Council of the European Union
General Secretariat

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Brussels, 31 July 2025

WK 10354/2025 INIT

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Integration, Migration and Expulsion (IMEX Expulsion)
N° prev. doc.:	CM 3675/25, 6917/1/25 REV 1 + ADD 1-2
N° Cion doc.:	COM (2025) 101 FV2
Subject:	Regulation on establishing a common system for the return of third-country nationals staying illegally in the EU - Compilation of drafting proposals and comments on Articles 23 to 37

Delegations will find attached the compilation of Member States' drafting proposals and comments on Articles 23 to 37 of the draft Regulation on establishing a common system for the return of third-country nationals staying illegaly in the EU, which was discussed at the Working Party on Intergration, Migration and Expulsion (IMEX Expulsion) meeting on 8 and 9 July 2025.

Art 23 - 37 - New Return Regulation Deadline: ***21 July 2025***
From: IE, HR, AT, RO, NO, SK, IS, EE, CZ, LU, MT, LT, FR, PL, IT, EL, NL, CY, BE, SI, HU, LV, CH, ES, SE, BG, FI

Updated: 30/07/2025 16:12

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Please kindly provide your contributions in the table below.

Drafting suggestions: you may use '**track changes**'* or formatting (for example **bold-underline** for additions and ~~strike-through~~ for deletions, **where necessary, in a different colour**). *Track changes can only be connected once the cursor is placed in editable areas (Drafting or Comments columns).

To make it feasible to consolidate all contributions, the structure of the table must not be changed, so **no rows can be added or deleted.**

New provisions may only be added in any of the **'existing cells'.**

Name of document: please add the **two initials** of your delegation's country followed by a space (to the MS Word document name), followed by any optional text, for example, for Austria: **AT comments on … .docx**

Thank you for your cooperation!

Commission proposal	Drafting Suggestions and Comments
General Comments	EE (Comments): **Estonia** has the follwing comments on Articles 23-37 of the draft Return Regulation: SE (Comments): SE retains a scrutiny reservation for the proposal as a whole.

PUBLIC

Article 23 ***Availability for the return process***	IE (Comments): IE would welcome the addition of a provision allowing for the detention of TCN for the purpose of facilitating return, as is currently the case in IE. HR (Drafting Suggestions): Article 23 **Availability for the return ~~process~~procedure** HR (Comments): We sugesst to use the term **procedure.** AT (Comments): General remarks: Article 23 has enshrined residence requirements. In addition to para. 6, it would also be important to include cases where the ordering of measures according to lit. a-c is justified in order to prevent unfavorable jurisdiction. For example, it should be possible to order measures in accordance with a-c if the TCN does not comply with his/her obligation to cooperate, e.g. by not attending return counseling, has already absconded or does not have travel documents and has not made any

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	demonstrable effort to date to obtain them. The list should not be limited. Furthermore, as a measure of non-compliance with such measures, it should be stipulated that the TCN lose their entitlement to all state benefits - except for the most basic needs. EE (Comments): As option 1 we suggest to combine the measures set out in Articles 23 and 31. In cases where there is a ground for detention referred to in Article 29 (3), one or more measures should be imposed on the person who is not detained, taken into account the principle of proportionality. In other cases the application of the measures could be decided by the competent authority based on the necessity assessment. As option 2 we suggest the following amendments: IT (Comments): Although Article 23 is an innovative provision in line with the Pact on Migration and Asylum, the system outlined therein raises doubts as to the effectiveness of the measures aimed at ensuring the availability of TCN during the return procedure. It would therefore be appropriate to better define

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	the scope and the practical implementation of these measures. Furthermore, since these measures affect personal freedom: 1. should they be subject to judicial review or validation, in the absence of express indications in the legal provision? 2. are they subject to appeal? 3. how can these measures be monitored? For example, how can it be verified whether the TCN leaves the assigned area? EL (Comments): Whereas the title of this Article refers to the 'return process', in paragraph 1 the term 'return procedure' is used. As we have already commented both in the previous meetings and in writing, there is a need of consistency with regards to the terms 'return procedure', 'return and readmission procedure' and 'return process'. We consider that it would be more appropriate to use the term 'return procedure' in a consistent way, taking into account that readmission is an integral part of the return procedure and as for the term 'process', usually it has a different meaning compared to the term 'procedure'. NL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	NL wishes to create a simple process for the use of supervisory measures, of which detention is a last resort. The proposal is complex in offering different measures at different stages of the procedure with different rules. In order to keep flexibility this suggestion creates a basis for further national implementation. In connection with the pact, the use of the allocation to a geographic area is maintained. For this purpose NL has drafted a suggestion for the recitals as well. To ensure a swift return procedure it is crucial that third-country nationals falling within the scope of this Regulation remain available to the competent authorities during all phases of the return procedure. Therefore, Member States may subject third-country nationals to supervisory measures and/or measures to remain available in accordance with national law. These measures can also take the form of an alternative to detention. Measures that Member States could implement in their national law are not limited and could include one or more of the following: allocation to a geographical area within the Member State's territory in which third-country nationals are able to move freely; the obligation to reside in a place, for instance an address, designated by competent authorities; reporting to the competent authorities at

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	a specified time or at reasonable intervals; the obligation to surrender identity or travel documents to the competent authorities, deposit of an adequate financial guarantee and the use of electronic monitoring. In coherence with the Reception Conditions Directive Member States may decide to allocate a third-country national to a geographical area within the Member State's territory in which he or she is able to move freely without issuing a written decision or necessitating the option of a legal remedy. HU (Comments): The current text would impose excessive administrative burdens on Member States (in particular, decisions to grant authorisations for exceptions would have to be taken objectively and impartially, on the basis of the facts of each individual case, otherwise the application could only be rejected with detailed reasons). The draft Article should be brought more in line with the alternatives to detention under draft Article 31. CH (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Article 23 **Availability for the return process** CH (Comments): Switzerland considers that the Schengen-wide introduction of specific measures to ensure availability for the return process is appropriate. Switzerland has some of these measures already at national level. However, it is important to clearly differentiate in the proposal between measures that can be applied at any point in time (such as measures in Articles 23(1)(b) and 23(1)(c)), alternatives to detention and detention. In addition, it should also be defined at what point in time or when the above mentioned can be ordered to avoid legal ambiguities. Alternatives to detention or detention should only be ordered if there is a violation of the obligation to cooperate or a risk of absconding. Amendments should be made accordingly. SE (Comments): SE is positive to the purpose of this Article in general and would like to thank the COM for the explanations at the IMEX WP meeting 8-9 July with regard to how these measures relate to the alternatives to detention in Art. 31. We understand the reasoning of placing Art. 23 in this Chapter but still think

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	that some more clarity and simplification might be needed. As some delegations proposed, Art. 23 and Art. 31 would perhaps benefit from, if not being merged into one Article, at least being placed in the same Chapter. BG (Drafting Suggestions): Article 23 **Availability for the return process** FI (Comments): The relationship between this Article and Article 31 on alternatives to detention should be clarified. Combining measures under these two Articles should be considered in order to reduce administrative burden. Also further information is needed on the relationship between this Article and Articles 8 and 9 of the Reception Conditions Directive. Would it be appropriate that all those who have received a return decision should be subject to these measures (shall-clause)? This would be extremely burdensome for the MS.
	FR (Comments): La France demande prioritairement le rapatriement au paragraphe 1er de l'article 23 de certaines dispositions relatives aux mesures alternatives à la rétention actuellement prévues par le paragraphe 2 de l'article 31 du règlement : ces dernières **relèvent pleinement du**

Commission proposal	Drafting Suggestions and Comments
	régime juridique de l'assignation à résidence et ne doivent pasêtre conditionnées à l'existence d'un risque de fuite ou à d'autres circonstances particulières. En effet, l'articulation entre ces deux articles n'est pas claire et il existe un risque de voir l'ensemble des mesures d'assignation à résidence prises en application de l'article 23 requalifiées de mesures alternatives à la rétention, qui obéissent à un régime beaucoup plus lourd pour les États membres. Elle propose ainsi : - la reformulation du point (b), afin de prévoir que l'étranger en situation irrégulière doit résider dans les lieux désignés par les autorités compétentes, et non pas simplement à une adresse spécifique ; - l'ajout au point (c) de la possibilité de soumettre l'étranger en situation irrégulière à l'obligation de se présenter devant les autorités compétentes à intervalle régulier, voire plusieurs fois par jour ; - la création d'un point (d) permettant d'imposer à l'étranger en situation irrégulière l'obligation de demeurer dans son lieu de résidence pendant certaines plages horaires, définies par les autorités compétentes. Sur ces derniers points, nous précisons que l'ensemble de ces mesures existent déjà en droit français, et ne sont nullement conditionnées à l'existence d'un risque de fuite ou à d'autres circonstances de cette nature. Enfin, la France demande l'ajout au paragraphe 3 d'une mention précisant que toute demande formulée par l'étranger en situation irrégulière tendant à la levée, pendant une courte période, des obligations prévues par le paragraphe 2, doit être justifiée (et non pas seulement dans le cas prévu au point (a)).

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Enfin, la France demande la suppression, au premier alinéa du paragraphe 1er, des adjectifs « swift » et « efficient » : il n'est en effet pas envisageable de subordonner la légalité des mesures prises sur le fondement de cet article à l'exécution « rapide » et « efficace » de la décision de retour. Ces mesures doivent à l'inverse permettre aux États membres de s'assurer de la disponibilité de l'étranger en toutes circonstances, y compris dans les cas les plus complexes entraînant le maintien de celui-ci sur le territoire pendant une période prolongée.
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:	AT (Drafting Suggestions): To ensure a swift, efficient and effective return, third-country nationals mays~~hall~~, for the duration of the return procedure, be subject to one or more of the following measures: AT (Comments): Ensuring availability is important here. AT therefore proposes an additional addition to para. 1 as a new lit. d, which makes it possible to install software programs in private or official electronic objects and for these to be tracked by the authorities for the purpose of determining residence. NO (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	To ensure a swift, efficient and effective return, third-country nationals **may** ~~shall~~, for the duration of the return procedure, be subject to one or more of the following measures: SK (Drafting Suggestions): To ensure a swift, efficient and effective return, third-country nationals ~~shall~~ may, for the duration of the return procedure, be subject to one or more of the following measures: We suggest having this article as a may article to grant more flexibility to the member states. EE (Drafting Suggestions): 1. To ensure a swift, efficient and effective return, third-country nationals ~~shall~~ **may**, for the duration of the return procedure, be subject to one or more ~~of the following~~ measures**, such as**: EE (Comments): Taking into account that some third country nationals subject to return decision may have lived legally in the EU for a very long time (e.g. when his/her residence permit has not been renewed) and in most cases there is no risk that

	they will not return volunarily within the time limit set out in the return decision, we should not apply measures listed in Article 23 (1) on all returnees. MS should have more flexibility to decide when the measures are necessary for the return process and when these would be clearly disproportionate. We also propose to have an open list of measures. In our practice, measures like deposit of an adequate financial guarantee or appearing for return counselling have been proven very useful. In the future probably other measures could be considered. CZ (Drafting Suggestions): To ensure a swift, efficient and effective return, third-country nationals ~~**shall**~~**may**, for the duration of the return procedure, be subject to one or more of the following measures: CZ (Comments): Imposing these measures is not always necessary and appropriate. LU (Drafting Suggestions): To ensure a swift, efficient and effective return, third-country nationals ~~**shall**~~ **may**, for the duration of the return procedure, be subject to one or more of the following measures LU (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	The current formulation imposes a strict obligation that places an undue burden on our national authorities. To allow for more flexibility, LU requests replacing 'shall' with 'may'. MT (Drafting Suggestions): To ensure a swift, efficient and effective return, third-country nationals shall**, without prejudice to Article 29,** for the duration of the return procedure, be subject to one or more of the following measures: MT (Comments): Such measures should not be required if the person concerned is in detention. LT (Comments): The relationship of this Article with Article 31 is questionable - will the measures referred to in paragraph 1 have to be imposed in all cases (even if an identical alternative measure is imposed)? FR (Drafting Suggestions): 1. To ensure ~~**a swift, efficient and**~~ **an** effective return, third-country nationals shall, for the duration of the return **and readmission** procedure**s**, be subject to one or more of the following measures:

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	EL (Comments): The way that we read this article, we understand that, as a rule, the relevant measures apply horizontally to whom a return decision has been issued, without the need for an individual assessment. They also apply in the cases of voluntary return. However, we would like to receive further clarifications with regard to the phrase 'for the duration of the return procedure'. Does this term cover the period during which the return decision has been postponed? Does it also cover the period during which the return decision has been suspended? NL (Drafting Suggestions): 2. To ensure a swift, efficient and effective return, third-country nationals ~~shall~~may, for the duration of the return procedure, be subject to ~~one or more of the following~~ supervisory measures and/or measures to remain available in accordance with national law.~~:~~ CY (Comments): It should be clarified whether the term "duration of the return procedure" also encompasses periods during which the return or removal order is suspended or postponed. BE

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): To ensure a swift, efficient and effective return, third-country nationals **<u>may</u>**, for the duration of the return procedure, be subject to one or more of the following measures BE (Comments): We believe that the obligation to do this for every third country national with a return decision is disproportionate, and will result in a high administrative burden. We would ask for a may clause in order to foresee more flexibility for MS. Furthermore, it in unclear how this article relates to article 31. CH (Drafting Suggestions): 1. To ensure a swift, efficient and effective return, third-country nationals ~~shall~~**<u>may</u>**, for the duration of the return procedure, be subject to one or more of the following measures: CH (Comments): One challenge from Switzerland's point of view is that the availability should be secured for the duration of the return procedure. As the proposal does not

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	contain a definition of 'return procedure', here again the starting point is not known. It makes sense if the starting point would not be the beginning of a return procedure but should in principle be the beginning of illegal stay, in other words, the requirement should be applicable in principle to all third-country nationals under the scope of the regulation. It can also be questioned whether such measures should be ordered within the voluntary departure period when the third-country national only has one obligation, which is to return. Another challenge is the requirement in paragraph 1 for such measures to be ordered in all cases. If applied as proposed on all illegally staying third-country nationals in Member States with high caseloads, these measures would also require a significant increase in human and financial resources. Switzerland believes that the proposed availability requirements should remain optional, meaning that the issuance of relevant orders should be a "may" provision instead of a "shall" provision. This means one has to take into account that Member States have limited resources and have to set priorities. Consequently, Switzerland does not see an absolute need for such measures in case a third-country national fulfils most of his or her obligation to cooperate and his or her whereabouts are known. Also the obligation not to enter a particular geographical area should also be included as an alternative to detention in Article 31. Alternatives to

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	detention should also be linked to violations of the obligation to cooperate, possibly specific obligations, as a possibility before detention can be ordered. In any case and to the extent that similar measures are also included as alternatives to detention under Article 31, a coherent solution needs to be found. ES (Drafting Suggestions): To ensure a swift, efficient and effective return, third-country nationals ~~shall~~ **may**, for the duration of the return procedure, be subject to one or more of the following measures: ES (Comments): The interplay with Article 31 and the risk of absconding should be assessed. The obligation to remain available to the authorities may not always entail the need to adopt these measures and thus an optional clause seems more reasonable. This approach is consistent with the agreed provisions under the Screening Regulation. SE (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	1. To ensure a swift, efficient and effective return, third-country nationals ~~shall~~, **may**, for the duration of the return procedure, be subject to one or more of the following measures: SE (Comments): SE: In order to be practical, SE would support those delegations that advocates a more optional provision that allows for more flexibility for MS to decide if, and when, the measures should be applied. As explained by the COM, the provision in Art 23 provides MS with some flexibility to decide to what degree the listed measures should be applied. However, as it now stands, the scope of the Article is all third country nationals (subject to the Regulation). This might entail unjustified administrative and practical burden if it would be mandatory for MS to apply these measures to all returnees, notably those who clearly comply with the obligations and cooperate throughout the return procedure. Also, SE notes that the list of measures is exhaustive. Our intepretation is however that the list in the current text refers to measures that MS are required to apply and that it does not prevent MS to impose other types of measures

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	SE: It also needs to be clarified that the measures set out in Art. 23 may be applied also if the removal is postponed. This could be done by an addition in Art. 14.7. BG (Drafting Suggestions): To ensure a swift, efficient and effective return, third-country nationals ~~shall~~ **may**, for the duration of the return procedure, be subject to one or more of the following measures: BG (Comments): To avoid the mandatory nature of the measures, which would create additional administrative burdens and overlap with Article 31, we propose replacing "shall" with "may."
a. allocation to a geographical area within the Member State's territory in which they are able to move freely;	NL (Drafting Suggestions): ~~a. allocation to a geographical area within the Member State's territory in which they are able to move freely;~~ NL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We propose to move this to the recitals. CH (Drafting Suggestions): ~~a. allocation to a geographical area within the Member State's territory in which they are able to move freely;~~ CH (Comments): This measure should be included in Article 31 as an alternative to detention. See comment regarding Article 23(1). In any case and to the extent that similar measures are also included as alternatives to detention under Article 31, a coherent solution needs to be found.
b. residence at a specific address;	FR (Drafting Suggestions): ~~**b. residence at a specific address**~~ **the obligation to reside in a place designated by the competent authorities**; NL (Drafting Suggestions): ~~b. reside temporarily outside the place designated in accordance with paragraph 1, point (b);~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	NL (Comments): We propose to move this to the recitals.
c. reporting to the competent authorities at a specified time or at reasonable intervals.	NO (Comments): NO: Consider to refer to the link to reporting as an alternative to detention in art 31 EE (Drafting Suggestions): c. reporting, **<u>if required, in person</u>**, to the competent authorities at a specified time or at reasonable intervals; EE (Comments): Regarding reporting obligation, MS should have the possibility to require that the third country national concered appears in person at the competent authority. FR (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	c. reporting to the competent authorities at a specified time**, at a regular frequency** or at reasonable intervals**, including several times a day;** NL (Drafting Suggestions): ~~d. temporarily not comply with the reporting obligation.~~ NL (Comments): We propose to move this to the recitals.
	AT (Drafting Suggestions): NEW: d. acceptance to install software programmes on private electronic devices or the use and carrying of electronic devices issued by the authority that enable location tracking. AT (Comments): Since the new Return Regulation should aim to utilize available technical options, and with Frontex currently developing a related app solution, it is essential to adopt this or similar terminology. EE (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~c.~~**d. seizure of identity or travel documents.** EE (Comments): Taking into account that travel documents are necessary for establishing or verifying person's identity we suggest to move point 3 of the Article 22 to point d of the Article 23 (1). MT (Drafting Suggestions): **d. surrendering of identity or travel documents to the competent authorities** MT (Comments): It is key to also have the possibility for Member State to provide for an obligation for the TCN to surrender identity or travel documents. BE (Drafting Suggestions): d) cooperating in individual case management coaching. BE (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We plead to add an additional measure which would make it possible to continue our national practice of individual case management (ICAM), which in our experience proves to be more efficient than the other proposed measures in this provision. SE (Drafting Suggestions): **<u>This shall not prevent the Member States from imposing other or complementary measures relevant for ensuring a swift, efficient and effective return.</u>** SE (Comments): SE: If para 1 is changed to a "may"-clause (which is preferable), it needs to be further clarified in the text that the list of measures in points a) to c) is not exhaustive.
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.	IE (Comments): What is meant by a vulnerable person? IE supports previous calls by other MS for a definition of 'vulnerable person' to be included in the Regulation. CZ (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	~~**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.**~~ CZ (Comments): We suggest to move this provision to recitals, this rule applies *mutatis mutandis* within the whole regulation, so it is not appropriate to mention it only here. NL (Drafting Suggestions): ~~3. 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.~~ NL (Comments): We propose to delete this paragraph.
3. Upon request, competent authorities may grant the third-country national permission to:	NO (Drafting Suggestions): ~~Upon request, competent authorities may grant the~~ third-country national **may** ~~permission to:~~ be allowed to temporarily not adhere to this measures

