and Coast Guard Regulation. Frontex shall notably participate in fraud prevention activities of the European Anti-fraud Office and inform the Commission without delay on cases of presumed fraud and other financial irregularities – in line with its internal anti-fraud strategy.

Moreover, as partner DG, DG HOME has developed and implemented its own anti-fraud strategy on the basis of the methodology provided by OLAF. Decentralised agencies, including European Border and Coast Guard Agency, fall within the scope of the strategy.

Agence Europe

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. ⁶⁴	from EFTA countries ⁶⁵	from candidate countries and potential candidates ⁶⁶	From other third countries	other assigned revenue
4	10 01 01 00	Diff./Non-diff.	NO	NO	NO	NO
4	10 02 01 00	Diff./Non-diff.	NO	NO	NO	NO
4	11 10 01 00	Diff./Non-diff.	NO	NO	NO	NO

⁶⁴ Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

⁶⁵ EFTA: European Free Trade Association.

⁶⁶ Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below

3.2.1.1. Appropriations from voted budget

EUR million (to three decimal places)

Heading of multiannual financial framework			4					
DG HOME			Year	Year	Year	TOTAL MFF		
			2025	2026	2027	2021-2027		
Operational appropriations								
10 02 01 00	Commitments	(1a)	0,000	75,044	122,240	197,284		
	Payments	(2a)	0,000	8,005	8,514	16,519		
Appropriations of an administrative nature financed from the envelope of specific programmes								
10 01 01 00		(3)	0,000	0,832	1,610	2,442		
TOTAL appropriations			Commitments	=1a+1b+3	0,000	75,876	123,850	199,726
for DG HOME			Payments	=2a+2b+3	0,000	8,837	10,124	18,961

Agency: European Border and Coast Guard Agency (Frontex)	Year	Year	Year	TOTAL
	2025	2026	2027	2021 - 2027
Budget line: 11 10 01 00 / EU Budget contribution to the agency	0,148	0,599	1,124	1,871

It is proposed to reinforce Frontex's return budget, if needed, in 2025, 2026 and 2027 by deploying resources internally within the Frontex's budget, depending on actual consumption. The internal re-deployment may be compensated by a reduction of the envelope of the following programme AMIF / budget line: 10 02 01 00 / in the years: 2025-2027.

			Year	Year	Year	TOTAL MFF 2021-2027
			2025	2026	2027	
TOTAL operational appropriations (including contribution to decentralised agency)	Commitments	(4)	0,148	75,643	123,364	199,155
	Payments	(5)	0,148	8,604	9,637	18,390
TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)	0,000	0,832	1,610	2,442
TOTAL appropriations under HEADING 4	Commitments	=4+6	0,148	76,475	124,974	201,597
of the multiannual financial framework	Payments	=5+6	0,148	9,436	11,247	20,832
TOTAL appropriations under Heading 1 to 6	Commitments	=4+6	0,148	76,475	124,974	201,597
of the multiannual financial framework (Reference amount)	Payments	=5+6	0,148	9,436	11,247	20,832

Heading of multiannual financial framework	7	'Administrative expenditure'			
DG HOME		Year	Year	Year	TOTAL MFF 2021-2027
		2025	2026	2027	

Human resources		0,958	1,146	1,334	3,438
Other administrative expenditure		0,000	0,000	0,000	0,000
TOTAL DG HOME	Appropriations	0,958	1,146	1,334	3,438
TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)	0,958	1,146	1,334	3,438

		Year	Year	Year	TOTAL MFF 2021-2027
		2025	2026	2027	
TOTAL appropriations under HEADINGS 1 to 7	Commitments	1,106	77,621	126,308	205,035
of the multiannual financial framework	Payments	1,106	10,582	12,581	24,270

3.2.2. *Estimated output funded from operational appropriations (not to be completed for decentralised agencies)*

