

**Réponse de Mme [STRIK Tineke](#) aux échanges qu'elle a eu le mardi 4 juillet au Parlement européen avec Henriette ESSAMI-KHAULLOT, Ahmed MANAR, et Pietro EMILI**

Regarding the articles that could be relevant for your work in the Return Directive, I'm herewith sharing the link to the Return Directive as it is currently in force (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115> ) which already contains some potentially useful references in recital 12, article 6 (particularly the exception in subparagraph 4) and article 9.

(recital 12) The situation of third-country nationals who are staying illegally but who cannot yet be removed should be addressed. Their basic conditions of subsistence should be defined according to national legislation. In order to be able to demonstrate their specific situation in the event of administrative controls or checks, such persons should be provided with written confirmation of their situation. Member States should enjoy wide discretion concerning the form and format of the written confirmation and should also be able to include it in decisions related to return adopted under this Directive.

**Article 6 (Return Decision)**

1. Member States shall issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in paragraphs 2 to 5.
2. Third-country nationals staying illegally on the territory of a Member State and holding a valid residence permit or other authorisation offering a right to stay issued by another Member State shall be required to go to the territory of that other Member State immediately. In the event of non-compliance by the third-country national concerned with this requirement, or where the third-country national's immediate departure is required for reasons of public policy or national security, paragraph 1 shall apply.
3. Member States may refrain from issuing a return decision to a third-country national staying illegally on their territory if the third-country national concerned is taken back by another Member State under bilateral agreements or arrangements existing on the date of entry into force of this Directive. In such a case the Member State which has taken back the third-country national concerned shall apply paragraph 1.
4. Member States may at any moment decide to grant an autonomous residence permit 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 that event no return decision shall be issued. Where a return decision has already been issued, it shall be withdrawn or suspended for the duration of validity of the residence permit or other authorisation offering a right to stay.
5. If a third-country national staying illegally on the territory of a Member State is the subject of a pending procedure for renewing his or her residence permit or other authorisation offering a right to stay, that Member State shall consider refraining from issuing a return decision, until the pending procedure is finished, without prejudice to paragraph 6.
6. This Directive shall not prevent Member States from adopting a decision on the ending of a legal stay together with a return decision and/or a decision on a removal and/or entry ban in a single administrative or judicial decision or act as provided for in their national legislation, without prejudice to the procedural safeguards available under Chapter III and under other relevant provisions of Community and national law.

## Article 9 (Postponement of removal)

1. Member States shall postpone removal:

- (a) when it would violate the principle of non-refoulement, or
- (b) for as long as a suspensory effect is granted in accordance with Article 13(2).

2. Member States may postpone removal for an appropriate period taking into account the specific circumstances of the individual case. Member States shall in particular take into account:

- (a) the third-country national's physical state or mental capacity;
- (b) technical reasons, such as lack of transport capacity, or failure of the removal due to lack of identification.

3. If a removal is postponed as provided for in paragraphs 1 and 2, the obligations set out in Article 7(3) may be imposed on the third-country national concerned.

As mentioned, please also find below the wording of recital 22 (which is recital 12 in the current Return Directive) and article 11 (which is article 9 in the current Return Directive) in the recast Return Directive text that is currently being negotiated by the European Parliament. The exceptions listed in the current article 6 of the Return Directive are also maintained in the EP text that is currently being negotiated. As mentioned, the addition of temporary residence rights in recital 22 could be a useful hook for your advocacy work towards Member States. Please note though that these texts have not yet been fully agreed, which means we cannot guarantee that they will stay exactly like this in the EP position (and they would then also still have to be negotiated with the Council afterwards). I can keep you updated once we have finalized the negotiations to let you know if this additional reference in recital 12 made it into the EP position in the end. We also kindly ask you to please treat the below texts confidentially for now as they are still being discussed.

(recital 22) The situation of third-country nationals who are staying ~~illegally~~ **irregularly** but who cannot yet be removed should be addressed. Their ~~basic~~ conditions of subsistence should **be appropriate and should** be defined according to national legislation **and Member States should look for sustainable solutions for them, such as the granting of temporary residence rights**. In order to be able to demonstrate their specific situation in the event of administrative controls or checks, such persons should be provided with written confirmation of their situation. Member States should enjoy wide discretion concerning the form and format of the written confirmation and should also be able to include it in decisions related to return adopted under this Directive

## Article 11 - Postponement of removal

1. Member States shall postpone removal:

- (a) when it would violate the principle of non-refoulement, ~~or~~
- (b) for as long as a suspensory effect is granted in accordance with Article 16

2. Member States may postpone removal for an appropriate period taking into account the specific circumstances of the individual case. Member States shall in particular take into account:

- (a) the third-country national's physical state or mental capacity;

(b) technical reasons, such as lack of transport capacity, or failure of the removal due to lack of identification;

**(ba) *the third country national's participation in ongoing criminal, civil or administrative proceedings which require their presence, including as a victim, suspect or witness, in particular in relation to Directive 2009/52/EC, Directive 2011/36/EU, and Directive 2012/29/EU. (AM71, AM564 partly)***

3. If a removal is postponed as provided for in paragraphs 1 and 2, the obligations set out in Article 9 may be imposed on the third-country national concerned.