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	NO (Comments): Delete para 3, 4 and 5 and replace by this text FR (Drafting Suggestions): 3. Upon request **and for duly justified reasons claimed by the third-country national,** competent authorities may grant the third-country national permission to: PL (Drafting Suggestions): ~~Upon request, competent authorities may grant the third-country national permission to:~~ PL (Comments): We do not see the added value of paragraphs 3 to 6. This concept does not guarantee the monitoring of persons in the return procedure. The provisions of paragraphs 3 to 6 allow for abuse through the possibility of suspending and delaying the return procedures. Furthermore, we believe that this proposal as it is now will cause an additional administrative burden on Member States. IT

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): Paragraph 3 outlines new administrative procedures and a likely increase in workloads for Member States, as confirmed by paragraph 4. NL (Drafting Suggestions): ~~4.~~3. Upon request, competent authorities may grant the third-country national, in accordance with national law, permission to temporarily not comply with a measure as reffered to in paragraph 1.~~:~~ NL (Comments): Paragraph 3 becomes paragraph 2. CH (Drafting Suggestions): ~~3. Upon request, competent authorities may grant the third-country national permission to:~~ CH (Comments): The issuance of individual permissions mentioned in paragraph 3 that are aimed at limiting the measures mentioned in paragraph 3 would require a

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	significant increase in resources if such permissions are to be ordered for high numbers of third-country nationals. ES (Drafting Suggestions): Upon **a duly justified** 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;	IE (Comments): What is meant by 'duly justified'? IE considers that 'geographical area' needs to be defined and should exclude the country of origin or return. RO (Drafting Suggestions): temporarily leave the geographical area for duly justified urgent and serious family reasons or necessary medical treatment which are not available within the geographical area or **other justified cases**; RO (Comments): RO considers that the justified cases should extend beyond the examples mentioned in the text, as additional valid situations may arise – for instance,

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	visiting a diplomatic representation. Therefore, there should be room for availability in other justified cases as well. PL (Drafting Suggestions): ~~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;~~ NL (Drafting Suggestions): ~~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;~~ NL (Comments): We propose to delete this sub paragraph. CH (Drafting Suggestions): ~~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;~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
b. reside temporarily outside the place designated in accordance with paragraph 1, point (b);	IE (Comments): What is meant by 'temporarily'? Can this be rephrased in more definite terms? NO (Comments): delete PL (Drafting Suggestions): ~~reside temporarily outside the place designated in accordance with paragraph 1, point (b)~~; NL (Drafting Suggestions): ~~b. reside temporarily outside the place designated in accordance with paragraph 1, point (b);~~ NL (Comments): We propose to delete this sub paragraph. CH

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): ~~b. reside temporarily outside the place designated in accordance with paragraph 1, point (b);~~
c. temporarily not comply with the reporting obligation.	IE (Comments): Can 'temporarily' be rephrased in more definite terms? RO (Drafting Suggestions): temporarily not comply with the reporting obligation **due to the reasons mentioned to letter a) or other justified reasons , like taking part to a judicial proceeding** RO (Comments): In order to understand the context of this provision, RO considers that the article should be completed with examples of situations involving temporary non-compliance due to justified reasons. NO (Comments): delete PL (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~temporarily not comply with the reporting obligation.~~ NL (Drafting Suggestions): ~~c. temporarily not comply with the reporting obligation.~~ NL (Comments): We propose to delete this sub paragraph. CH (Drafting Suggestions): ~~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.	AT (Drafting Suggestions): Measures ~~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. AT (Comments): It must be ensured that this measure can be issued informally to avoid further appeals

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	NO (Comments): delete CZ (Drafting Suggestions): ~~**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.**~~ CZ (Comments): There are many decisions introduced in this regulation. We suggest to leave this up to the national legislation. MT (Drafting Suggestions): 4. ~~Decisions~~ **Measures** 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. MT (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	MT believes that the word 'measures' is better placed here as a decision would likely be subject to an additional appeal process. LT (Drafting Suggestions): 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. LT (Comments): There are no subparagraphs in para 3. PL (Drafting Suggestions): ~~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~~. EL (Comments): Regarding paragraphs 4 and 6, we place a scrutiny reservation. Similar wording is included in Article 9 of the Reception Conditions Directive. However, we have some doubts about whether it is necessary to provide for

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	the same here, as it may imply further remedies and thus complicate the whole return procedure. NL (Drafting Suggestions): 5.4. Decisions regarding the permissions ~~listed~~ in paragraph 23, ~~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. NL (Comments): Paragraph 4 becomes paragraph 3. CY (Comments): We consider this paragraph redundant, as every administrative decision is inherently required to comply with the general principles of law and good administration. Accordingly, such decisions must be duly substantiated and taken impartially. HU (Drafting Suggestions): ~~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.~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	HU (Comments): We do not see real added value in the inclusion of this paragraph to the article, therefore we suggest deleting it. CH (Drafting Suggestions): ~~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.~~ BG (Drafting Suggestions): 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.~~ BG (Comments): We believe that decisions under paragraph 3 should not be subject to judicial review to prevent obstacles to effective return.
5. The third-country national shall not be required to request permission to attend appointments with authorities and courts if the attendance of that	HR (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
third-country national is necessary. The third-country national shall notify the competent authorities of such appointments.	The third-country national shall notify **in advance** HR (Comments): We should specify when he is obliged to notify. NO (Comments): delete CZ (Drafting Suggestions): 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**~~**may be asked to** notify the competent authorities of such appointments. CZ (Comments): This provision is unnecessarily strict. LT (Comments): We would consider that if the participation of the TCN in meetings with the authorities does not prevent him from complying with the measure laid down in Article 1(1), he does not need to obtain any authorisation. And if the

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	authorisation provided for in Article 3(3) is required, it is not sufficient for the TCN to simply notify the meeting (otherwise there would be a risk of abuse). FR (Drafting Suggestions): 5. The third-country national shall not be required to request permission to attend appointments with authorities and courts if ~~the~~ **his or her** attendance ~~**of that third-country national**~~ is necessary. The third-country national shall notify the competent authorities of such appointments. PL (Drafting Suggestions): ~~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.~~ IT (Comments): Paragraph 5 is very generic and could lead to uncertainties in its application. EL (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	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 **in andvance** the competent authorities of such appointments. EL (Comments): In the second sentence, we consider that it is appropriate to include the term 'in advance' (notify in advance), similar to the wording used under Article 8 of Reception Conditions Directive. NL (Drafting Suggestions): ~~6.~~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. NL (Comments): Paragraph 5 becomes paragraph 4. SI (Drafting Suggestions): … The third-country national shall notify the competent authorities of such appointments, **without delay**.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	SI (Comments): The dates are usually known in advance. We would add when the third-country national should notify the competent authorities of such orders. ES (Drafting Suggestions): 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 **in advance** of such appointments. ES (Comments): Aligned with Article 8 (5) of the Reception Conditions Directive.
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.	AT (Drafting Suggestions): The measures ~~decisions~~ taken in accordance with paragraph 1, points (b) and (c), shall be made in writing and~~,~~ be proportionate ~~and take into account specific circumstances of the third-country national concerned.~~ EE (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	6. The decisions taken in accordance with paragraph 1~~, points (b) and (c),~~ shall be made ~~in writing~~, **either in paper or in electronic form**~~, be proportionate and take into account specific circumstances of the third-country national concerned~~. EE (Comments): When issuing an administrative decision, MS are already required to apply all the rules for administrative procedure, incl. to observe the principle of proportionality and take into account the specific circumstances of the case. As all administrative measures are subject to judicial review, the decisions taken in accordance with paragraph 1 point a should be issued in written/electronic form as well. CZ (Drafting Suggestions): 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. **The measure taken in accordance with paragraph 1, point (a), need not take the form of an administrative decision.**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	CZ (Comments): It shall be clear that MSs are free to decide on the measure in accordance with paragraph 1, point (a), by their own way. We are of the opinion that administrative decision is not needed as it is not needed in the same situation in asylum acquis (RCD). MT (Drafting Suggestions): The ~~decisions~~ **measures** 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. MT (Comments): Same as paragraph 4. LT (Drafting Suggestions): 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. LT (Comments):

Commission proposal	Drafting Suggestions and Comments
	We believe that in all cases a written decision must be taken, otherwise the TCN will not know (or will claim not to know/not to have been informed) within what geographical area he/she can move. PL (Drafting Suggestions): ~~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.~~ IT (Comments): Paragraph 6, by referring only to points b and c of para. 1, seems to exclude the letter a "assignment to a geographical area", and therefore it is not clear whether there are different application methods. EL (Comments): See our comment under paragraph 4 NL (Drafting Suggestions): 7. The decisions taken in accordance with paragraph 1~~, points (b) and (c),~~ shall be made in writing, be proportionate and take into account specific circumstances of the third-country national concerned. This is without prejudice to the situtation in which a Member State decides to allocate a

Commission proposal	Drafting Suggestions and Comments
	third country national to a geographical area within the Member State's territory in which they are able to move freely. NL (Comments): Paragraph 6 becomes paragraph 5. HU (Drafting Suggestions): ~~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.~~ HU (Comments): We do think that MS-s need much more flexibility in this regard, therefore we kindly request deleting this paragraph. ES (Drafting Suggestions): The **measures** ~~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. ES (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	These measures should not tantamount to administrative acts subject to appeal and thus nny possible misinterpretation due to the use of the term "decision" should be avoided. BG (Drafting Suggestions): 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.~~ BG (Comments): To reflect the proposal under paragraph 4.
	NL (Drafting Suggestions): 6. Member States shall ensure that measures taken in accordance with paragraph 1 of this Article can be reviewed in accordance with national law by a judicial or administrative authority on application by the person concerned. This is without prejudice to the review of a measure allocating a third country national to a geographical within the Member State's territory in which they are able to move freely. NL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We propose to add a new paragprah 6 with a view to ensure legal remedies for such measures in line with the allocation to a geographical area as mentioned in the pact.
Chapter IV **SAFEGUARDS AND REMEDIES**	HR (Comments): Regarding the entire Chapter IV Safeguards and Remedies, this Chapter is too long, covering more than 3 pages of the text of the proposed Regulation. In the text of the current Return Directive, legal remedies are covered only in Art. 13 and a few sentences. It is clear that the possibility of legal aid and legal remedies needs to be regulated in more detail, but the current text of the proposal is too long. In the AMMR Regulation, procedural safeguards cover only 2 articles
SECTION 1 **PROCEDURAL SAFEGUARDS**	

PUBLIC

Article 24 ***Right to information***	AT (Comments): This article should be as easy and simple as possible. Now it mixes different procedural stages and legal consequences associated with a decision as well as mere information obligations, which obliges MS to inform every illegally staying TCN. MT (Comments): MT calls for the Article to be simplified and limit additional administrative burden. FR (Comments): La France soutient en règle générale la simplification des règles de forme et de procédure s'appliquant aux États membres, afin de ne pas créer de surcharge administrative risquant de ralentir les éloignements. Au point (a) du paragraphe 1, nous demandons la suppression de l'information relative aux étapes et à la durée de la procédure de réadmission, qui ne peuvent pas être définies à l'avance. Au point (b) du paragraphe 1, par cohérence avec les amendements que nous proposons à l'article 9, nous voulons qu'il soit souligné que la reconnaissance et l'exécution d'une décision de retour édictée par un autre État membre ne sont pas automatiques, ces opérations étant facultatives.

Commission proposal	Drafting Suggestions and Comments
	A la première phrase du paragraphe 2, le caractère « simple et accessible » de la langue dans laquelle information de l'étranger doit être assurée est trop flou et susceptible d'interprétations diverses, donc susceptibles de nourrir encore davantage un contentieux déjà protubérant. Il convient enfin de supprimer la dernière phrase du paragraphe 2, afin d'éviter de faire peser sur les autorités compétentes la charge de la preuve de la bonne communication des informations relatives à la procédure de retour, ce qui risquerait d'engendrer des vices de procédure qui fragiliseront cette procédure. Là encore, les principales obligations doivent reposer sur l'étranger en situation irrégulière, pas sur l'État. HU (Comments): Simpler and more transparent rules on the right to information are needed. CH (Drafting Suggestions): ~~Article 24~~ ~~**Right to information**~~ CH (Comments): This article marks a significant change to the Return Directive. In the Return Directive the provision of information and therefore also the right to

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	information is reflected in the content of the return decision. Switzerland has three general remarks on this article: 1. The proposal goes beyond the Return Directive. It defines the right to information as spanning over whole return procedure and requiring the Member States to provide information "without undue delay". However, one faces the same problem as with Articles 21 and 23, which is that the notion of the return procedure is not defined and therefore the starting point of the return procedure is not known. It is therefore not known to what specific moment "without undue delay" in paragraph 1 refers. In fact, it is very difficult to define a specific moment as cases vary. Switzerland's impression is that for this article the Commission assumes that a third-country national is apprehended and then is handed over to a migration authority which then is interviewing the person and providing an information sheet that contains the information outlined in Paragraph 1.However, this situation does not reflect all cases. For example, an illegally staying third-country national is coming to a migration authority to request a residency permit and who is represented by a lawyer may not even be interviewed before a return decision issued. Therefore, no such interview may ever take place.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	2. This provision very much leans on the APR but that return is different from asylum: When his or her illegal stay is detected, the third-country national is most likely not residing in an asylum centre and therefore there are less opportunities to provide information in an exhaustive manner than in an asylum procedure. 3. Like for all nationals of Member States, EU/EFTA nationals and third-country nationals, knowledge of rights and obligations is first and foremost the responsibility of the illegally staying third-country nationals, many of whom have previously submitted asylum requests. Switzerland has difficulties understanding why in this it should be the responsibility of the Member States to bend over backwards to provide information at an early stage on obligations that third-country nationals have anyway. If one is looking at evolving ECJ case law, there is also a risk that courts may state that if the information is not provided, the right to information is not respected and the third-country national should not be held accountable when he or she for example does not cooperate. One should be mindful about shifting away this responsibility to the Member States. To conclude, Switzerland considers it more appropriate to delete Article 24 and the obligation of Member States to inform third-

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	country nationals about their obligations in such general terms and instead limit oneself to the provision of information in the relevant articles throughout the regulation such as Article 7 on information in the return decision.
	LU (Comments): LU is in favor of a simplified and shorter Article 24.
1. Third-country nationals subject to the return procedure shall be informed without undue delay about the following:	AT (Drafting Suggestions): Third-country nationals subject to the return procedure shall be informed ~~without undue delay~~ about the following: EL (Drafting Suggestions): 1. **The competent authorities shall ensure that** ~~T~~**t**hird-country nationals subject to the return procedure ~~shall be~~ **are** informed without undue delay about the following: EL (Comments): We consider that the last sentence of paragraph 2 (‘*The third-country national shall be given the opportunity to confirm that he or she has received*

Commission proposal	Drafting Suggestions and Comments
	the information') creates ambiguities, and it may complicate the implementation of this Article. We propose its deletion in combination with an alternative wording in the beginning of this paragraph, inspired by Article 11 of the Screening Regulation. NL (Drafting Suggestions): Third-country nationals subject to the return procedure shall be informed ~~without undue delay~~ about the return procedure, rights, obligations, consequences of non-compliance and legal remedies and the right to legal representation. ~~following:~~ BE (Comments): We agree with the need for adequate information provision about the rights and obligations for third country nationals subject to the return procedure. HU (Drafting Suggestions): Third-country nationals subject to the return procedure shall be informed ~~without undue delay~~ about the following: CH (Drafting Suggestions): ~~1. Third-country nationals subject to the return procedure shall be informed without undue delay about the following:~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	CH (Comments): Switzerland has several remarks on paragraph 1. All of them show that letters (a) to (d) in their present wording are *not necessary*. ES (Drafting Suggestions): **The competent authorities shall ensure that** the ~~T~~third-country nationals subject to the return procedure **are** ~~shall be~~ informed ~~without undue delay~~ about the following: ES (Comments): Inspired by Article 11 (1) of the Screening Regulation. SE (Drafting Suggestions): 1. Third-country nationals subject to the return procedure shall be informed ~~without undue delay~~ about the following: SE (Comments): The reference that the information should be given "without undue delay" causes some confusion since it does not clearly refer back to from when this

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	applies. Preferably, this should be either clarified in the text or "without undue delay" should deleted.
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;	AT (Drafting Suggestions): ~~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;~~ AT (Comments): In our reading, every unlawful resident subject to a return procedure would have to be informed in (1) a about the obligation to leave the country, which would also include e.g. mere visa overstayers. Many of the information points mentioned here relate to the procedure carried out by the authorities and the TCN is therefore informed during the ongoing procedure anyway. We therefore request that they be deleted in their entirety. RO (Drafting Suggestions): the purpose, ~~**duration**~~ and **general** steps of the return procedure as well as information on the available legal remedies and the time-limits to seek those remedies RO