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs			Year		Year		Year		TOTAL	
			2025		2026		2027		2021-2027	
OUTPUTS										
	Type	Average cost	No	Cost	No	Cost	No	Cost	No	Cost
SPECIFIC OBJECTIVE No 1 <i>Strengthen the European dimension in managing returns and simplify and increase effectiveness of the return process</i>										
- Establish a common form for european return order						0,087			0	0,087
- Establish a standard form for readmission applications						0,087				0,087
Subtotal for specific objective No 1			0	0,000	0	0,174	0	0,000	0	0,174
SPECIFIC OBJECTIVE No 2 Streamline the return procedure										
- Increased number of forced returns						17,070		34,140	0	51,210
Subtotal for specific objective No 2			0	0,000	0	17,070	0	34,140	0	51,210
SPECIFIC OBJECTIVE No 3 Incentivise cooperation by the returnee										
- Incentives for voluntary returns						2,800		5,600	0	8,400
- Detention capacity						55,000		82,500	0	137,500
Subtotal for specific objective No 3			0	0,000	0	57,800	0	88,100	0	145,900
TOTALS			0	0,000	0	75,044	0	122,240	0	197,284

3.2.3. Summary of estimated impact on administrative appropriations

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below

3.2.3.1. Appropriations from voted budget

VOTED APPROPRIATIONS	Year	Year	Year	TOTAL 2021 - 2027
	2025	2026	2027	
HEADING 7				
Human resources	0,958	1,146	1,334	3,438
Other administrative expenditure	0,000	0,000	0,000	0,000
Subtotal HEADING 7	0,958	1,146	1,334	3,438
Outside HEADING 7				
Human resources	0,000	0,805	1,610	2,415
Other expenditure of an administrative nature	0,000	0,027	0,000	0,027
Subtotal outside HEADING 7	0,000	0,832	1,610	2,442
TOTAL	0,958	1,978	2,944	5,880

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together, if necessary, with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

3.2.4. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources
- The proposal/initiative requires the use of human resources, as explained below

3.2.4.1. Financed from voted budget

Estimate to be expressed in full-time equivalent units (FTEs)⁶⁷

VOTED APPROPRIATIONS	Year 2025	Year 2026	Year 2027
• Establishment plan posts (officials and temporary staff)			
20 01 02 01 (Headquarters and Commission's Representation Offices)	4	5	6
20 01 02 03 (EU Delegations)	0	0	0
01 01 01 01 (Indirect research)	0	0	0
01 01 01 11 (Direct research)	0	0	0
Other budget lines (specify)	0	0	0

⁶⁷ Please specify below the table how many FTEs within the number indicated are already assigned to the management of the action and/or can be redeployed within your DG and what are your net needs.

• External staff (inFTEs)				
20 02 01 (AC, END from the 'global envelope')		2	2	2
20 02 03 (AC, AL, END and JPD in the EU Delegations)		0	0	0
Admin. Support line [XX.01.YY.YY]	- at Headquarters	0	0	0
	- in EU Delegations	0	5	10
01 01 01 02 (AC, END - Indirect research)		0	0	0
01 01 01 12 (AC, END - Direct research)		0	0	0
Other budget lines (specify) - Heading 7		0	0	0
Other budget lines (specify) - Outside Heading 7		0	0	0
TOTAL		6	12	18

The human resources necessary for the initiative are composed of 6 AD officials and 12 external staff (10 AC and 2 SNE).

At the moment, DG HOME has 4 AD officials and 2 external staff (SNE) working (FTE) on this legislative proposal for return matters. As already mentioned and explained in DG HOME's submission for the DB 2026, 3 further AD officials are needed to carry on the negotiations and follow up on the implementation of this new initiative and future new ecosystem for digitalisation of the return, readmission and reintegration process. Out of the 3 AD requested in the DB 2026, 2 AD officials are necessary for supporting the negotiations/preparations ahead of entry into force of the regulation, drafting implementing/delegated acts and have been mentioned in the Legal Financial and Digital Statement of the current proposal. DG Home clarified in the DG submission why internal redeployments are currently not a feasible option (DG Home have used them, as far as possible already, to align priorities with necessary staff in other areas of work). This proposal requires also 10 AC to be placed in the EU delegations in third countries which cannot be redeployed within DG HOME and have to be allocated to DG HOME in addition to the annual allocation.

The staff required to implement the proposal (in FTEs):

	Current staff available in the Commission services	Additional staff*			
		To be financed under Heading 7 or Research	To be financed from BA line	To be financed from fees	Exceptionally, from the Commission redeployment pool after orientation from the CMB*
Establishment plan posts	4		N/A		2
External staff (CA, SNEs, INT)	2		10 AC		

Description of tasks to be carried out by:

Officials and temporary staff	<ul style="list-style-type: none"> - 2 staff: Support to negotiations of the legislative proposal in the European Parliament and the Council - 1 staff: Drafting delegated and implementing acts + negotiations - 2 staff: Support to Member States and Frontex in implementing - 1 staff: Drafting a handbook
External staff	<ul style="list-style-type: none"> - 1 SNE: Support to negotiations of the legislative proposal in the European Parliament and the Council - 1 SNE: Drafting delegated and implementing acts + negotiations, Drafting a handbook and Support to Member States and Frontex in implementing - 10 AC: Support to Member States and Frontex in implementing readmission in third countries

3.2.5. Overview of estimated impact on digital technology-related investments

Compulsory: the best estimate of the digital technology-related investments entailed by the proposal/initiative should be included in the table below.

Exceptionally, when required for the implementation of the proposal/initiative, the appropriations under Heading 7 should be presented in the designated line.

The appropriations under Headings 1-6 should be reflected as “Policy IT expenditure on operational programmes”. This expenditure refers to the operational budget to be used to re-use/ buy/ develop IT platforms/ tools directly linked to the implementation of the initiative and their associated investments (e.g. licences, studies, data storage etc). The information provided in this table should be consistent with details presented under Section 4 “Digital dimensions”.

TOTAL Digital and IT appropriations	Year	Year	Year	Year	TOTAL MFF 2021 - 2027
	2024	2025	2026	2027	
HEADING 7					
IT expenditure (corporate)	0.000	0.000	0.000	0.000	0.000
Subtotal HEADING 7	0.000	0.000	0.000	0.000	0.000
Outside HEADING 7					
Policy IT expenditure on operational programmes	0.000	0.000	0.000	0.000	0.000
Subtotal outside HEADING 7	0.000	0.000	0.000	0.000	0.000
TOTAL	0.000	0.000	0.000	0.000	0.000

3.2.6. Compatibility with the current multiannual financial framework

The proposal/initiative:

- can be fully financed through redeployment within the relevant heading of the multiannual financial framework (MFF)

The costs covered by AMIF and Frontex will be financed within the existing MFF.

- requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation

Explain what is required, specifying the headings and budget lines concerned, the corresponding amounts, and the instruments proposed to be used.

- requires a revision of the MFF

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.7. Third-party contributions

The proposal/initiative:

- does not provide for co-financing by third parties
- provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year 2024	Year 2025	Year 2026	Year 2027	Total
Specify the co-financing body					
TOTAL appropriations co-financed					

3.2.8 Estimated human resources and the use of appropriations required in a decentralised agency

Staff requirements (full-time equivalent units)

Agency: European Border and Coast Guard Agency (Frontex)	Year	Year	Year
	2025	2026	2027
Temporary agents (AD Grades)	2	4	7
Temporary agents (AST grades)	0	1	1
<i>Temporary agents (AD+AST) subtotal</i>	2	5	8
Contract staff	0	1	1
Seconded National Experts	0	1	2
<i>Contract agents and SNE subtotal</i>	0	2	3
TOTAL staff	2	7	11

Appropriations covered by the EU budget contribution in EUR million (to three decimal places)