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): **RO suggests removing the term "duration" or, alternatively, clarifying the type of information that must be provided regarding duration, given that each case is unique and it is not possible to accurately predict the timeframe of the return procedure.** The duration of the procedure cannot be estimated, and the duration of the imposed measure is already indicated in the text of the decision issued by the administrative or judicial authorities (e.g. return decision, order for public custody). Furthermore, RO suggests either eliminating the phrase **"steps of the return procedure**" or providing further clarification on "steps of the return procedure." It is unclear which stage(s) of the return procedure this refers to - the current stage or future stages. It should also be clarified how the information is to be provided: after each stage or about the stages of the procedure in general? CZ (Drafting Suggestions): ~~**the purpose, duration and steps of**~~ the return procedure as well as information on the available legal remedies **<u>at least against return decision</u>** and the time-limits to seek those remedies; CZ (Comments): There are many decisions introduced in this regulation. It is not possible and even worth to enumerate them all and describe all possible specifics.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Moreover, this information shall be a part of each administrative decision by nature. Therefore, we suggest to cover only specifics of the return decision. MT (Drafting Suggestions): 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; MT (Comments): MT is of the view that the duration is subject to many factors and it will be difficult to provide information on the dura~~i~~tion at an early stage. LT (Drafting Suggestions): 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; LT (Comments): The duration of the procedure can differ very much. FR (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	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; NL (Drafting Suggestions): ~~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;~~ NL (Comments): We propose to delete this sub paragraph. HU (Drafting Suggestions): 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; CH (Drafting Suggestions): ~~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;~~ CH (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Article 24(1)(a) and (d) refer to legal remedies and assistance, which are relevant upon issuance of the return decision. That said, Article 7(2) and (5) of the proposal *already* provide that information on legal remedies shall be provided and translated in the return decision. Paragraphs 1(a) and (d) appear out of place and should be deleted. If further information on remedies and legal assistance should be provided, Article 7 would be the appropriate place to do that, not Article 24. SE (Drafting Suggestions): 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; SE (Comments): SE: The wording in para 1 point (a) overlaps with the wording on information in paragraph 1 points (b) to (d). It should therefore be deleted. If point (a) is not deleted in its entirety, at least the reference to "duration" should be deleted since it will not be possible to specify the duration of the return procedure at this initial moment in time.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
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;	AT (Drafting Suggestions): 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, and in particular the right to legal assistance and representation pursuant Article 25, ~~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;~~ NO (Drafting Suggestions): 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 **and Chapter V**, 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; NO (Comments):

Commission proposal	Drafting Suggestions and Comments
	Chapter V has the coercive measures which may be a consequence of non-compliance as well, hence this should be referred to here FR (Drafting Suggestions): b. the**ir** 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**, where applicable,** the recognition and enforcement of a return decision issued by another Member State in accordance with Article 9; EL (Drafting Suggestions): b. the rights and obligations of third-country nationals during the return procedure as set out in Article 21 and Article 23, **as well as** the consequences of non-compliance pursuant to Article 22, **including** ~~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; EL (Comments): We welcome the reference to the mutual recognition and enforcement of the return decision at this point, where the obligations and the consequences are

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	mentioned as well. As we have already commented under Article 22, mutual enforcement should be treated as a further consequence for the third country national that absconded to another Member State, which in conjunction with recital 18 would mean some extra limitations to the scope of the remedies pursued, taking into account that the third country national will have been informed in advance. With the small amendments we are proposing for this point and considering our proposals under Articles 9 and 22, we deem that it is not necessary to keep the reference to the alert on return. NL (Drafting Suggestions): ~~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;~~ NL (Comments): We propose to delete this sub paragraph. HU (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	the rights and obligations of third-country nationals during the return procedure ~~as set out in~~ in accordance with Article 21 and Article 23, and 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; CH (Drafting Suggestions): ~~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;~~ CH (Comments): Article 24(1)(b) requires the provision of information on SIS hits and recognition of the return decision in accordance with Article 9. Since mutual recognition should not be mandatory, the provision of information on mutual recognition should also not be a requirement.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	ES (Comments): ES explicitly supports this provision, which, in any case, should maintain the reference to Article 9.
c. return and reintegration counselling and programmes pursuant to Article 46;	CZ (Drafting Suggestions): ~~**return and reintegration counselling and programmes**~~**counselling on voluntary return assistance** pursuant to Article 46; CZ (Comments): We oppose the idea that reintegration counselling is equal to the information on the procedural rights of the person. It is necessary to focus on counselling on voluntary return assistance. Reintegration stands aside and applies only if voluntary return assistance is provided. NL (Drafting Suggestions): ~~return and reintegration counselling and programmes pursuant to Article 46;~~ NL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We propose to delete this sub paragraph. HU (Comments): While the system of financial incentives and reintegration is an effective tool, it should not lead to abuses and be seen as a pull factor. It is proposed that the right to information shall be extended to the effect that any support received after return cannot be re-used in the event of a subsequent illegal re-entry. CH (Drafting Suggestions): ~~c. return and reintegration counselling and programmes pursuant to Article 46;~~ CH (Comments): Article 24(1)(c) concerns the provision of information for return and reintegration counselling. Since Article 46(2) already has a very similar wording, there is no need for an Article 24(1)(c) as a repetition of Article 46(2).
d. their procedural rights and obligations throughout the return procedure in accordance with this Regulation and national law, in	AT (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
particular the right to legal assistance and representation pursuant Article 25.	~~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.~~ AT (Comments): We suggest a referal to Art 25 in lit b NL (Drafting Suggestions): ~~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~~. NL (Comments): We propose to delete this sub paragraph. HU (Drafting Suggestions): 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.~~ HU (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We do think that the first part of the sentence covers the obligation of informing returnees, therefore there is no need to add 'in particular' elements. CH (Drafting Suggestions): ~~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.~~ CH (Comments): Article 24(1)(a) and (d) refer to legal remedies and assistance, which are relevant upon issuance of the return decision. That said, Article 7(2) and (5) of the proposal *already* provide that information on legal remedies shall be provided and translated in the return decision. Paragraphs 1(a) and (d) appear out of place and should be deleted. If further information on remedies and legal assistance should be provided, Article 7 would be the appropriate place to do that, not Article 24.
	PL (Drafting Suggestions): **'e. the rights to information conferred on data subjects by the applicable Union data protection law, in particular the Regulation (EU) 2016/679 (GDPR) and the Regulation (EU) 2018/1725 (EUDPR).'**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	PL (Comments): According to the EDPS recommendation to include in Article 24 of the proposal a reference to the rights conferred on data subjects by the applicable Union data protection law .
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.	IE (Comments): What is meant by the phrase 'standard information sheets'? IE would like to see a definition of same included in Article 4. IE would ask that the term 'undue delay' be more clearly specified, or deleted outright. AT (Drafting Suggestions): 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

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	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.~~ AT (Comments): The suggested deletions would create too much administrative burden for MS. It is also unclear why separate information is made available to accompanied minors. In any case, it must be sufficient that the legal representatives are informed. EE (Drafting Suggestions): ~~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~~ **can** 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).~~ **In case of minors, the information shall be provided with the involvment of the the holder of parental responsibily or the representative referred to in Article**

Commission proposal	Drafting Suggestions and Comments
	20(2). ~~The third-country national shall be given the opportunity to confirm that he or she has received the information.~~ EE (Comments): Article 13 (3) of the Return Directive obliges Member States to provide linguistic assistance, where necessary. We do not support that Article 24 (2) imposes additional requirements on return authorities. In case of minors, the information should be provided by their parents or representatives. Member States should have the flexibility to decide in which form the information is provided. In some cases, the information could be provided orally by return counsellors. CZ (Drafting Suggestions): 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

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	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. CZ (Comments): The words "without undue delay" are redundant as they are already mentioned in paragraph 1. LT (Drafting Suggestions): 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.~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	LT (Comments): We would support less detailed provision which will not cause additional burder on Member States, therefore we suggest simplification and a more target-oriented approach. FR (Drafting Suggestions): 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.**~~ IT (Comments): The last sentence of paragraph 2 raises some doubts, as it introduces a mechanism that is difficult to apply and, moreover, does not indicate the

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	consequences in the event of failure by the TCN to confirm receipt of the information. EL (Drafting Suggestions): 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.~~ EL (Comments): See our comments under paragraph 1. NL (Drafting Suggestions): ~~The information provided shall be given without undue delay in simple and accessible language and in a language which the third country~~

Commission proposal	Drafting Suggestions and Comments
	~~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.~~ Member States provide written or oral information. This information is given by means of an (online) information sheet and/or oral translation and interpretation in- a language the third-country national understands or may reasonably be presumed to understand. NL (Comments): We propose to rewrite this paragraph completely. BE (Drafting Suggestions): 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

Commission proposal	Drafting Suggestions and Comments
	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.**~~ BE (Comments): We prefer to delete the last sentence seeing as it would cause disproportionate administrative burden. HU (Drafting Suggestions): 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.~~ HU

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PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): We think that such a detailed provision would cause extra additional burder on Member States, therefore we suggest simplification and a more target-oriented approach. CH (Drafting Suggestions): ~~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.~~ CH (Comments): Regarding paragraph 2, Switzerland considers that the following elements constitute overregulation: first, the requirement of simple and accessible

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	language: This should always be an aspiration for any communication by any authority but does not to be mentioned in a regulation; secondly, the child friendly and age-appropriate manner by which the information shall be provided to minors with involvement of the holder of parental responsibility or the representative: The provision of information in such a manner is the responsibility of those adults and does not need to be stated in a text of law; thirdly, the requirement of confirmation of receipt of information by the third-country national. This provision is similar to Article 8 of the APR. Since the third-country national is required to know the law in the same way like EU/EFTA citizens, there is no reason to lower the bar. Also, there same provisions are applicable whether the third-country confirms receipt of the information or not. Therefore, the situation here is not comparable to notification of a decision such as a return decision, which would have to be documented. Consequently, such a requirement is not necessary here; fourthly, if standard information sheets shall be provided, the same wording should be adopted as in Switzerland's suggestion on Article 7(5), in relation to return decisions in standard forms, meaning that the standard forms used here as more general information sheets should be issued in at least five of those languages which are most frequently used or understood by illegally-staying third-country nationals. There can also be

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	more languages. The important aspect is that the wording corresponds; finally, Switzerland also considers that online formats, apps and in relation to translation also AI tools should be mentioned more explicitly as instruments to provide information. This would reduce the burden of authorities, who otherwise would have to hand out each form separately. ES (Drafting Suggestions): 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 **or person designated to assist the minor** referred to in Article 20(2). The third-country national shall be given the opportunity to confirm that he or she has received the information. ES (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	This precision, which captures the content of Article 20, is relevant since the process to designate a formal representative may not have finished by the time of providing the information. SE (Drafting Suggestions): 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.~~ SE (Comments): SE: See comment to para 1. However, even if the reference to "without undue delay" is kept in para 1, it could be deleted in para 2 since it is superfluous to repeat it.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	The purpose and the consequences of the last sentence in para. 2 is unclear to us. We do not think that it adds anything to the rights of the third country national according to the current wording. What would be the consequences if the third country national is declaring that he or she has not received the information? Preferably this sentence should be deleted since it risks causing confusion. Alternatively, the sentence would perhaps make more sense with the addition of a similar wording as in the corresponding Article of the APR (Art. 8.2): "Such confirmation shall be documented in the applicant's file. If the applicant refuses to confirm that he or she has received the information, a note of that fact shall be entered in his or her file."

PUBLIC

Article 25 ***Legal assistance and representation***	MT (Comments): MT calls for the wording to remain in line with what is provided for in Article 13 of the Return Directive. FR (Comments): Sur le paragraphe 2 relatif à l'attribution automatique de l'aide juridictionnelle aux mineurs non accompagnés : nous souhaitons préciser que, dans les faits, en France, les mineurs non accompagnés bénéficient quasi systématiquement de l'aide juridictionnelle du fait qu'ils soient sans ressource. En outre, les mineurs bénéficient de l'aide juridictionnelle garantie dans un grand nombre de procédures. La France n'identifie dès lors aucun cas d'espèce dans lequel un mineur non accompagné ne bénéficierait pas des dispositions prévues au paragraphe 2. Sur le paragraphe 9 relatif au recours effectif devant une autorité judiciaire contre une décision d'une autorité non-judiciaire : la France demande à ce que ce paragraphe soit amendé en vue de tenir compte des législations nationales prévoyant d'autres types de recours effectifs, y compris lorsque ces derniers n'impliquent pas d'audience, et dès lors la possibilité de bénéficier d'assistance juridique et de représentation en justice gratuites. EL (Comments): -We place a scrutiny reservation for the whole Article, especially due to the proposed change when it comes to the appeal system in accordance with Articles 26 and 27 (appeal only before a judicial authority instead of what is provided for under the Return Directive: 'before a competent judicial or

Commission proposal	Drafting Suggestions and Comments
	administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence') -In general, we consider that this Article is more excessive than what is necessary and it may provide some further possibilities for abusive use of appeal procedures for the sole reason of delaying and hampering the return. For example, the provision of paragraph 9 would add further burden to the competent appeal authorities. NL (Drafting Suggestions): *Article 25* **The right to an effective remedy and ~~l~~Legal assistance and representation** NL (Comments): These articles could also be more aligned with art. 19 APR if necessary. Then, this should remain a separate article (in stead of bringing back art. 13 Return Directive on all these matters). CY (Comments): A general observation arising from the substance of Articles 25-33 is that the expanded examination of both facts and law, together with the broader

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PUBLIC

Commission proposal	Drafting Suggestions and Comments
	responsibilities now placed upon the relevant Courts, will unavoidably lead to a significant increase in administrative burden. Accordingly, greater administrative support will be essential to assist Judges effectively and to ensure adherence to the strict procedural deadlines. CH (Comments): In Article 13, the Return Directive offers the right to an effective remedy. In order to safeguard this right, Article 13(3) states that the third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance. Under Article 13(4), Member States shall ensure that the necessary legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation or rules regarding legal aid. Therefore, the Return Directive sets a right for legal assistance and representation as a principle in one paragraph and then specifies in a separate paragraph that this shall be provided free of charge in accordance with national legislation. The proposal changes or one can say inverts this logic by establishing free legal assistance and representation as a principle in Paragraph 1 and establishing exclusion clauses for free legal assistance in Paragraph 5. This principle corresponds to Article 17(1) of the APR. In fact, most of Article 25

Commission proposal	Drafting Suggestions and Comments
	constitutes a copy-paste of the most important paragraphs of Articles 15, 17 and 19 of the APR. Switzerland's position is that the logic of the Return Directive should be maintained as based on Switzerland's knowledge from Schengen evaluations, this also corresponds to administrative law in most if not all Member States and has not been problematic. Switzerland also does not see a requirement that this regulation has to have a similar provision to the APR since asylum and return are two separate procedures. Therefore, a revised Article 25 should entail all provisions of Article 13 of the Return Directive, complemented by paragraphs 4 and 5 of the Commissions's proposal (see drafting suggestions). SE (Comments): SE is still analyzing this Article. Our general point of view is that the right to legal assistance and representation should not be extended compared to the APR and the current Return Directive.
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.	AT (Drafting Suggestions): 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

Commission proposal	Drafting Suggestions and Comments
	national, ensure that free legal assistance and representation is made available as necessary. ~~to ensure the right to an effective remedy and fair trial.~~ Such request shall be made within 3 days. AT (Comments): Due to the possible effects on the time limit for appeal and any intentions of delay, it is important to set a deadline for submitting the application. Legal assisstance and representation is only one piece of the puzzle to ensure a fair trial, which is why the reference to it here is redundant. NO (Comments): Please see comment to art. 27 on «a judicial authority in accordance with Article 27", SK (Comments): The Legal Aid Centre, the body that provides legal aid to foreigners in the Slovak has provided the following comments: The current legal situation under the so-called Return Directive regulates the obligation of a Member State to provide free legal aid to a foreigner in the matter of administrative expulsion only at the 2nd instance of the procedure, i.e. for filing an appeal,

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	and may limit legal aid, e.g. due to the apparent failure of the appeal, or in the event that the foreigner is not in material need, etc. The Legal Aid Centre provides legal aid at the 2nd instance for a long time, and from 01.07.2025 the Legal Aid Centre will also examine the apparent failure of an appeal in the matter of expulsion when granting legal aid. The proposed regulation does not change the situation in this regard, it only allows (does not impose an obligation) for a Member State to provide free legal aid at the 1st instance in the matter of detention and expulsion, i.e. before the decision is issued. The same situation is currently valid, but this option is not used in the Slovak Republic. We believe that the provision of legal aid in the first instance of the proceedings does not need to be covered by free legal aid. We consider legal aid for filing an appeal in the second instance, as currently provided, to be sufficient. This does not exclude the possibility for third-country nationals to secure legal aid in the first instance as well, but at their own expense. IS (Drafting Suggestions): "…before a judicial **or administrative** authority…" IS (Comments): See comment below regarding 26.1.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	EE (Drafting Suggestions): 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 **before a judicial authority of first instance.** EE (Comments): According to Article 25 (5) point (c), free legal assistance and representation may be excluded where the appeal or review is at a second level of appeal or higher. This causes heavy administrative burden as the competent authority is required to request the court to terminate the granting of the legal assistance and representation to the person whose appeal was rejected. We propose that the returnee should have the right to receive free legal assistance and representation until the judicial authority of first instance has reviewed the decisions referred to in Article 7, Article 10 and Article 12(2). CZ (Drafting Suggestions): 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

Commission proposal	Drafting Suggestions and Comments
	available ~~**as necessary to ensure the right to an effective remedy and fair trial**~~. CZ (Comments): We suggest to leave out the words "as necessary to ensure the right to an effective remedy and fair trial" as there is no normative content. It is rather a text of a recital. LT (Drafting Suggestions): 2. 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 **before a judicial authority of first instance.** LT (Comments): With regard to paragraph 5(c) of this Article, we suggest that the returnee should be entitled to free legal aid and representation before the judicial authority of first instance. NL (Drafting Suggestions): ~~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~~

Commission proposal	Drafting Suggestions and Comments
	~~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.~~ 1. The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, as referred to in Article 7, Article 10 and Article 12(2), before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence. CY (Drafting Suggestions): In the case of an appeal or a review before a judicial authority in accordance with Article 27, Member States shall, ~~at the~~ **upon reasoned** request of the third-country national, ensure that free legal assistance and representation is made available ~~as~~ **to the extend** necessary to ensure the right to an effective remedy and fair trial. CY (Comments): **'Upon reasoned request'**: Ensures applicants must substantiate their request, discouraging abuse without excluding genuine cases.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	'to the extent necessary': Grants flexibility in the scope of legal assistance, allowing resources to be focused on what is essential for an effective remedy. CH (Drafting Suggestions): 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.~~ **The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, as referred to in Article 7, Article 10 and Article 12(2), before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.** CH (Comments): See comment regarding Article 25. BG (Comments): We place a scrutiny reservation for the whole Article due to the ongoing consultations at national level.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
2. Unaccompanied minors shall automatically be provided with free legal assistance and representation.	SK (Comments): The Legal Aid Centre, the body that provides legal aid to foreigners in the Slovak has provided the following comments: As for free legal aid for unaccompanied minors, currently, according to the so-called Return Directive and also according to the proposed regulation, it is possible in the European Union to detain an unaccompanied minor as a last resort and, in case of necessity, to issue a decision on expulsion, if this is in his or her best interest. However, in Slovakia, according to the Act on the Residence of Foreigners, this is not permissible; the Slovak Republic has always followed the path of "more favourable legal regulation" in the case of unaccompanied minors. The Centre believes that in the case of unaccompanied minors, there should not be a possibility to detain an unaccompanied minor even at the level of EU legislation, in accordance with the international principle of the best interests of the child, which is intended to motivate Member States to seek solutions other than restricting their personal freedom. The regulation proposes mandatory representation in the matter of detaining an unaccompanied minor, but based on the assumption that detaining