Agency: European Border and Coast Guard Agency (Frontex)	Year	Year	Year	TOTAL 2021 - 2027
	2025	2026	2027	
Title 1: Staff expenditure	0,148	0,599	1,124	1,871
Title 2: Infrastructure and operating expenditure				0,000
Title 3: Operational expenditure				0,000
TOTAL of appropriations covered by the EU Budget	0,148	0,599	1,124	1,871

Overview/summary of human resources and appropriations (in EUR million) required by the proposal/initiative in a decentralised agency

Agency: European Border and Coast Guard Agency (Frontex)	Year	Year	Year	TOTAL 2021 - 2027
	2025	2026	2027	
Temporary agents (AD+AST)	2	5	8	
Contract agents	0	1	1	
Seconded National Experts	0	1	2	
Total staff	2	7	11	
Appropriations covered by the EU Budget	0,148	0,599	1,124	1,871
Appropriations covered by fees	0,000	0,000	0,000	0,000
Appropriations co-financed (if applicable)	0,000	0,000	0,000	0,000
TOTAL appropriations	0,148	0,599	1,124	1,871

It is proposed to reinforce Frontex return budget, if needed, in 2025, 2026 and 2027 by deploying resources internally within the Frontex budget depending on actual consumption. Funding beyond the year 2027 will fall within the negotiations of the next MFF.

3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.

- The proposal/initiative has the following financial impact:
 - on own resources
 - on other revenue
 - please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative ⁶⁸			
		Year 2024	Year 2025	Year 2026	Year 2027
Article					

For assigned revenue, specify the budget expenditure line(s) affected.

[...]

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[...]

4. DIGITAL DIMENSIONS

4.1. Requirements of digital relevance

This initiative is closely linked to another separate upcoming initiative on digitalisation of case management in the area of return, readmission and reintegration (new common approach on returns). This separate upcoming initiative will thoroughly address the digitalisation of the processes established by the present initiative.

Reference to the requirement	Requirement description	Actor(s) affected or concerned by the requirement	High-level Processes	Categories
Article 42(1)(d)	The common Union system for returns must include digital systems for managing return, readmission and reintegration of third-country nationals.	Member States	Establishment of digital systems	Digital solution
Article 7(7)	Obligation to make available in the Schengen Information System the	Member States	Recording of data	Data

⁶⁸ As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20% for collection costs.

	European Return Order containing the main elements of the return decision.			
Article 21(5)	Member States must either establish in national law the method of communication with the third-country nationals 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 system developed and/or supported by the EU for the purpose of such communication.	Member States	Notification	Data
Article 36(4)	Information about the outcome of the request for confirmation of nationality and the travel document obtained must be uploaded in the Schengen Information System by the competent authority concerned. Such information and travel document must be made available to the competent authorities of other Member States upon request.	Member States	Recording of data	Data

4.2. Data

Type of data	Reference to the requirement(s)	Standard and/or specification (if applicable)
Data necessary for the application of the present initiative aiming to establish a common EU system for the return of third-country nationals staying illegally in the EU.	Article 42(1)(d)	n/a
Common form for return containing the main elements of	Article 7(7)	n/a

the return decision (European Return Order)		
Data communicated between competent authorities and third-country nationals.	Article 21(5)	n/a
Information about the outcome of the request for confirmation of nationality and the travel document.	Article 36(4)	n/a

Alignment with the European Data Strategy

Due to the type of data processed and the fact that such data will be processed for very specific purposes, the proposed initiative is of very limited relevance to the objective of achieving a genuine single market for data, which is the underpinning objective of the European Data Strategy.

Alignment with the European Data Strategy

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Alignment with the once-only principle

The once-only principle will be considered in the context of a separate initiative on digitalisation of case management in the area of return, readmission and reintegration. This separate initiative will address the question of automating the production of reliable and detailed statistics, with the view to improve policymaking. It will also touch upon the question of interoperability of existing and future digital systems in the field of return, readmission and reintegration

Data flows

Type of data	Reference(s) to the requirement(s)	Actor who provides the data	Actor who receives the data	Trigger for the data exchange	Frequency (if applicable)
Data necessary for the application of the present initiative aiming to establish a common Union system for returns of third-country nationals	Article 42(1)(d)	Member States	Member States	Obligation to comply with procedural requirements	n/a

staying illegally in the EU.					
Common form for return containing the main elements of the return decision (European Return Order).	Article 7(7)	Member States through the Schengen Information System.	Member States through the Schengen Information System.	Obligation to comply with procedural requirements	n/a
Data communicated between competent authorities and third-country nationals.	Article 21(5)	Member States	Third-country nationals	Need to communicate with third-country nationals	n/a
Information about the outcome of the request for confirmation of nationality and the travel document.	Article 36(4)	Member States through the Schengen Information System.	Member States through the Schengen Information System.	Obligation to comply with procedural requirements	n/a

4.3. Digital solutions

Digital solution	Reference(s) to the requirement(s)	Main mandated functionalities	Responsible body	How is accessibility catered for?	How is reusability considered?	Use of AI technologies (if applicable)
Digital systems for managing return, readmission and reintegration of third-country nationals.	Article 42(1)(d)	Such systems should manage return, readmission and reintegration of third-country nationals.	Member States	Such systems should be accessible to Member State's competent authorities.	Sharing and reuse of data will be detailed in the separate initiative on digitalisation of case management in the area of return, readmission and reintegration.	n/a

Digital systems for managing return, readmission and reintegration of third-country nationals.

Digital and/or sectorial policy (when these are applicable)	Explanation on how it aligns
<i>AI Act</i>	n/a – where relevant, explanation will be provided in the separate initiative on digitalisation of case management in the area of return, readmission and reintegration.
<i>EU Cybersecurity framework</i>	n/a – where relevant, explanation will be provided in the separate initiative on digitalisation of case management in the area of return, readmission and reintegration.
<i>eIDAS</i>	n/a – where relevant, explanation will be provided in the separate initiative on digitalisation of case management in the area of return, readmission and reintegration.

Single Digital Gateway and IMI	n/a – where relevant, explanation will be provided in the separate initiative on digitalisation of case management in the area of return, readmission and reintegration.
Others	n/a – where relevant, explanation will be provided in the separate initiative on digitalisation of case management in the area of return, readmission and reintegration.

4.4. Interoperability assessment

Digital public service or category of digital public services	Description	Reference(s) to the requirement(s)	Interoperable Europe Solution(s)(NOT APPLICABLE)	Other interoperability solution(s)
Immigration services	Competent authorities in charge of enforcing the rules on return.	Article 42(1)(d), Article 7(7), Article 21(5), Article 36(4).	n/a	The interoperability of the digital case management system referred to in the present initiative will be detailed in a separate initiative on digitalisation of case management in the area of return, readmission and reintegration.

Digital public service #1: Digital systems for managing return, readmission and reintegration of third-country nationals.

Assessment	Measure(s)	Potential remaining barriers (if applicable)
Alignment with existing digital and sectorial policies. The interoperability of the digital case management system referred to in the present initiative will be addressed in a separate initiative on digitalisation in the area of return, readmission and reintegration.	n/a	n/a

<p>Organisational measures for a smooth cross-border digital public services delivery. The governance of the digital case management system referred to in the present initiative will be addressed in a separate initiative on digitalisation in the area of return, readmission and reintegration.</p>	n/a	n/a
<p>Measures taken to ensure a shared understanding of the data. The sharing and reuse of data processed in the digital case management system referred to in the present initiative will be addressed in a separate initiative on digitalisation in the area of return, readmission and reintegration.</p>	n/a	n/a
<p>Use of commonly agreed open technical specifications and standards.</p>	n/a	n/a

4.5. Measures to support digital implementation

The role of the Commission and other actors (e.g. EU agencies) will be addressed in a separate initiative on digitalisation in the area of return, readmission and reintegration