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	unaccompanied minors will continue to be inadmissible, mandatory provision of legal aid in the given case will therefore not be necessary. CZ (Drafting Suggestions): ~~**Unaccompanied minors shall automatically be provided with free legal assistance and representation.**~~ CZ (Comments): We suggest to leave out this provision as unaccompanied minors shall have a guardian/a representative who may arrange/ask for free legal assistance and representation. NL (Drafting Suggestions): ~~Unaccompanied minors shall automatically be provided with free legal assistance and representation.~~ 2. The authority or body referred to in paragraph 1 shall have the power to review decisions related to return, as referred to in Article 7, Article 10 and Article 12(2), including the possibility of temporarily suspending their enforcement, unless a temporary suspension is already applicable under national legislation.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	CH (Drafting Suggestions): 2. ~~Unaccompanied minors shall automatically be provided with free legal assistance and representation.~~ **The authority or body mentioned in paragraph 1 shall have the power to review decisions related to return, as referred to in Article 7, Article 10 and Article 12(2), including the possibility of temporarily suspending their enforcement, unless a temporary suspension is already applicable under national legislation.** CH (Comments): Switzerland would like to point out some issues with paragraph 2 in its current form. Paragraph 2 states that unaccompanied minors shall automatically be provided with free legal assistance and representation. Switzerland can understand the reasoning to ensure that the minor is protected. At the same time, Article 20 already requires the appointment of a person to represent, assist and act on behalf of the unaccompanied minor. That person also has the obligation to request free legal assistance. One should therefore reassess the need for paragraph 2. Interestingly, the APR does not contain a provision such as paragraph 2. Moreover, children from wealthy families in third countries who are staying in Member States to complete their secondary education in expensive boarding schools may also

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	be considered unaccompanied minors. It would be difficult to understand that they should automatically be provided with free legal assistance and representation when appealing a return decision. SE (Comments): SE: The right to legal assistance and representation for unaccompanied minors seems to go further according to this proposal than what applies to unaccompanied minor according to the APR. Is that intentional?
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.	IS (Drafting Suggestions): "…before a judicial **<u>or administrative</u>** authority…" IS (Comments): See comment below regarding 26.1. CZ (Comments): We support SI comment here. Approximately half of the MSs issue a joint decision on international protection and on return. Only one assistance/representation that covers both situations shall be granted.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Therefore, it is necessary to change the wording of the last sentence reflecting these joint decisions. MT (Drafting Suggestions): 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 **competent** judicial **or administrative** 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. MT (Comments): MT calls for the wording to maintained in line the Aritlce 13 of the Return Directive, providing the possibility for effective remedy also before an administrative authority. IT (Comments): In paragraph 3, it might be appropriate to defer to national legislation, rather than specifying the minimum content of legal assistance.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	NL (Drafting Suggestions): ~~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.~~ 3. The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance. CH (Drafting Suggestions): 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.~~ **The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance.** CH

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): See comment regarding Article 25.
	NL (Drafting Suggestions): 4. Member States shall ensure that the necessary legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation or rules regarding legal aid, and may provide that such free legal assistance and/or representation is subject to conditions as set out in [APR in art 73 repealing Directive 2005/85/EC in particular Article 15(3) to (6) of Directive 2005/85/EC]. NL (Comments): This is a new paragprah 4, that brings back article 13 paragraph 4 of the Return Directive; the reference to Directive 2005/85/EC needs to be updated.
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.	IE (Comments): What is meant by the phrase 'suitably qualified'? IE would welceome clarity on same. CZ (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	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~~. CZ (Comments): This goes even further than asylum acquis. We do not see why. There it is used in relation to guardians, but not in relation to legal assistance/reprepresentation. MT (Drafting Suggestions): 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. MT (Comments): MT notes that the current wording would be very difficult to implement and would cause excessive administrative burden. EL

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): It is not clear why the phrase '*whose interests…of the third-country national.*' is included in this paragraph. In order to clarify this issue, we would like the Commission to provide some examples of cases of legal advisers or qualified persons, whose interests would conflict with those of the TCN. NL (Drafting Suggestions): 5. 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. NL (Comments): The old paragraph 4 becomes paragraph 5. CH (Drafting Suggestions): 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.~~ **Member States shall ensure that the necessary legal assistance and/or representation is granted on**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	request free of charge in accordance with relevant national legislation or rules regarding legal aid, and may provide that such free legal assistance and/or representation is subject to conditions as set out in Article 15(3) to (6) of Directive 2005/85/EC. CH (Comments): See comment regarding Article 25.
5. The provision of free legal assistance and representation in the appeal procedure may be excluded by the Member States where:	NL (Drafting Suggestions): 6. The provision of free legal assistance and representation in the appeal procedure may be excluded by the Member States in accordance with national law where: NL (Comments): The old paragraph 5 becomes paragraph 6. CH (Drafting Suggestions): ~~5. The provision of free legal assistance and representation in the appeal procedure may be excluded by the Member States where:~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	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. CH (Comments): See comment regarding Article 25.
a. the third-country national is considered to have sufficient resources to afford legal assistance and representation at his or her own cost;	CH (Drafting Suggestions): ~~a. the third-country national is considered to have sufficient resources to afford legal assistance and representation at his or her own cost;~~ SE (Drafting Suggestions): a. the third-country national**, who shall disclose his or her financial situation,** is considered to have sufficient resources to afford legal assistance and representation at his or her own cost; SE (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	SE: It is optional for the MS to apply the possibility in para 5 point (a), i.e. to exclude free legal assistance and representation if the third country national concerned is considered to afford it at his or her own cost. However, there is no neeed for Member States who do not apply this possibility to require that the third country national shall disclose his or or financial situation in accordance with point 6. In these cases it would only entail an unjustifiable administrative workload for the authorities. Either, this could be solved by an addition in point (b) using the same wording as in the corresponding Article of the APR (Art.17) in conjunction with the deletion of para 6 in its entirety or by clarifying in para 6 that it is optional for MS to request the disclosure of the third country national's financial situation. See alternative text proposal for point 6 below.
b. it is considered that the appeal has no tangible prospect of success or is abusive;	IT (Comments): Paragraph 5(b) needs to be clarified with regard to the possibility of referring, for example, to the applicant's origin from safe third countries when assessing the absence of any real prospect of success of the appeal or its abusive nature.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	CY (Drafting Suggestions): it is considered that the appeal has no tangible prospect of success or is abusive **or outside the time limits specified under national law**; CH (Drafting Suggestions): ~~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;	CH (Drafting Suggestions): ~~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.	CH (Drafting Suggestions): ~~d. the third-country national is already assisted or represented by a legal adviser.~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
6. The third-country national requesting free legal assistance and representation shall disclose his or her financial situation.	EE (Drafting Suggestions): 7. The third-country national requesting free legal assistance and representation shall disclose his or her financial situation **and submit a copy of the decision subject to appeal**. EE (Comments): According to Article 25 (5) point (b), free legal assistance and representation may be excluded where the appeal has no tangible prospect of success or is abusive. To assess it, a third country national requesting free legal asistance and representation should submit a copy of the decision subject to judicial review. NL (Drafting Suggestions): ~~The third-country national requesting free legal assistance and representation shall disclose his or her financial situation.~~ CY (Drafting Suggestions): The third-country national requesting free legal assistance and representation shall **submit a declaration of his or her financial situation in the form, as prescribed in the national law** ~~disclose his or her financial situation~~. CY

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): **Declaration of financial situation**: Standardises the applicants' duty to disclose their means, allowing for fairer allocation. The CY Legal aid law was recently amended for the asylum seekers with the deletion of the disclosure of the financial declaration of the applicant as it created a lot of workload to the competent authority to confirm their financial situation. For the cases specified in article 27, which are more limited, it is welcome. CH (Drafting Suggestions): 6. ~~The third-country national requesting free legal assistance and representation shall disclose his or her financial situation.~~ **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;**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	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.** CH (Comments): See comment regarding Article 25. SE (Drafting Suggestions): 6. The third-country national requesting free legal assistance and representation **may be required to** ~~shall~~ disclose his or her financial situation. SE (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	SE: It is optional for the MS to apply the possibility in para 5 point (b) to exclude free legal assistance and representation if the third country concerned is considered to afford it at his or her own cost. Consequently, it should also be optional for MS to require that the third country national discloses his or her financial situation. There is no neeed for a Member State who do not apply this possibility to require that the third country national shall disclose his or or financial situation. In these cases it would only entail an unjustifiable administrative workload for the authorities. Either, this could be solved by an addition in para 5 point (b) using the same wording as in the corresponding Article of the APR (Art.17) in conjunction with the deletion of para 6 in its entirety (see text proposal for para 5 point (b) above) or by clarifying in para 6 that it is optional for MS to request the disclosure of the third country national's 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:	EE (Comments): With regard to paragraph 7, we propose to add a recital in the preamble to Return Regulation *(28[1]) Due to the complex nature of return cases, Member States may provide differential payment to legal advisers or other qualified persons providing free*

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	legal assistance and representation to third country nationals subject to return. Justification Due to the specificity of the return cases and language barrier it is very challenging to find lawers willing to provide legal assistance and representation to third country nationals subject to return decisions. The regulation should leave MS the possibility of paying higher fee to legal advisers or other suitable qualified persons providing free legal assistance and representation to third country nationals subject to return. NL (Drafting Suggestions): ~~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:~~ CH (Drafting Suggestions): ~~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:~~ CH (Comments): See comment regarding Article 25.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
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;	NL (Drafting Suggestions): ~~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;~~ CY (Drafting Suggestions): impose **reasonable** 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.**Monetary limits may be set by reference to the minimum fees established in national legal aid schemes, while time limits may be determined in light of the average duration and procedural requirements of the relevant judicial proceedings** CY (Comments): **Reasonable limits:** Makes it explicit that any limits on time or money must not be arbitrary or unduly restrictive, thus balancing cost control with rights protection.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	CH (Drafting Suggestions): ~~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;	NL (Drafting Suggestions): ~~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;~~ CY (Comments): The provision must be further clarified in order to ensure smooth implementation and monitoring of financials. CH (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~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.	NL (Drafting Suggestions): ~~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.~~ CH (Drafting Suggestions): ~~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	NL (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
similar nature, provided that those rules do not render access to free legal assistance and representation excessively difficult or impossible.	~~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.~~ CH (Drafting Suggestions): ~~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.~~ CH (Comments): See comment regarding Article 25.
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.	AT (Comments): Para 9 is very bureaucratic with multiple applications/decisions and will lead to unnecessary delays, which is why it is proposed to delete or at least revise it for the purpose of simplification and acceleration. It is also not clear what happens to the appeal period - which is a maximum of 14 days - during the

Commission proposal	Drafting Suggestions and Comments
	"interim process" provided for in para. 9, how should this work out after (1)? Therefore, we need a time limit in (1) for the application and simplification of the non-grant procedure according to (9). If the judicial review/decision remains necessary, a time limit for the court to reach a decision would also be required. IS (Drafting Suggestions): "…before a judicial **or administrative** authority…" IS (Comments): See comment below regarding 26.1. FR (Drafting Suggestions): 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~~. NL (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	~~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.~~ CH (Drafting Suggestions): ~~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.~~ CH (Comments): See comment regarding Article 25.
10. Member States may provide for free legal assistance and representation in the administrative procedure in accordance with national law.	AT (Drafting Suggestions): ~~Member States may provide for free legal assistance and representation in the administrative procedure in accordance with national law~~.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	AT (Comments): Deletion is proposed to harmonize the applicable rules and ensure uniformity. NL (Drafting Suggestions): ~~Member States may provide for free legal assistance and representation in the administrative procedure in accordance with national law.~~ CH (Drafting Suggestions): ~~10. Member States may provide for free legal assistance and representation in the administrative procedure in accordance with national law.~~ CH (Comments): Switzerland would like to point out some issues with paragraph 10 in its current form: paragraph 10 allows Member States to provide free legal assistance and representation in the administrative procedure in accordance with national law, which is a copy-paste of Article 15(3) of the APR. The term 'administrative procedure' is used throughout the APR. The specific rules in the APR for the administrative procedure make it clear that the

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	administrative procedure are the steps before the asylum decision such as interviews. In this proposal, the term 'administrative procedure' is mentioned only twice, in Recital 43 and here. Consequently, one does not know what the administrative procedure is in relation to return. It can also be questioned whether the same provision as in the APR has to be used, considering that return is not asylum and that in case of protection related concerns the cases should be referred to asylum authorities anyway. In case paragraph 10 would be maintained, a different term than 'administrative procedure' would have to be used that better specifies the period that would be covered, for example 'before a return decision is issued'.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
SECTION 2 **REMEDIES**	IT (Comments): We place a scrutiny reservation for the whole Articles 26 and 27, which are still being examined and discussed by the Italian Ministry of Justice. BG (Drafting Suggestions): **SECTION 2** **REMEDIES**

PUBLIC

Article 26 ***The right to an effective remedy***	MT (Comments): MT notes that since Member States have different legal systems, more flexibility is required here to allow Member States to regulate appeals as is current possible under the Return Directive. FR (Comments): La Commission a confirmé qu'elle entendait par « ex nunc examination » une application du droit en vigueur à la date du jugement. La France s'y oppose fermement. En droit français, le juge applique le droit en vigueur au moment de l'édiction de la décision. Il ne peut en effet être attendu des autorités compétentes qu'elles anticipent les changements de législation ou de réglementation postérieurs à l'édiction de leur décision. Cette obligation est impraticable et ferait peser sur leurs décisions en matière de retour un risque juridique beaucoup trop important. Au paragraphe 3, par cohérence avec les amendements que nous proposons à l'article 12, nous voulons qu'il soit rappelé que l'examen du respect du principe de non-refoulement ne s'effectue qu'au regard du pays de retour c'est-à-dire au stade de l'exécution et non de la décision, pays de retour qui peut être fixé dans une décision distincte et postérieure à la décision de retour. EL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	-We consider that Articles 26 and 27 should be merged, under the title of this Article. -We place substansive reservations with regard to reference only to 'competent judicial authority'. NL (Comments): We propose to delete this article. CH (Drafting Suggestions): ~~Article 26~~ ~~The right to an effective remedy~~ CH (Comments): The whole article can be merged with Article 27 which would maintain the title "Appeal before a competent judicial authority". Consequently, Article 26 should be deleted. BG (Drafting Suggestions): Article 26 **The right to an effective remedy**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
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.	IE (Comments): IE can support calls from other Member States on the addition of a reference to an independent administrative authority. As Ireland operates a common law system, this is a necessary addition. NO (Comments): Need to define "competent judicial authority". IS (Drafting Suggestions): 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 **or administrative** authority. IS (Comments): It is important that the provision acknowledges that not all Member States assign judicial authorities to review such decisions. For instance, in Iceland, this function is carried out by an administrative body; the Immigration and Asylum Appeals Board, which meets the requirements of Article 13 of the current Return Directive by providing an effective remedy to appeal against or seek review of decisions related to return. The board operates as a quasi-judicial body: its members must meet the qualifications required to serve as district court judges, and it functions with full institutional independence.

Commission proposal	Drafting Suggestions and Comments
	Notably, the Ministry of Justice has no authority to intervene in its decision-making, including rulings on asylum matters. It is therefore suggested that the phrase "…or administrative authority" be added to the provision to accurately reflect this diversity in national systems. MT (Drafting Suggestions): 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 **or administrative** authority. MT (Comments): MT notes the need to preserve the possibility for effective remedy before an administrative authority. FR (Drafting Suggestions): 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~~**3**) before a competent judicial authority. PL (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	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 **administrative or** judicial authority. PL (Comments): We would suggest maintaining flexibility and leaving it up to Member States to regulate the appeal process themselves, including the possibility of appealing decisions before the competent administrative authority. Implementing a solution as it is now proposed would represent an undue administrative burden on the judical authority. EL (Drafting Suggestions): 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 **or administrative** authority **or a competent body composed of members who are impartial and who enjoy safeguards of independence**. EL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Any change in terms of the appeal system compared to what is provided for under the Return Directive, would necessitate, at least in our case, a complete reform of the appeal procedures. This reform most probably will further delay the return rather than facilitate the main purpose of updating the legal framework, which is to make the return procedure more efficient and effective. Therefore, retaining the wording used in the Return Directive should be considered. An appeal system, which combines administrative and judicial authorities as competent to examine remedies, should be deemed as sufficient in terms of exercising an effective remedy. NL (Drafting Suggestions): ~~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.~~ BE (Drafting Suggestions): 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) **subject to judicial review**. BE (Comments):

Commission proposal	Drafting Suggestions and Comments
	The formulation "before a competent judicial authority" is stricter than the current Return Directive (which mentions "judicial or administrative authority"). We would like to foresee more margin for the MS, by changing the formulation to "subject to judicial review". CH (Drafting Suggestions): ~~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.~~ CH (Comments): Switzerland believes that paragraph 1 should be merged with paragraph 1 of Article 27, which already in the proposal basically covers all aspects of paragraph 1 of Article 26.
2. The effective remedy shall provide for a full and *ex nunc* examination of both points of facts and points of law.	AT (Drafting Suggestions): The effective remedy shall provide for a full and ~~*ex nunc*~~ examination of both points of facts and points of law. AT

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): The deletion would allow to keep our current system EE (Drafting Suggestions): 2. The effective remedy shall provide for a full and *ex nunc* examination of both points of facts and points of law **before a judicial authority of first instance**. EE (Comments): The courts of appeal and cassation (courts of second and third instance) review the judicial decisions with regard to application and interpretation of legal norms. Therefore, we suggest to specify that *ex nunc* examination is only required before a judicial authority of first instance. LU (Drafting Suggestions): The effective remedy shall provide for a full and *ex* ***~~nunc~~ tunc*** examination of both points of facts and points of law. LU (Comments): LU requests to delete the notion “ex nunc”, and replace it with “ex tunc”

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	LT (Drafting Suggestions): 3. The effective remedy shall provide for a full and *ex nunc* examination of both points of facts and points of law **before a judicial authority of first instance**. LT (Comments): The courts of appeal (courts of second instance) review the judicial decisions with regard to application and interpretation of legal norms. Therefore, we would suggest to specify that *ex nunc* examination is only required before a judicial authority of first instance. FR (Drafting Suggestions): 2. The effective remedy shall provide for a full ~~and ex nunc~~ examination of both points of facts and points of law. EL (Drafting Suggestions): Deletion EL

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): Taking into account the obligations deriving from the Charter, we deem that this provision should be deleted as unnecessary. NL (Drafting Suggestions): ~~The effective remedy shall provide for a full and *ex nunc* examination of both points of facts and points of law.~~ CY (Comments): CY will have to amend its legal system and the jurisdiction of the competent courts for the ex nunc examination. We propose that the examination is based on points of law. BE (Comments): Scrutiny reservation regarding the “ex nunc examination”. HU (Drafting Suggestions): The effective remedy shall provide for a full ~~and *ex nunc*~~ examination of both points of facts and points of law. HU (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We cannot support the possibility that the court may examine new circumstances in relation to the decision of the immigration authority. This would not be in line with fundamental legal principles. If ex nunc assessment is nevertheless used, it is necessary to ensure that only new facts and circumstances arising after the decision under appeal, which the authority that issued the contested decision was not in a position to assess and take into account, are assessed. If, however, the foreigner has failed to bring to the attention of the authority the new facts and circumstances which he has brought to its attention only in the appeal proceedings, they cannot be used as a basis for declaring the decision unlawful and putting the foreigner in a more favourable position in the appeal proceedings. CH (Drafting Suggestions): ~~2. The effective remedy shall provide for a full and ex nunc examination of both points of facts and points of law.~~ CH (Comments): In paragraph 2, the notion of a "full and ex nunc examination of both points of facts and points of law" is not clear and simple enough. Switzerland is aware that the term is also used in relation to other EU legislation, but it

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	would be simpler to state "full examination of both points of facts and points of law available at the time decision". However, it would make sense to also merge this provision with paragraph 1 of Article 27 since that provision suggests an appeal before one competent judicial authority. Switzerland believes that like today the right to an effective remedy should consist of an appeal before at least one judicial authority and not more. The text should clarify this. BG (Drafting Suggestions): .
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*.	AT (Drafting Suggestions): ~~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*.~~ AT (Comments): This creates a repetition IS

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): Member States shall ensure that compliance with the requirements arising from the principle of non-refoulement is verified by the competent judicial **or administrative** authority, at the request of the third-country national or *ex officio*. IS (Comments): Same as the comment above regarding 26.1. EE (Drafting Suggestions): 4. ~~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*~~. EE (Comments): We believe that the principle of non refoulement should be assessed by the authority enforcing the return decision. In cases where the removal could violate the principle of of *non-refoulement* or there are other relevant circumstances that hinder the enforcement of the return decision (e.g. reflection period has been granted to a victim of human trafficking in accordance with the Directive 2004/81/EC), the compentent authority should have the right to decide whether to suspend or postpone the enforcement of the return decision. When removal is suspended or postponed by a judicial authority, MS should follow the rules set out in their national legislation. If concrete time limits for judicial authorities are still set, the court should have

PUBLIC

	the right to exceed the time limits, in particularly complex cases or in emergency or crisis situations. See also our comments on Article 28. CZ (Drafting Suggestions): ~~**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*.**~~ CZ (Comments): We suggest to leave out paragraph 3. Paragraph 2 and existing case law are sufficient in this respect. The formulation is very open and it is not clear which decision this relates to. As a consequence, it may paralyse MSs by constant non-refoulement checks. (We support the idea of determining the country of return and doing non-refoulement check in the phase of removal.) LU (Drafting Suggestions): 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*.**~~ LU

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): In coherence with our other comments on these articles, LU requests the deletion of "or *ex officio*" FR (Drafting Suggestions): 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**, and only by reference to the country of return determined either in the return decision referred to in Article 7 or in the removal order referred to in Article 12(3)**. EL (Drafting Suggestions): Deletion EL (Comments): We deem that the provision of Article 12 (3) is adequate and there is no need to further provide for the compliance with the principle of non-refoulment. NL (Drafting Suggestions): ~~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*.~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	CY (Comments): Exceptions should be placed (i.e when this is already done by a judicial authority on the basis of the examination of the asylum application) BE (Comments): We can accept this formulation on the condition that the "or" is maintained. CH (Drafting Suggestions): ~~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.~~ CH (Comments): Paragraph 3 should be deleted since consideration for non-refoulement is covered in Article 12(3) and paragraph 3 does not bring forward an additional element. ES (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	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*~~. BG (Drafting Suggestions): 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~~. BG (Comments): We propose deleting "ex officio" because obligating the administrative authority to monitor compliance with the principle of non-refoulement ex officio in each individual case will increase the administrative burden and delay the return procedure as a whole. We could accept the deletion of the paragraph, as well.

PUBLIC

Article 27 ***Appeal before a competent judicial authority***	NO (Comments): Everyone who is subject to a return decision should be able to have their case tried before a court at least once. The COMM referred to recital 30 which refers to the EU Charter 47 on the right to an effective remedy by an independent and impartial body. Norway is not bound by the Charter of Fundamental Rights of the EU. The right to an effective remedy follows from § 92 of the Norwegian Constitution, cf. the Human Rights Act § 2, cf. the European Convention on Human Rights (ECHR). NO believes that the Immigration Appeals Board (UNE), which is a court-like body with independent decision-makers, satisfies the requirements for an appeal body in Articles 25 (9), 26 (1) and 27 (1). Appeals processing in UNE is considered to satisfy the requirements for an effective remedy that follow from the Constitution and Norway's international obligations. IS (Drafting Suggestions): *Article 27* ***Appeal before a competent judicial <u>or administrative</u> authority*** IS (Comments): See comment above regarding 26.1.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	MT (Drafting Suggestions): Appeal before a competent judicial **or administrative** authority MT (Comments): In line with the Return Directive. FR (Comments): S'agissant de l'article 27, la France est satisfaite du délai de recours maximal fixé à 14 jours. Nous souhaitons en revanche la suppression du paragraphe 5, qui sort du champ du règlement « retour » et nous semble superfétatoire. Pour le reste, nous avons des remarques d'ordre plus technique et rédactionnel : IT (Comments): See our comment under Article 26. EL (Drafting Suggestions): Deletion EL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Concerning the amendments proposed for this Article, see our comments under the Article 26 NL (Drafting Suggestions): Article 27 **Appeal before a competent** body, administrative authority or **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.	IE (Comments): IE can support calls from other Member States on the addition of a reference to an independent administrative authority. As Ireland operates a common law system, this is a necessary addition. SK (Comments): The Ministry of Justice of the Slovak Republic has provided the following comments: The draft regulation brings a significant diversion from the current wording of Directive 2008/115/EC, namely the obligation for Member States to lay down in their national law “reasonable time limits for the competent judicial authority of first instance to examine the decisions”

Commission proposal	Drafting Suggestions and Comments
	referred to in Article 7, Article 10 and Article 12(2), of the draft regulation. Despite the fact that the draft regulation leaves the determination of the length of the time limit to individual Member States, the very assumption and requirement of its national regulation represents a fundamental breakthrough in the current concept of administrative justice. Generally, on the issue of time limits for issuing a decision in proceedings before a court, we would like to state that it is a long-term effort, which had its reflection in the framework of the recodification of the rules of court procedure, not to regulate strict time limits for issuing a decision (with certain justified exceptions in proceedings in matters of detention), even for special types of proceedings. In this case, it is not only a matter of substantive reservations to such proposals, but also about the practical impacts on the operation and performance of the judiciary. In view of the above, we would like to express disagreement with such regulation that would oblige Member States to determine a deadline for the court's decision in specific case. Position on the second sentence of Art 27 by The Ministry of Justice of the Slovak Republic: In principle, the adoption of the relevant amendment to the draft regulation would require the amendment or deletion of the provision of

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Art. 235 of the Administrative Court Procedure, which currently specifically regulates the issue of the deadline for filing an administrative appeal within 30 days of the delivery of the relevant decision or measure. It is also necessary, in our opinion, to evaluate the moment of the start of the said deadline, which the draft regulation links to the moment of "notification" (which is not further defined), whether this actually coincides with the moment of "delivery" as currently known and defined in Art. 235 of the Administrative Court Procedure. In this regard, we would welcome clarification from the Commission, as to how to correctly interpret the said moment of "notification of the decision". As for the length of the period itself, according to the draft regulation, it is stricter (14 days) than the current 30-day period under Art. 235 of the Administrative Court Procedure, which is itself a special period for this specific type of administrative action. IS (Drafting Suggestions): 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 **or administrative** authority IS (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	See comment above regarding 26.1. EE (Drafting Suggestions): **Option 1:** 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~~ **a. ensure the adequate and complete examination of appeals against** the decisions referred to in Article 7, Article 10 and Article 12(2)~~, providing for an adequate and complete examination of the appeal~~ **within a reasonable time;** **b.** ~~The period~~ **lay down in their national law time limits** for lodging an appeal before a judicial authority of first instance ~~shall not exceed 14 days~~. **Option 2:** 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 **a.** 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. **Further flexibility in time limits may be justified in complex cases or emergency/ crisis situations.** b. ~~The period~~ **time limits** for lodging an appeal before a judicial authority of first instance ~~shall not exceed~~ ~~14 days~~.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	EE (Comments): We would argue against setting concrete time limits for the court reviews (*option 1*). Specific deadlines for judicial review may influence the quality of court decisions. However, when most MS agree to fix reasonable time limits in their national law, there should be possible to exceed these deadlines in particularly complicated cases (e.g. removal of long-term residents) or where MS is facing emergency or crisis situation (*option 2*). With regard to paragraph 1 of Article 27, we suggest to make a clear distinction between time limits set down for judicial review and for lodging an appeal. As a rule, court proceedings commence when complaint is filed with the judicial authority. Therefore, Article 27(2) should only regulate the calculation of time limits relating to the appeal. CZ (Drafting Suggestions): 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.**~~ CZ

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): The two time limits are not interrelated. Therefore, we suggest to have two separate paragraphs. MT (Drafting Suggestions): 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 **or administrative** 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. FR (Drafting Suggestions): 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 **disputed** decision**(s)** referred to in Article 7, Article 10 ~~**and**~~ **or** Article 12(~~**2**~~**3**), providing for an adequate and complete examination of the ~~**appeal**~~ **petition**. The period for ~~**lodging an appeal**~~ **filing such a petition** before a judicial authority of first instance shall not exceed 14 days.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	PL (Drafting Suggestions): 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 **or competent administrative authority of second 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 7 ~~14~~ days. PL (Comments): We would suggest maintaining flexibility and leaving it up to Member States to regulate the appeal process themselves, including the possibility of appealing decisions before the competent administrative authority. Implementing a solution as it is now proposed would represent an undue administrative burden on the judical authority.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Additionally, we propose that the deadline for lodging an appeal be set at a maximum of 7 days. Given the wide range of procedural guarantees and the need to increase the efficiency of return procedures, this deadline is sufficient to ensure an effective remedy. This is particularly important in situations where the appeal is lodged with an administrative authority and the foreigner still has the option of appealing to a court. IT (Comments): Pending the evaluation by the Ministry of justice, the Ministry of Interior welcomes the 14-day deadline for lodging an appeal, in order to facilitate faster and more streamlined return procedures. EL (Drafting Suggestions): 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 **or body** 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

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	NL (Drafting Suggestions): For the purpose of ensuring the right to an effective remedy in accordance with Article ~~26~~25, Member States shall lay down in their national law reasonable time limits for the competent body, administrative authority or 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 competent body, administrative authority or judicial authority of first instance shall not exceed 14 days~~.~~ BE (Comments): The delay of 14 days is too short. In Belgium it is currently set at 30 days (and 10 days in case of extreme urgency). CH (Drafting Suggestions): 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~~**30** days. **The effective remedy shall provide for**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	a full examination of both points of facts and points of law available at the time of decision. CH (Comments): Switzerland has previously mentioned that the maximum 14-day period to lodge first-instance appeals for most cases in paragraph 1 - including complex cases - would strain the judiciary or in the case of the filing of appeals the third-county nationals and their legal representatives. Switzerland would therefore prefer a maximum one-month appeals period in paragraph 1, which also corresponds to Article 67(7)(b) of the APR. This also makes sense since asylum and return decisions are often in one single document. This also would mean that paragraph 3 could be deleted since one would not have to distinguish between particular types of return decisions. The underlying thinking is that the cooperation of the third-country national and of the third country as well as the Member States' efforts are key to ensuring effective returns and not whether the maximum appeals period is 14 days or one month. Switzerland believes that the Member States should be given sufficient flexibility. ES (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	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 months**. ES (Comments): This extension should be read in conjunction with the deletion of the automatic suspensive effect suggested under Article 28 SE (Drafting Suggestions): 1. For the purpose of ensuring the right to an effective remedy in accordance with Article 26, Member States ~~shall~~ **may** 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. **Without prejudice to paragraph 3,** ~~T~~the period for lodging an appeal before a judicial authority of first instance shall not exceed ~~14 days~~ **a month**.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	SE (Comments): SE generally that MS shall lay down provisions in national law on the duration of the appeal procedure, i.e. time limits for the courts. SE supports swift procedures. However, it should be up to the Member States to determine if set time limits in national law is the appropriate and an effective way to direct the courts to ensure swift procedures. It is also a question of the independency of the courts. SE therefore prefers the deletion of the proposal in this part or, alternatively, that it is made optional (a "may" clause). In order to be aligned with the time limits in APR the period for lodging an appeal should be that it should not exceed a month (Art. 67). SE took note of the explanation from the COM at the IMEX WP 8-9 July that the time limit of a maximum 14 days is not mandatory for MS to apply where the return decision is taken as a part of related decision and is appealed jointly with that related decision, before the same court and within the same judicial proceedings. However, we think that this needs to be clarified in the text. Especially, with regard to the appeal of return decisions that is

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	accompanying other decisions than rejected applications for internatiomal protection. SE applies a procedure where both negative asylum decisions and other decisions refusing legal stay are appealed in a single procedure with the same time limit of up to three weeks for lodging an appeal.
	CZ (Drafting Suggestions): **1a. 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.	IE (Comments): How can a MS determine when a third country national has absconded? EE (Drafting Suggestions): 8. ~~Time limits referred to in paragraph 1 shall start to run~~ **In accordance with paragraph 1 point (b), the period for lodging an appeal shall not exceed 14 days and start running** 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. EE

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): See the previous comment. LU (Drafting Suggestions): **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 <u>or deemed notified under national law.</u> ~~or from another date to be determined by national law, notably when the third-country national concerned has absconded.~~** LU (Comments): The last passage "or from another date to be determined by national law, notably when the third-country national concerned has absconded" is problematic for LU. It is unclear whether Member States must determine such a date for these cases involving absconding TCNs. This could increase the risk of abusive behaviour, such as absconding. FR (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	~~**2. Time limits**~~ **The period** referred to in paragraph 1 shall start to run from the date when ~~**any of**~~ the **disputed** decision**(s)** referred to in Article 7, Article 10 ~~**and**~~ **or** Article 12(~~**2**~~**3**) 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. IT (Comments): As regards the starting date for the time limits for lodging an appeal, it is unclear whether there are any indicators regarding the possibility of notification in absentia in case of absconding. SE (Drafting Suggestions): 2. Time limits **for lodging an appeal** 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. SE (Comments): SE: There must be an error in the reference here. It should be clarified that this only refers to the time limit for lodging an appeal.
	HU

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): A document which has not been notified by electronic means shall be deemed to have been served on the date of the attempted service if the addressee has refused to accept it. If service has failed because the document has not been received by the authority from the addressee's address or registered office (a) "not sought", the document shall be deemed to have been returned on the date of the second attempt at service, (b) returned marked 'unknown' or 'moved', the document shall be deemed to have been served on the fifth working day following the day on which service was attempted. If the addressee becomes aware that a document sent to him is deemed to have been served by the authority, he may lodge an objection within fifteen days of becoming aware of the fact, but not later than forty-five days from the date of notification. The authority shall uphold the objection if the addressee has not been able to receive the document because (a) the service was effected in breach of the law on the service of official documents or for any other reason; or

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(b) he was unable to receive the document for reasons other than his own fault not mentioned in point (a). The statement of objection must set out the facts or circumstances which establish that service was irregular or that there was no fault on his part. If the objection is upheld by the authority, the rules applicable to the request for verification shall apply. HU (Comments): We are considered that the date of notification shall be regulated to secure legal certainty connected to the decisions of the authorities also in those situations when the TCN is not available under the reported postal address. The regulation of presumption of the date of notification shall be implemented to the Regulation in order to verify the day of notification so that the legal binding force and legal effects can be applied.
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.	FR (Drafting Suggestions): 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**~~ **challenge** the return decision may be those laid down in national law for ~~**appealing**~~ **challenging** a decision ending or refusing legal stay. CH

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): ~~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.~~ CH (Comments): See comment regarding Article 27(1). SE (Comments): SE took note of the explanation from the COM at the IMEX WP 8-9 July that the time limit of a maximum 14 days stipulated in para 1 is not mandatory for MS to apply where the return decision is taken as a part of related decision and is appealed jointly with that related decision, before the same court and within the same judicial proceeedings. SE has as system where both negative asylum decisions and other decisions refusing legal stay are taken and appealed in a single procedure with the same time limit of maximum three weeks for lodging an appeal.
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	IS

PUBLIC

Commission proposal	Drafting Suggestions and Comments
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.	(Drafting Suggestions): "…before the same judicial **or administrative** authority…" IS (Comments): See comment above regarding 26.1. EE (Drafting Suggestions): ~~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.~~ **Where an appeal is lodged against an entry ban related to return, time limits set out in paragraph 1 shall apply**. EE (Comments):

PUBLIC

	We propose to simplify the text of paragraph 4 and provide that the time limits set out in paragraph 1 shall also apply when an entry ban accompanied by a releted to return is appealed. MT (Drafting Suggestions): 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 **or administrative** 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. FR (Drafting Suggestions): 4. Where an entry ban is issued together with a return decision as referred to in Article 7, it shall be ~~**appealed**~~ **challenged** 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**~~ **contested**, it may be ~~**appealed against**~~ **challenged** 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**~~ **challenged** with the return decision.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	PL (Drafting Suggestions): 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 **or competent administrative authority of second instance** 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 **or administrative** proceedings shall be the same as those laid down in case where the entry ban is jointly appealed against with the return decision. PL (Comments): The two-instance administrative procedure, with the right to appeal the final decision to an administrative court is more in line with the specific nature of return proceedings.

Commission proposal	Drafting Suggestions and Comments
	Therefore we propose a flexible solution. The adoption of a solution as it is now proposed would seriously reduce Member States ability to return foreigners due to the burden on administrative courts. EL (Drafting Suggestions): 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~~ **competent** authority **or body** 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. NL (Drafting Suggestions): 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 competent body, administrative authority or 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~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~in case where the entry ban is jointly appealed against with the return decision.~~ NL (Comments): This time limit is already stated in paragraph 1 of this article. CY (Drafting Suggestions): 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 **responsible for the return decision** 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. CY (Comments): Recommended drafting provides a clearer definition of the competent Court.
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	IE (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
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.	What is meant by the phrase 'in due time'? IS (Drafting Suggestions): "…by the competent judicial **or administrative** authority…" IS (Comments): See comment above regarding 26.1. EE (Drafting Suggestions): ~~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.~~ EE (Comments): We propose the deletion as the organisation of the work of the courts should not be regulated by this regulation. MT (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	Where the documents are not submitted in due time, as determined by the competent judicial **or administrative** 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**~~ **competent** 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. LT (Drafting Suggestions): ~~6. 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.~~ LT (Comments): We would assume that these issues should be regulated by national law. FR (Drafting Suggestions): ~~**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**~~

Commission proposal	Drafting Suggestions and Comments
	~~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.~~ EL (Drafting Suggestions): Deletion EL (Comments): This provision goes beyond what is necessary in terms of regulating issues related to the proceedings of the remedies. ES (Drafting Suggestions): ~~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.~~ ES (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	ES deems that this provision exceeds the scope of the Return Regulation and covers general aspects of judicial procedures which fall under national competence.

PUBLIC

Article 28 ***Suspensive effect***	EE (Drafting Suggestions): ~~**Article 28**~~ ~~**Suspensive effect**~~ EE (Comments): According to Return Directive, automatic suspensive effect is required only in cases where there are substantial grounds for believing that the person, if returned, will be exposed to a real risk of ill-treatment contrary to Article 3 ECHR. We do not support the idea of automatic suspension of removal until a judicial authority of first instance has taken a decision on the application for suspension of the enforcement of a return decision. This may give rise to an abuse of judicial processes and hinder effective returns. Furthermore, we consider it necessary to ensure coherence with the Commission proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the application of the 'safe third country' concept. As the conditions for suspending or postponing removal are the same we propose combining the provisions of Article 14 and Article 28. The combined Article 14 could regulate both the postponement and suspension of the enforcement of the return decision. In cases where the removal could violate the principle of of *non-refoulement* or there are other relevant circumstances that hinder the enforcement of the return decision (e.g. reflection period has been granted to a victim of human trafficking in accordance with the Directive 2004/81/EC), the compentent authority should have the right to decide whether to suspend or postpone the enforcement of the return decision.

PUBLIC

	When removal is suspended or postponed by a judicial authority, MS should follow the rules set out in their national legislation. If concrete time limits for judicial authorities are still set, the court should have the right to exceed the time limits, in particularly complex cases or in emergency or crisis situations. MT (Comments): MT notes the need to add 'administrative authority' so as to preserve current national practices. FR (Comments): Concernant le paragraphe 1, la France s'oppose fermement au fait de conférer un effet suspensif général au délai de recours ouvert contre la décision de retour et l'interdiction d'entrée : - d'une part, la décision de retour doit pouvoir être exécutée immédiatement, qu'il s'agisse pour l'étranger en situation irrégulière de quitter volontairement le territoire de l'Union ou pour les autorités compétentes de l'État membre de prendre toutes les mesures appropriées pour le maintenir à leur disposition (aide au retour, mesures de contrainte prévues par les articles 23, 29 et 31). Cette nécessité vaut particulièrement pour les étrangers en situation irrégulière qui représentent un risque sécuritaire - d'autre part, l'interdiction d'entrée ne porte aucun préjudice à l'étranger en situation irrégulière qui n'a pas encore quitté le territoire de l'Union.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Le caractère suspensif du délai de recours doit ainsi seulement faire obstacle à l'exécution immédiate du « removal », c'est-à-dire au transfert forcé de l'étranger en situation irrégulière hors du territoire de l'Union. Il ne doit pas faire obstacle à la possibilité de lui octroyer une aide au retour volontaire, ou de le placer en assignation à résidence ou en rétention. S'agissant du paragraphe 2 et du caractère suspensif du recours lui-même, les États membres doivent avoir la possibilité de prévoir une suspension de plein droit, comme c'est le cas en droit français, et comme le permet la directive actuelle, plutôt que d'offrir aux étrangers en situation irrégulière la possibilité de saisir le juge d'une demande de suspension. Le droit français prévoit un recours suspensif de plein droit à l'encontre des décisions de retour prises par l'autorité administrative (OQTF) en première instance, qui peut être formé dans un délai d'un mois dans le cas général (le tribunal se prononce dans les 6 mois), de sept jours si la décision s'accompagne d'une assignation à résidence (le tribunal se prononce dans les 7 jours), de 48 heures si la décision s'accompagne d'un placement en rétention (le tribunal se prononce dans les 96 heures). Ce recours est suspensif de plein droit, autrement dit l'étranger n'a pas à saisir le juge d'une demande de suspension. Ces affaires sont donc jugées selon une procédure accélérée spéciale, qui impose au juge de statuer dans des délais resserrés, et à l'administration de surseoir à l'exécution de la décision tant que l'affaire n'a pas été jugée. Le paragraphe 2 accorde le droit aux étrangers de saisir le juge d'une demande de suspension sans possibilité de prévoir un recours suspensif de plein droit (« *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*

Commission proposal	Drafting Suggestions and Comments
	a judicial authority of first instance referred to in Article 27 has expired"). L'ajout d'une telle voie contentieuse additionnelle alourdirait de manière démesurée la charge des juridictions administratives. en doublant le volume contentieux porté devant les juridictions. Celles-ci devraient en effet juger deux requêtes pour un même étranger en situation irrégulière : la demande de suspension de la mesure d'éloignement en 48 heures, puis la demande d'annulation de la mesure d'éloignement elle-même. Elle alourdirait considérablement les sujétions imposées aux juridictions nationales, sans bénéfice pour le droit des personnes concernées. En France, le contentieux de l'éloignement, contentieux de masse en constante augmentation, a représenté, en 2022, environ 20 % des affaires enregistrées par les tribunaux administratifs, soit plus de 55 500 affaires. Le contentieux des étrangers en général représente plus de 40 % de l'activité des juridictions. Les juridictions françaises ne disposent ni des moyens humains (en termes d'effectifs de magistrats et de greffiers) ni des moyens matériels (disponibilité limitée des salles d'audience) pour faire face à une augmentation aussi brutale du contentieux. La France demande donc que soit préservée la possibilité, pour les Etats membres qui en font le choix, de préférer un système dans lequel les recours contentieux sont, sauf exceptions, suspensifs de plein droit, sans possibilité de contentieux annexe portant sur une demande de suspension additionnelle. En outre, il est nécessaire de préciser expressément que seul le juge saisi de la requête, et non pas n'importe quelle autorité judiciaire (« A judicial authority ») aux fins de suspension peut l'accorder, et qu'il ne peut dans ce cadre examiner le respect du principe de non-

Commission proposal	Drafting Suggestions and Comments
	refoulement qu'au regard du pays de retour. Ainsi, si le pays de retour n'a pas encore été fixé au moment où le juge statue, il ne peut conclure à la violation du principe de non-refoulement. Au paragraphe 3, pour les mêmes raisons que celles évoquées supra, il convient de limiter la possibilité pour l'étranger en situation irrégulière de requérir la suspension de la décision litigieuse au stade de l'appel : les États membres ne doivent pas être tenus de prévoir des recours aux fins de suspension dans le cadre d'appels subséquents, de pourvois en cassation (recours limité aux questions de droit, ne donnant pas lieu à un examen des faits) ou encore des recours devant les juridictions européennes. Cela multiplierait en effet le nombre de recours et allongerait considérablement la durée de la procédure de retour. Il convient également de remplacer les mots « appeal decision » par les mots « judicial decision » : dès lors qu'on limite cette possibilité au premier appel, la décision contestée est forcément celle de première instance, et non une décision d'appel. Enfin, au paragraphe 4, le délai maximal de jugement de 48 heures ne peut s'appliquer qu'en cas de demande de suspension en première instance (lorsque le caractère suspensif du recours n'est pas de droit), et non en cas de demande de suspension au stade de l'appel, qui ne sont pas enserrés dans des délais en droit français. EL (Comments): We take note of the explanations provided during the meeting concerning the interrelation between this Article and Article 68 of the Asylum Procedures

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Regulation and in particular that Article 68 is a lex specialis for the suspensive effect of appeals for the return decisions issued in the same act with the one rejecting the asylum application. NL (Comments): We propose to delete this article. NL is strongly of the view that no automatic suspensive effect should be given. Whereas it sounds logical that the removal is suspended when there is a possible breach of non-refoulement, this could invite third-country nationals to always claim that their removal would breach the principle of non-refoulement with a view to prolonging their illegal stay and frustrating their removal until the judiciary has made a final ruling. If there is a risk of non-refoulement, the third-country national should request a suspensive effect at the court (as is the current procedure). Therefore we suggest to keep the current article 13 of the Return Directive as proposed at article 25. That article also maintains flexibility for the MS to continue their current procedures when it comes to suspensive effect. CY (Comments): We enter a general scrutiny reservation on the entirety of the article, as we maintain the position that appeals against return decisions should not have

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	suspensive effect. Accordingly, we consider that the article should be deleted in its entirety. CH (Drafting Suggestions): ~~Article 28~~ ~~**Suspensive effect**~~ CH (Comments): There should be no automatic suspensive effect for all return decisions. Switzerland's and other Member States' national legislation does not offer automatic suspensive effect outside of asylum cases – and rightly so, especially considering that many third-country nationals subject to return decisions do not claim persecution and do not come from countries where persecution is taking place. The provision of automatic suspensive effect may also not be understood by the partners at national level and be perceived as a weakening of the approach to return. For Switzerland, the question of automatic suspensive effect is where there needs to be a clear distinction between return and asylum. Furthermore, as the suspensive effect would already be sufficiently regulated with the proposed wording of Article 25(2), Article 28 is not necessary anymore and should be deleted.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	BG (Drafting Suggestions): 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.	IE (Comments): IE can support calls from other Member States on the addition of a reference to an independent administrative authority. As Ireland operates a common law system, this is a necessary addition. HR (Drafting Suggestions): Delete HR (Comments): Paragraph 1 provides that the enforcement of a decision taken pursuant to Article 7, Article 10 and Article 12 shall be suspended until the expiry of the period within which persons may exercise their right to an effective remedy before the competent first-instance judicial body.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	HR considers that the aforementioned decisions should not a priori have a suspensive effect, i.e. be immediately enforceable, and the protection of the rights of third-country nationals would be ensured through the institution of an administrative dispute in which the possibility is left to the judicial body to order a suspensive effect in justified cases. AT (Comments): It should be clarified here that applications under Art 14 (3) have no suspensive effect. AT is of the opinion, that an automatic suspensive effect would further delay the return procedure, which must be avoided especially when there is regular return procedure without asylum context or for security reasons. RO (Drafting Suggestions): The enforcement of the decisions issued pursuant to Article 7, Article 10 and Article 12(2) **may** 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 RO (Comments): RO considers that clarification is needed on the following issues:

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	✓ In practice, there are situations where third-country nationals request support for return within the appeal period, this support being equivalent to the enforcement of the return decision. How can Para. (1) be applied in such cases? ✓ **How are cases involving third-country nationals who pose a threat to national security adressed in this context?** ✓ Should Para. (1) be interpreted as **applying ex officio in all cases**? ✓ Furthermore, Para. (2) is contradictory to Para. (1). While Para. (1) provides for a general, ex officio suspension for the entire duration of the appeal period, Para. (2) refers to a suspension upon request, leaving the judicial authorities to decide whether to suspend or not the enforcement of the return decision during the resolution of the case. NO (Comments): "judicial authority of first instance" should be defined IE and MT requested that an "administrative authority" also be added to the provision. NO requested the same for Norway, if our Immigration Appeals Board should not be considered as a judicial authority in art. 25-27. SK (Comments): The Ministry of Justice of the Slovak Republic has provided the following comments: In view of the wording of the first sentence of the provision, "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

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	instance referred to in Article 27 has expired." raises doubts about what institute from the point of view of national law should be involved in the given case. That is, whether it is a special regulation of the enforceability of an administrative decision (on administrative expulsion), which is, however, meaninglessly linked to "the expiration of the period within which it is possible to exercise the right to an effective remedy before a judicial authority of first instance, (in theory it seems very unfortunate as it does not distinguish that the said decisions are, within the meaning of national law, issued in administrative proceedings by an administrative authority) or whether it is granting a suspensive effect to the filing of an administrative action against an administrative decision (on administrative expulsion), which, however, does not clearly follow from the given formulation and its linguistic and stylistic expression (the above can only be deduced from the systematics of the draft regulation and the title of the provision). If the intention of the commission is to regulate the automatic suspensive effect of filing an administrative appeal, which would also make sense in light of the shortening of the time limit for filing an appeal to the first-instance judicial authority to 14 days, the above conclusion is in direct contradiction with the wording of Art. 29 para. 2, which incorporates the element of an individual application by a third-country national into the

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	entire process. It is therefore, in our opinion, necessary to draw attention to the aforementioned shortcomings, possible internal conflict and the need to harmonise the wording, in particular, since this is a directly applicable EU act) following the example of other acts in the relevant area of legislation, e.g. by wording the provision as follows: "The exercise of the right to an effective remedy before a judicial authority of first instance referred to in Article 27 within the time limit referred to in the second sentence of Article 27 shall have the suspensive effect to the enforcement of the decisions referred to in Article 7, Article 10 and Article 12 para. 2 under the conditions laid down in paragraph 2.". Currently, in the provisions of Art. 237 para. 1 of the Administrative Court Procedure, the filing of an administrative appeal by which the plaintiff seeks review of a decision or measure concerning administrative expulsion does not have an "automatic" suspensive effect, but this may be granted by the administrative court on the basis of an individual request by the plaintiff. IS (Drafting Suggestions): "…before a judicial **or administrative** authority…" IS (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	See comment above regarding 26.1. EE (Drafting Suggestions): ~~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.~~ MT (Drafting Suggestions): 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 **or administrative** authority of first instance referred to in Article 27 has expired**, unless the right is waived in writing**. MT (Comments): MT calls for Article 28(1) to include '…unless the right is waived in writing' or for the automatic suspensive effect to be deleted, including the 14 day delay. LT (Comments):

Commission proposal	Drafting Suggestions and Comments
	We would suggest to provide for the possibility that a decision to expel before the expiry of the appeal period can be enforced if the TCN submits a request/statement that he/she agrees to be expelled immediately (this is already the case in practice). Furthermore, as mentioned in relation to Article 16, we believe that an exception to the suspensive effect of this paragraph should be made for TCNs who pose a threat (so that they are not subject to the automatic suspension (Article 16 only allows for a derogation from Article 28(2) and (3)). If this is not accepted, we would suggest that an exception should be made at least for TCNs that pose a threat to public security or national security. FR (Drafting Suggestions): 1. ~~**The enforcement of the decisions issued pursuant to Article 7, Article 10 and Article 12(2)**~~ **Removal pursuant to Article 4(5)** 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. **In the meantime, measures set out in articles 23, 29 and 31 may be applied.** PL (Drafting Suggestions): The enforcement of the decisions issued pursuant to Article 7, Article 10 and Article 12(2) shall **not be subject to suspension** ~~be suspended until the time~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~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~~ PL (Comments): We do not support the proposal to automatically suspend the enforcement of a return decision until the expiry of the period during which the foreigner may exercise their right to an effective legal remedy before a judical authority of first instance. The automatic suspensive effect until the foreigner lodges a complaint will lead to obstruction of returns. IT (Drafting Suggestions): **~~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.~~** IT (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We oppose the provision insofar as it imposes an obligation not to proceed with return before the end of the time limit for appealing the decision, which should not exceed 14 days. Therefore, we strongly ask for deletion of this paragraph. EL (Drafting Suggestions): Deletion EL (Comments): We consider that, as a general rule, the appeal under the return procedure should not have suspensive effect, including during the time limit withing which the right to an effective remedy can be exercised. The illegally staying TCN should comply with the obligation to leave the territory of the Member States as soon as possible. Therefore, we propose the deletion of this paragraph. NL (Drafting Suggestions): ~~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.~~ BE

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): Paragraph 1 refers to the return decision, the entry ban and the removal decision, whereas the rest of the article only refers to the enforcement of the return decision: how does this relate to each other? What is the relation between article 28 and article 14? It could be useful to clarify that the suspensive effect is aimed at both the decision ending legal stay and the return decision, in order to be aligned with art. 68 of the Asylum Procedure Regulation. HU (Drafting Suggestions): ~~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.~~ HU

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): On the Hungarian side, we share the view that there is no added value in automatically suspending the execution of decisions as long as the persons concerned exercise their right to appeal, and therefore we supported the deletion of this paragraph from the draft article. CH (Drafting Suggestions): ~~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.~~ CH (Comments): The automatic suspensive effect would also apply to entry bans. If a person leaves the country beforehand or absconds, the entry ban can only be imposed upon their re-entry. If the person fulfils the remaining entry requirements, they would be allowed to enter at the external border. Therefore, this would give an advantage to persons who have not complied with their obligation to cooperate, while persons who have provided correct

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	information would be issued with an entry ban abroad. This is another reason for the deletion of Article 28 in its current form. ES (Drafting Suggestions): The enforcement of the decisions issued pursuant to Article 7, Article 10 and Article 12(2) ~~shall~~ **may be suspended by the competent** ~~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~~ **at the request of the third-country national**. ES (Comments): An automatic suspensive effect does not only hamper the effectiveness and efficiency of the return procedure, but it also goes against the principle of judicial independence and the principle of immediate effect of administrative acts. BG (Drafting Suggestions): Deletion BG (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We propose this amendment because we believe the automatic suspensive effect creates opportunities for third-country nationals to abuse their rights and delays their return. FI (Comments): It is problematic for us that the return decision could not be enforced during a proposed period for lodging an appeal of up to 14 days. The suspensive effect should not be tied to the period of lodging an appeal. The TCN may also appeal from abroad after the return decision has been enforced.
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.	AT (Comments): One problem that exists here in connection with (2) and persons at risk is that they will always apply for a review of the violation of non-refoulement, which de facto means that there would no longer be any difference between a "normal" returnee and a person posing security risks. However, there is a strong interest in returning this group of people as quickly as possible. As a solution, one could consider waiving the suspensive effect and obliging the authority to submit the file to the court at the same time as issuing the

Commission proposal	Drafting Suggestions and Comments
	return decision and thus lodge an appeal before the court, which would/should then decide as quickly as possible. This would also guarantee the right to an effective legal remedy. The court should decide on the possible violation within one week; this should be limited to cases of TCN posing a security risk to avoid placing an additional burden on the courts. SK (Comments): The Ministry of Justice of the Slovak Republic has provided the following comments: Currently, in the provisions of Art. 237 para. 1 of the Administrative Court Procedure, the filing of an administrative appeal by which the plaintiff seeks review of a decision or measure concerning administrative expulsion does not have an "automatic" suspensive effect, but this may be granted by the administrative court on the basis of an individual request by the plaintiff. IS (Drafting Suggestions): "A judicial **or administrative** authority shall have the power to decide…" IS (Comments): See comment above regarding 26.1.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	EE (Drafting Suggestions): ~~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.~~ LU (Comments): LU opposes an ex officio examination of both facts and points of law by a judicial authority. This would create an excessive additional burden for our courts. MT (Drafting Suggestions): 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 **or administrative** authority of first instance referred to in Article

Commission proposal	Drafting Suggestions and Comments
	27 has expired. A **~~judicial~~competent** 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. FR (Drafting Suggestions): 2. **Without prejudice to provisions in national law under which first instance remedies have a suspensive effect,** third-country nationals **~~shall~~ may** 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~~ The** judicial authority **before which such application is filed** 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 **by this authority** where there is a risk to breach the principle of non-refoulement**, which shall only be assessed by reference to the country of return**. EL (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	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~~ **competent** authority **or body** of first instance ~~referred to in Article 27~~ has expired. **During this period and until the time limit within which the decision on the application for suspension is taken, the return decision may not be enforced.** ~~A judicial~~ **The competent** authority **or body** 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. EL (Comments): This amendment is proposed following our suggestions with regard to Articles 26 & 27 and the deletion of paragraph 1 of this Article. NL (Drafting Suggestions): ~~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~~

Commission proposal	Drafting Suggestions and Comments
	~~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.~~ CY (Drafting Suggestions): 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. CY (Comments): The examination of both facts and points of law, extends the jurisdiction of the involved Courts. Since the assessment of the principle of non-refoulement takes place during the issuance of the return decision by the

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	administrative authority, we are of the opinion that a judicial review limited to points of law — including the principle of impartiality, the obligation to examine relevant facts and evidence, and the duty to give reasons — ensures that the administration's assessment is legally sound, while also preventing a potential breach of the principle of non-refoulement. HU (Drafting Suggestions): ~~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. HU (Comments):

Commission proposal	Drafting Suggestions and Comments
	We consider the text supportable if the aim is that the suspensive effect would only be triggered at the request of the third country national (and not automatically), but on the basis of a court decision. CH (Drafting Suggestions): 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.~~ ES (Drafting Suggestions): 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~~ **The**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	competent 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. SE (Comments): SE: This Article is very complex. In general, it needs to be clearar how the provisions relates to the corresponding provisions of APR on suspensive effect (Art. 68). It is unclear to us whether Article 28 makes any distinction between decisions that are immediately enforceable and those which are not. According to APR, automatic suspensive effect is the general rule but with several derogations, for example if the application for international protection has been examined in an accelerated and/or a border procedure or if it concerns a rejection of a subsequent application. But in case of non-automatic suspensive effect the time limit for submitting a request to be allowed to remain on the territory pending the outcome of the remedy is up to five days during which the person in question shall not be removed from the territory. It is not clear how this time limit of five days relates to the corresponding time limit of maximum 14 days in Article 28, para 1 and 2.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	BG (Drafting Suggestions): .
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.	IE (Comments): IE seeks clarification what is meant by 'specific circumstances'. SK (Comments): The Ministry of Justice of the Slovak Republic has provided the following comments: In relation to Article 28 para. 3 of the draft regulation, we do not fully understand the form used: "Where a further appeal against a first or subsequent appeal decision". It is not clear how the above words would be interpreted in the Slovak administrative justice system, as it does not recognize a "subsequent decision on appeal". We understand that the regulation must take into account and affect in practice very different national legal systems, but this can be directly taken into account in a specific linguistic-stylistic expression (e. g. by formulating several alternatives).

Commission proposal	Drafting Suggestions and Comments
	Likewise, in this context, it is not clear to us which institute the commission understands by the words "another remedy". In the Slovak legal system, the above words are interpreted as a cassation appeal. However, this is an extraordinary remedy of administrative justice, not an ordinary one, and therefore, in our opinion, it should be outside the substantive definition of the provision, since this is provided for in Art. 28 para. 1 uses and states the words "to file a remedy before a judicial authority of the first instance", and thus regulates only ordinary remedies (proceedings in the court of first instance). In addition, a cassation appeal as an extraordinary remedy filed against legally binding decisions of regional courts (i.e., proceedings in the second instance) has, pursuant to Art. 446 para. 2(d) of the Administrative Court Procedure, an automatic suspensive effect (suspensive effect ex lege), i.e., it is not necessary to request it. If the wording of Article 28 para. 3 were to be interpreted in such a way that the "further remedy" in the national legal system would be represented by a cassation appeal (despite the reservations previously mentioned), the aforementioned concept of the Administrative Court Procedure would have to be revised in the situation of the adoption of the draft regulation in its unamended wording. Based on the above, we request that the wording of the provision be revised so that it better takes into account the very different national legal systems

Commission proposal	Drafting Suggestions and Comments
	and provides them with sufficient room for maneuver without the need for any fundamental changes, especially as regards their basic structural elements. IS (Drafting Suggestions): "…and a competent judicial **or administrative** authority decides to grant it…" IS (Comments): See comment above regarding 26.1. EE (Drafting Suggestions): ~~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.~~ CZ (Drafting Suggestions): ~~**Where a further appeal against a first or subsequent appeal decision is lodged,the enforcement of a return decision shall not be suspended**~~

Commission proposal	Drafting Suggestions and Comments
	~~**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.**~~ CZ (Comments): Neither EU law nor international obligations require the existence of second judicial instance. This would only prolong the return procedure. We strongly ask for deletion of this paragraph. MT (Drafting Suggestions): 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 **or administrative** authority decides to grant it, taking due account of the specific circumstances of the individual case. LT (Drafting Suggestions): 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~~

Commission proposal	Drafting Suggestions and Comments
	~~decides to grant it, taking due account of the specific circumstances of the individual case~~. LT (Comments): Does this provision mean that enforcement of the decision is suspended while the court of second instance decides on the suspensive effect? If so, does it mean that the enforcement of the decision shall be also suspended during the period of the application to the court (in such a case tehre will be no added value of this provision)? Therefore we propose to delete all paragraph or the end of this paragraph. FR (Drafting Suggestions): 3. Where ~~a further~~ **an** appeal against a first ~~or subsequent appeal~~ **judicial** 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 **according to national law**. EL (Drafting Suggestions): **1st option** Deletion

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	2nd option 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~~. EL (Comments): We consider that it is not necessary to regulate the issue of further appeals and in any case we suggest the deletion of the second intent. NL (Drafting Suggestions): ~~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.~~ BE (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Paragraph (3) is ok for us, but we like to indicate already that there should be no further change. A suspensive effect of appeals to courts other than a court of first instance would be very problematic for us. CH (Drafting Suggestions): ~~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.~~ SE (Drafting Suggestions): 3. Where a further appeal against a first or subsequent appeal decision is lodged, **Member States may provide in national law that** 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. SE (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	SE: This should be aligned with the APR according to which it is up to the MS to decide nationally.
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.	IE (Comments): Does this 48 hour period remain the same in the context of the weekends and/or public holidays, or do Member States have flexibility? IE thinks it may be more appropriate to specify the time period in the context of working days. IE also considers that 48 hours is too short a window to effect this provision, and would prefer a longer period. IE also notes that no particular grounds for an application for suspensive effect are provided – what is the reason for same? Is a decision to grant or refuse suspensive effect subject to an appeal? AT (Drafting Suggestions): A decision on the application for suspension of the enforcement of a return decision shall be taken within ~~2 days~~2 days~~48 hours~~. In cases involving complex issues of fact or law, that time-limit may be exceeded by additional 2 days.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	AT (Comments): In order to keep coherence within the legal framwork time limits shall be kept in days and not hours. The time allowed for exceeding deadlines in compley cases must be limited. NO (Comments): Para 4 seems to refer to the whole of art. 28 and then the deadline of 48 hours is very short to decide on deferred enforcement for everyone who has a return decision and is to be returned. SK (Comments): The Ministry of Justice of the Slovak Republic has provided the following comments: In relation to Art. 28, paragraph 4 of the draft regulation on the basis of the explanation of the intention and objectives of the commission, the proposal to determine a 48-hour deadline for processing a request for granting suspensive effect to a filed administrative appeal (or even a cassation appeal, if in its case the current concept of automatic suspensive

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	effect associated with its filing would have to be abandoned) is understandable; however, as we have previously stated, the above represents a fundamental breakthrough in the current concept of administrative justice with significant practical impacts on the overall operation and performance of administrative justice. Achieving the pursued goal would inevitably require a similar arrangement and organization of work and services in administrative justice as in the cases of judges conducting criminal proceedings, which inevitably has an impact on the state budget. Based on the above, we would like to express disagreement with the provision and demand its deletion without compensation. EE (Drafting Suggestions): 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.~~ CZ (Drafting Suggestions): ~~**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.**~~**Member**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	States shall lay down time limits for a decision on the application for suspension of the enforcement of a return decision. CZ (Comments): The time limit of 48 hours is unrealistic. The Czech administrative courts do not operate in the regime 24/7. LU (Drafting Suggestions): A decision on the application for suspension of the enforcement of a return decision shall be taken within ~~**48 hours**~~ **5 working days**. In cases involving complex issues of fact or law, that time-limit may be exceeded. LU (Comments): The 48 hours time limit is significantly too short to fulfil this obligation in earnest and therefor not acceptable. LU suggests to replace it with – at the minimum – "five working days". MT (Drafting Suggestions): 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

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	fact or law, that time-limit may be exceeded, **in accordance with national law**. LT (Comments): LT has a reservation on this part, as we are waiting for the courts to assess this provision. In general, we support the aim of speeding up return procedures, but we have doubts about the ability of the courts to decide on the suspensive effect within 48 hours (there is a risk that the courts will in all cases suspend the enfoercement of the decision due to the short time limit). FR (Drafting Suggestions): 4. A decision on the application for suspension of the enforcement of a return decision shall be taken within 48 hours. In **case of appeal against a first judicial decision or in** cases involving complex issues of fact or law, that time-limit may be exceeded. FR (Comments): A défaut, la France est également en mesure de soutenir la rédaction suivante, proposée par les Pays Bas, qui reprend le texte de l'article 13 de la Directive de 2008 sous réserve de deux modifications en gras ci-dessous :

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	1. The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, as referred to in Article 7, Article 10 and Article 12(x [removal orders]), before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence. 2. The authority or body mentioned in paragraph 1 shall have the power to review decisions related to return, as referred to in Article 7, Article 10 and Article 12(x), including the possibility of temporarily suspending the ~~enforcement of the decision~~ **removal**, unless a temporary suspension is already applicable under national legislation. **In the meantime, measures set out in articles 23, 29 and 31 may be applied.** PL (Drafting Suggestions): 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 **but not longer than 7 days.** PL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	In order to ensure the effectiveness of returns, the decision on the suspension of the return decision should be made as soon as possible. A period of 7 days seems reasonable. IT (Drafting Suggestions): 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.**~~ IT (Comments): In paragraph 4, though we agree with the first sentence, we consider that the second sentence should be deleted or reworded to define the time limit (another 48 hours?) even for complex issues. Furthermore, it would be desirable to establish a rapid and effective procedure for verifying the lodging of an appeal by the TCN and the appeal stage, so as to facilitate relevant authorities in processing the cases, especially when referring to return decisions issued by other Member States. NL (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	~~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.~~ BE (Comments): The mentioned 48 hours is very problematic for us, this is too short and unrealistic even in high urgency cases. In addition, Article 26 (2) provides for a full examination of the file, both in law and in fact, and it should be avoided that the appeal body has to examine the same file twice: once for the suspension procedure and a second time for the proceedings on the merits. This is not efficient and creates disproportionate administrative burden. HU (Drafting Suggestions): ~~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.~~ CH (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~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.~~ CH (Comments): Switzerland is against the 48-hour time limit for courts to issue rulings on suspensive effect of removals. Such a new rule would require Switzerland's courts to be open on week-ends and public holidays only for return cases. This would place a significant additional burden on the national judicial system. Such a rule would also be void of purpose since administrative procedure law ensures that the third-country national shall not be removed anyway while the application for suspensive effect is pending. This is another reason for the deletion of Article 28 in its current form. SE (Drafting Suggestions): ~~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.~~ SE (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	SE generally opposes that MS shall lay down time limits in national law for the court examination. SE supports swift procedures. However, it should be up to the Member States to determine if set time limits in national law is an appropriate and effective way to direct the courts to ensure swift procdurese. It is also a question of the independency of the courts. We would therefore prefer to delete para 4. Nonetheless, 48 hours is not workable in practice, especially since it does not take into account weekends or public holidays. BG (Drafting Suggestions): 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.~~ **in accordance with the national legislation of the Member States** BG (Comments): We propose deleting the 48-hour time limit because we consider it unrealistic. The time limits for taking a decision should be regulated according to national legislation of Member States. FI (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	The proposed 48 hour time limit would require weekend services, which would considerably increase costs and administrative burden.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
Chapter V **PREVENTION OF ABSCONDING AND DETENTION**	NO (Drafting Suggestions): PREVENTION OF ABSCONDING**, ARREST** AND DETENTION NO (Comments): Suggest to include "arrest" to clarify that also arrest (which may be for a short time to present a person before his Embassy or similar) is included. Furhtermore, NO suggest a different order of the articles in Chapter 5, to start with the least intrusive measure to the most intrusive measures. We propose to start with art 30, followed by art. 31 and then art. 29 BG (Drafting Suggestions): **Chapter V** **PREVENTION OF ABSCONDING AND DETENTION**

PUBLIC

Article 29 ***Grounds for detention***	FR (Comments): La France se félicite de l'extension des motifs de placement en rétention (nous passons de deux à cinq motifs). Le fait en particulier que le risque de trouble à l'ordre public figure parmi ces motifs est une avancée. Nous avons néanmoins une interrogation quant à la pertinence de l'ajout du paragraphe 6, qui reprend des dispositions sur les personnes vulnérables qui figurent déjà à l'article 34 sur les conditions de rétention. Ce paragraphe n'a pas à figurer dans l'article sur les motifs de placement en rétention, dans la mesure où la vulnérabilité ne doit pas être, dans l'absolu, un obstacle au placement en rétention. De plus, la rédaction telle que proposée apparait excessive (« statements ») et suggère une nouvelle appréciation de la vulnérabilité (« visible signs »). D'après le paragraphe 5, la notification de la décision relative à la rétention à l'étranger (comportant des informations sur les voies de recours disponibles) doit être réalisée dans une langue qu'il comprend ou dont il peut raisonnablement être estimé qu'il la comprend. Néanmoins, la portée de cette prescription n'est pas très claire. Notamment, impose-t-elle une traduction écrite de la décision (ce qui serait lourd à mettre en œuvre en pratique) ? Ou bien la décision pourra être notifiée telle quelle (en français), par le truchement d'un interprète expliquant cette décision oralement dans la langue parlée par l'étranger ? BE (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We welcome this article, and particularly the additional grounds for detention. HU (Comments): We do not consider that the creation of a closed list at the level of a regulation is justified and have suggested that it would be necessary to add to the list a provision that grounds established under national law could also be used as a basis for ordering detention. CH (Comments): Switzerland welcomes that the grounds for detention are expanded, including the grounds of posing security risks under Article 16. Switzerland can also generally agree with the content of paragraphs 1 to 4. This also includes the provision that the grounds for detention shall be laid down in national law, which is important to allow Member States to implement this regulation without having to amend parts of the legislation which already meet the requirements. BG (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Article 29 **Grounds for detention** FI (Comments): The grounds for detention under the Reception Conditions Directive must be regulated at national law, and therefore consideration must be given to situations where these grounds continue to apply after a person falls within the scope of the Return Regulation.
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.	HR (Drafting Suggestions): 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.~~ HR (Comments): We do not support this term na would like to delete it. EL (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	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~~. EL (Comments): We consider that the reference to the proportionality in paragraph 1 is unnecessary, as this principle applies in any case. A relevant reference in the preamble should be deemed as adequate. NL (Drafting Suggestions): 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 and other sufficient but less coercive measures cannot be applied effectively. NL (Comments): With reference to the deletion of article 31, the notion of alternative to detention is mentioned here. ES (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	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 **necessary and** proportionate. ES (Comments): ES deems that detention should be measure of last resort in line with the current Return Directive. Furthermore, the principles of necessity and proportionality should be assessed in order to decide the detention of third-country nationals for the purpose of return. In addition, mentioning both principles ensures alignment with recital 32 where reference is made to necessity and proportionality. BG (Drafting Suggestions): 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~~ BG (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We propose deleting the phrase "and only in so far as detention is proportionate" because we consider that assessing the proportionality of detention will complicate the procedure. As a compromise, we would accept a text on proportionality to be included in the preamble to the regulation, as is the case in the current directive.
2. Member States may only keep in detention a third-country national for the purpose of preparing the return or carrying out the removal.	AT (Drafting Suggestions): Member States may only keep in detention a third-country national for the purpose of the return procedure, preparing the return or carrying out the removal. AT (Comments): Align with (3) b Clarification of the scope of application SK (Comments): The Slovak Republic suggests new grounds for detention following the non-compliance with procedures pursuant to Art. 8 para. 3 of this Regulation. CZ

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): Member States may only keep in detention a third-country national for the purpose of **return procedure,** preparing the return or carrying out the removal. IT (Drafting Suggestions): Member States may only keep in detention a third-country national for the purpose of preparing the return ~~**or**~~ **and** carrying out the removal. IT (Comments): Regarding paragraph 2, preparation for return should also include removal.
3. A third-country national may only be detained based on one or more of the following grounds for detention:	MT (Comments): MT calls for an open list to ensure that the Regulation remains future proof. SE (Drafting Suggestions): 3. A third-country national may ~~only~~ be detained based on one or more of the following grounds for detention: SE (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	SE welcomes that the grounds for detention is extended. However, we are still reflecting on the potential need for further flexibility in this regard. We also note that, unlike the Council partial general approach 2019 on the proposal for the recast of the Return Directive, there is an exhaustive list of grounds in the current proposal.
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;	AT (Drafting Suggestions): the third-country national avoids or hampers the return procedure, the preparation of the return or the removal process; AT (Comments): Align with (2) BE (Comments): What does this mean in practice? Do MS need to prove this explicitly or can a presumption of avoidance or hampering or a risk-analysis suffice?

PUBLIC

Commission proposal	Drafting Suggestions and Comments
c. the third-country national poses security risks in accordance with Article 16;	EL (Drafting Suggestions): c. ~~the third-country national poses security risks in accordance with Article 16~~ **when protection of national security or public order so requires**; EL (Comments): We propose replacing the wording of this point with the wording of Article 10(4)(f) of the Reception Conditions Directive.
d. to determine or verify his or her identity or nationality;	AT (Drafting Suggestions): to determine or verify his or her identity or nationality and to obtain a valid travel document; AT (Comments): In some cases, personal presence is also required for the issuance of a travel document, making an additional provision necessary. Moreover, the use of "or" could be misinterpreted to suggest that this ground for detention no longer applies once nationality has been established. Therefore, it is crucial

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	to clarify that detention under this provision may be permitted for the entire duration needed to verify all requirements until the travel document is actually issued.
e. non-compliance with the measures ordered pursuant to Article 31.	NL (Drafting Suggestions): non-compliance with ~~the~~ other supervisory measures including alternatives to detention ~~measures ordered pursuant to Article 31~~.
	EE (Drafting Suggestions): f. **detention is imposed in accordance with the Regulation (EU) 2024/1349;** g. **the third country national is transferred to another Member State;** h. **on other grounds provided by national law.** EE (Comments): The proposal establishes an exhaustive list of grounds for detention. However, having new grounds for detention (points c-e) already shows the changing nature of challenges in time. Considering the complex process of amending the regulation, MS should be given more flexibility, including having the right to establish new detention grounds in national law in cases the modus operandi of illegal migration changes and it is justified for the purpose of preparing the return or carrying out the removal.

Commission proposal	Drafting Suggestions and Comments
	According to Article 5(2) of Regulation 2024/1349, third country nationals detained during the asylum border procedure may be continue to be detained for the purpose of preventing their entry into the territory of the MS concerned, of preparing their return or of carrying out the removal process. For legal clarity, we propose the inclusion of the detention ground set out in Regulation 2024/1349 to the regulation. Article 8 (1) of the proposal regulates situations when the third country national is transferred to another MS. To implement these provisions, and mitigate the risk of absconding, MS should have the right to detain the person to be transferred. Hence, the proposal to include these situations to the regulation. MT (Drafting Suggestions): **f. the third-country national does not return within the voluntary return period provided.** MT (Comments): MT believes that it also ought to be a ground for detention if a third-country national does not return within the voluntary return period provided. LT

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): i. **on other grounds provided by national law.** LT (Comments): We would suggest introducing a non-exhaustive list of grounds for detention (e.g. in our national law, we have additional grounds for detention: suspicion of using forged documents; prevention of the spread of dangerous or particularly dangerous communicable diseases, etc.). EL (Drafting Suggestions): **f. the third country national has not left the territory of Member States by the date set in accordance with Article 13 or paragraph 6 of Article 12'** EL (Comments): We consider that an additional ground should be included, providing for the case where the TCN did not comply with the obligation to return voluntarily within the time limit that was indicated. Therefore, we propose the addition of this new point, taking also into account what we have suggested for the paragraph 6 of Article 12.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	NL (Drafting Suggestions): 7. A third-country- national who falls under the scope of Article 8, paragraph 2, and who has not complied with the obligation laid down in Article 8, paragraph 3, may only be detained for the purpose of preparing the return or carrying out the removal to the Member State where the third-country -national is holding a valid residence permit, a long-stay visa or other authorisation offering a right to stay. NL (Comments): We propose to add a new paragraph 4. BE (Drafting Suggestions): d. non-compliance with the obligation to cooperate pursuant to Article 21. BE (Comments): We aks to include an additional detention ground, namely the non-compliance with the obligation to cooperate in line with art. 21 HU (Drafting Suggestions): f. other relevant ground related to return laid down under national law HU

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): It would be necessary to add to the list the provision that grounds established under national law may also be invoked as a basis for detention.
4. Those detention grounds shall be laid down in national law.	CZ (Drafting Suggestions): ~~**Those detention grounds shall be laid down in national law.**~~ CZ (Comments): We do not see why the detention grounds shall be laid down in national law as this is a regulation, not a directive. LT (Comments): It is not clear whether only the grounds listed in paragraph 3 can be laid down in national law or whether MS have the flexibility to lay down other grounds for detention. IT (Comments): It is unclear whether only the detention grounds listed in paragraph 3 can be laid down in national law or whether Member States have the flexibility to provide for additional grounds. NL

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): 8. Those detention grounds in paragraphs 3 and 4 shall be laid down in national law. NL (Comments): The old paragraph 4 becomes paragraph 5. ES (Drafting Suggestions): ~~Those detention grounds shall be laid down in national law.~~ ES (Comments): Given the direct effect of the Regulation and the exhaustive list established in paragraph 1, ES considers that this provision is unnecessary and counterproductive.
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.	RO (Drafting Suggestions): 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 **verbally** to the third-country national in a language that the third-country national understands or may reasonably be presumed to understand

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	RO (Comments): RO would appreciate a clarification regarding the form of notification to third-country nationals in a language they understand. Does this mean that the decision to place the third-country national in public custody must be translated into a language which the third-country national is presumed to understand and that the text of the decision must be translated in full? What about rare languages or dialects? CZ (Drafting Suggestions): 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; **this may include the notification of the decision in the presence of an interpreter**. CZ (Comments): In case a decision is delivered by postal service, we absolutely do not support the need to translate the decision in writing. In case a decision is

Commission proposal	Drafting Suggestions and Comments
	delivered directly in person, the interpreter may translate orally the content of the decision to the person concerned. This is sufficient from our perspective. NL (Drafting Suggestions): 9. 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. This does not preclude the use of an interpreter. NL (Comments): The old paragraph 5 becomes pargraph 6. CH (Drafting Suggestions): 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.~~ CH

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): Switzerland considers the introduction of a translation requirement for a detention order in paragraph 5 problematic as such a requirement will overburden national authorities. The migration authorities will lose precious time since they will have to mandate translators who may have to translate several pages of detention orders when time is running. As the detention order will have to be reviewed anyway by a court within 15 days in accordance with Art. 33(3)(a) and the third-country national will be heard on the grounds of detention, the regulation already contains the necessary safeguards to ensure that detention is legal. Therefore, the translation requirement in paragraph 5 should be deleted.
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.	CZ (Drafting Suggestions): Option 1) ~~**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.**~~ Option 2) When detaining a third-country national pursuant to paragraph 2, ~~**Member States shall take into account**~~**competent authorities in the**

Commission proposal	Drafting Suggestions and Comments
	detention centre shall be informed about 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. CZ (Comments): Option 1) We suggest to move this provision to recitals. Option 2) It is not clear, why this is needed. FR (Drafting Suggestions): ~~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.~~ NL (Drafting Suggestions): 10. 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. NL (Comments): The old paragraph 6 becomes paragraph 7.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	BE (Comments): We wonder whether this provision is not superfluous, seeing as it already applies. The current formulation is considered too vague. If we keep this provision, it would need reformulation. SI (Drafting Suggestions): 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.~~ **prior vulnerability assessments and all relevant information available at any stage of the procedure, including the results of a proactive assessment carried out using structured tools and with the involvement of trained staff.** SI (Comments): The current standard on vulnerability identification should be better defined and include the obligation to proactively identify vulnerabilities rather than passive observation, the use of structured tools, the consideration of prior assessments, the involvement of specialised staff and bring it closer to the

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	provisions of e.g. The current proposal risks overlooking "invisible vulnerabilities" such as trauma, mental illness or post-traumatic stress disorder, which are most often not visible or self-reported, and which can appear or manifest themselves at any time during the procedure (even later, i.e. after the screening or the asylum procedure has already been completed). CH (Drafting Suggestions): ~~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.~~ CH (Comments): Paragraph 6 should be deleted: Consideration for vulnerability is already included in the individual and proportionality assessment for ordering detention under Paragraph 1. SE (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	~~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~~ SE (Comments): SE: The purpose and consequences of this provision is unclear. In a similar provision in the RCD (Art. 10) it is more clearly stated that it is part of an assessment of special reception needs when detaining an applicant or deciding whether to continue detention or whether the detention conditions need to be adjusted. We think that para 6 provision should be deleted or moved to Art. 34. Alternatively, the purpose should be clarified more in line with the wording in RCD.

PUBLIC

Article 30 ***Risk of absconding***	CZ (Comments): The obligation to cooperate and the consequences of not doing so should be better reflected. FR (Comments): Sur la définition du risque de fuite, la France salue l'introduction de cet article. Sa rédaction pourrait néanmoins être largement simplifiée, et la liste des cas dans lesquels le risque de fuite n'a pas besoin d'être prouvé peut être allongée. En effet, l'évaluation préalable systématique du risque de fuite dont le résultat pourra être contesté devant les tribunaux constitue une charge administrative trop lourde, qui pourrait être remplacée par une évaluation globale de proportionnalité de la mesure. **La France propose donc que l'ensemble des critères qui figurent au paragraphe 2 de l'article 30 soient intégrés au premier paragraphe et soient considérés comme des motifs établis de risque de fuite**, comme c'est aujourd'hui le cas dans notre droit national. Il importe également que les Etats membres **puissent ajouter des critères dans leur droit national** : certains des critères applicables en droit national aujourd'hui n'y figurent pas, comme les personnes qui sont restées après expiration de leur visa. A titre de comparaison et par cohérence, les textes du Pacte (l'article 2 §18 AMMR et article 2§11 directive Accueil) renvoient vers le droit national pour définir le risque de fuite de demandeurs d'asile. CH (Comments): Switzerland generally supports the Commission's proposal for Article 30. In particular, Switzerland welcomes that secondary movements are explicitly

Commission proposal	Drafting Suggestions and Comments
	included as grounds for risk of absconding.Switzerland also considers that Member States should keep flexibility when it comes to national legislation where it should be possible in particular to include additional criteria. FI (Comments): Subparagraphs (b) and (d-h) of paragraph 2 should be moved to the list in paragraph 1.
1. There is a risk of absconding in an individual case, unless proven otherwise, when one of the following criteria is fulfilled:	IE (Comments): IE would welcome the inclusion of the expiration and/or overstaying of a visa as an indication that a TCN poses a risk of absconding. IT (Comments): It is unclear whether the criteria set out in paragraphs 1 and 2 can be combined. Is the difference that the criteria set out in paragraph 1 are objective and therefore applicable by default, while those set out in paragraph 2 require an assessment by the competent authority? If so, it would be useful to extend the automatic mechanism set out in paragraph 1 to some of the criteria set out in paragraph 2.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	BE (Comments): We have doubts on the added value of "unless proven otherwise" and we fear it might lead to legal uncertainty. We would like to foresee more flexibility by allowing MS to add additional criteria under national law. SE (Comments): SE welcomes the proposal in principle, but are still reflecting on the need for further flexibility for the Member States to add national criteria. BG (Comments): We place scrutiny reservation. Regardless of the EC's explanations regarding Article 30(1)(a), it is unclear where the TCNs have moved. Does this mean that they entered the territory of the Member State illegally and then moved to another Member State or Member States?

PUBLIC

Commission proposal	Drafting Suggestions and Comments
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;	EE (Drafting Suggestions): a. the third-country national has **entered or** moved without authorisation to the territory of ~~another~~ **a** Member State or other Member States, including following a transit through a third country, or attempts to do so EE (Comments): In order to prevent secondary movements, it is necessary that third country nationals who have been apprehended or intercepted within the territory of a Member State after crossing illegally its external border, are considered as persons posing risk of absconding. ES (Drafting Suggestions): 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;~~ ES (Comments): ES proposes to delete the reference to the attempts due to the instrinsic difficulties to proof such situations.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	ES (Drafting Suggestions): **aa.non-compliance with the obligations to cooperate pursuant to Article 21.**
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;	EE (Drafting Suggestions): ~~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~~; EE (Comments): MS can enforce the return decision issued by another MS when the illegally staying third country national has absconded and been detected on the territory of enforcing MS. It seems that paragraph 1 point b is already covered by paragraph 1 point a. PL (Comments): . NL

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): the third-country national is subject to a return decision or ~~enforcing decision~~removal order 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; BE (Comments): Is this paragraph refering to cases of mutual recognition? SI (Drafting Suggestions): the third-country national is subject to a return decision or an enforcement 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 alerts entered in the Schengen Information System pursuant to Regulation (EU) 2018/1860, **unless the person is demonstrably complying with the return decision and is in the process of leaving the territory of the Member States.** SI (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	TCNs who have been issued with a return decision and are proven to be on their way out of the EU (i.e. in compliance with the return decision) should be excluded.
	ES (Drafting Suggestions): **ba.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)** ES (Comments): Moved from paragraph 2.
c. non-compliance with the measures pursuant to Article 23.	FR (Drafting Suggestions): non-compliance with the measures pursuant to Article**s** 23, **29 and 31**.; **d. opposing the return procedure violently ;** **e. 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 ;** **f. re-entering the Union in violation of a valid entry ban;** **g. 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**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	oral or written form, or otherwise fraudulently opposing the return or readmission procedure ; **h. illegal entry into the territory of the Member States or apprehension or interception in connection with the irregular crossing by land, sea or air of the external border of a Member State;** **i. 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) ;** **j. lack of residence, fixed abode or reliable address ;** **k. 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 ;** **l. 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).** **2. Member States may provide in their national law for additional critera according to which it is considered there is a risk of absconding in an individual case, unless proven otherwise.** NL (Drafting Suggestions): non-compliance with a measure~~s~~ pursuant to Article 23.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	AT (Drafting Suggestions): New: lit. d the third-country national has avoided or had hampered the preparation of the return procedure or the removal process. EE (Drafting Suggestions): d. **opposing the return procedure violently;** e. **re-entering the Union in violation of a valid entry ban.** EE (Comments): We propose to move points g and h of paragraph 2 into paragraph 1. Persons who act violently or have re-entered the EU in violation of a valid entry ban show with their behaviour that they are not willing to fulfil their obligation to return. LT (Drafting Suggestions): **f. opposing the return procedure violently as defined under national law;";** g. **re-entering the Union in violation of a valid entry ban.** LT (Comments):

Commission proposal	Drafting Suggestions and Comments
	We propose to move points g and h of paragraph 2 into paragraph 1 as in those cases TCNs very clearly show with their behaviour that they are not willing to fulfil their obligation to return. It is also not clear what is meant by "opposing… violently" – we suggest to clarify it or allow to regulated it in the national law. EL (Drafting Suggestions): **d. opposing the return procedure violently;** **e. re-entering the Union in violation of a valid entry ban.** EL (Comments): We propose to move here the points (g) and (h) of paragraph 2, as we consider that those behavious should be deemed as adequate proof for determining that a risk of absconding exists. ES (Drafting Suggestions): **d.opposing the return procedure using physical or verbal violence.** **e.re-entering the Union in violation of an entry ban.** ES (Comments): Moved from paragraph 2 and redrafted to include verbal violence.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	FI (Drafting Suggestions): **d. 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;** **e. 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);** **f. 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);** **g. 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;** **h. opposing the return procedure violently;**

Commission proposal	Drafting Suggestions and Comments
	i. re-entering the Union in violation of a valid entry ban.
2. In cases not covered by paragraph 1, the risk of absconding shall be determined on the basis of an overall assessment of the specific circumstances of the individual case and where one of the following criteria regarding the third-country national concerned is met:	NO (Drafting Suggestions): 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**. The assessment may** ~~and~~ in **particular include** ~~where one of~~ the following criteria ~~regarding the third-country national concerned is met~~: NO (Comments): NO support EL's proposal that paragraph 2 should not be exhaustive. We have some more indicators in national law that we would like the flexibility to consider also in this regard. Norwegian practice is that the court considers relevant factors that apply in the individual case, such as criminal history, and experiences with similar types of cases. EE (Drafting Suggestions): 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~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~regarding the third-country national concerned is met~~ **based on one or more criteria laid down in national law, including but not limited to**: EE (Comments): The regulation should not establish an exhaustive list of critera for risk of absconding. MS should be granted more flexibility with regard to assessing the risk of absconding, and have the right to establish new criteria under national law in case the modus operandi of illegal migration changes. LT (Drafting Suggestions): 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~~ **based on one or more criteria laid down in national law, including but not limited to**: LT (Comments): We would suggest a non-exhaustive list of criteria for the risk of absconding, leaving the MS the flexibility to define other criteria in national law. FR (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	3. 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~~ : EL (Drafting Suggestions): 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**, in particular,** where one of the following criteria regarding the third-country national concerned is met: EL (Comments): We consider that it would be more appropriate to provide for some room of flexibility when it comes to the closed list of paragraph 2. Therefore, we suggest the inclusion of the term 'in particular', in the beginning of the paragraph. NL (Drafting Suggestions): 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 in particular where one of the following criteria regarding the third-country national concerned is met: HU

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): 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: HU (Comments): We do not see added value in adding provisions of such assesments as it cannot be consolidated in an EU regulation, since each MS has its' own practise and rules regarding case assesments. SE (Drafting Suggestions): 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 **in particular** where one of the following criteria regarding the third-country national concerned is met: SE (Comments): SE thinks that there is a need for a non-exhaustive list and flexibility for the MS to add national criteria. For example, SE thinks that criteria relating to

Commission proposal	Drafting Suggestions and Comments
	whether the third-country national in question has committed a crime or is subject to return due to criminial conviction are relevant and important for assessing the risk of absconding. SE currently has such criteria laid down in national law.
a. lack of residence, fixed abode or reliable address;	FR (Drafting Suggestions): ~~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;	AT (Drafting Suggestions): ~~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; AT (Comments): It should be sufficient that the person implicitly indicates that he or she does not intend to comply with the return obligation etc.. FR (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	~~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 ;~~ PL (Drafting Suggestions): ~~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 IT (Comments): The text should be further clarified: " explicit expression of intent of non-compliance " and "actions clearly demonstrating intention not to comply " are generic expressions difficult to apply in practice. NL (Drafting Suggestions): ~~explicit~~ expression ~~of intent~~ of non-compliance with return-related measures applied by virtue of this Regulation, or actions ~~clearly~~ demonstrating the intention not to comply with such measures; BE

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): We wonder whether there is no overlap with 2g, and whether both should not be merged? LV (Comments): In Latvia's practice there are often cases in which a third-country national arbitrarily leaves Latvia without awaiting a final decision in the asylum procedure. Does that circumstance fall below Article 30(2)(b) or would it be more useful to make it a separate point? Please see drafting suggestion in line under Article 30(2)(h). FI (Drafting Suggestions): ~~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;	FR (Drafting Suggestions): ~~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 ;~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	NL (Drafting Suggestions): non-compliance with the obligation~~s~~ to leave the territory of the Member States within the period of voluntary departure as set out in ~~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);	AT (Comments): With reference to the AT proposal on extending the necessary cooperation obligations, the corresponding references would also need to be updated accordingly. FR (Drafting Suggestions): ~~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) ;~~ NL (Drafting Suggestions): 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)~~;

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	ES (Drafting Suggestions): ~~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);~~ ES (Comments): Already covered following the above suggestion under paragraph 1. FI (Drafting Suggestions): ~~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);	AT (Drafting Suggestions): when departure is pending ~~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)~~ point (i) ; AT (Comments):

Commission proposal	Drafting Suggestions and Comments
	The reference to Article 21 (2) should be rightly point (i)" and not !point (1)" FR (Drafting Suggestions): ~~c. 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) ;.~~ NL (Drafting Suggestions): 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)~~; ES (Drafting Suggestions): ~~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);~~ ES (Comments): Moved to paragraph 1. SE (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	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 (**i**~~l~~); SE (Comments): SE: Delete "serious". Should be enough with "reasons" and "serious" might cause interpretional uncertainty. FI (Drafting Suggestions): ~~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;	LU (Drafting Suggestions): Using **or previously having used** 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

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	form, or otherwise fraudulently opposing the return or readmission procedure; LU (Comments): LU suggests adding "or previously having used" to ensure that this provision also covers the behaviour of third-country nationals during the asylum procedure. LT (Comments): In our view, the circumstance referred to in point (f) should be one of the grounds for detention (unless MS maintain the right to provide additional grounds for detention in national law). FR (Drafting Suggestions): ~~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 ;~~ NL (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	h. using false or forged identity or travel documents, residence permits or visas, or documents justifying conditions of entry and/or residence, destroying or otherwise disposing identity or travel documents, residence permits or visas, or documents justifying conditions of entry and/or residence~~of such documents~~, using aliases with fraudulent intent, providing other false information in an oral or written form, or otherwise fraudulently opposing or misleading the return ~~or readmission~~ procedure; NL (Comments): We want to clarify the reference towards 'such documents', by rewriting the text in full. The phrase 'such documents' is too broad and it is not entirely clear to what it refers to. FI (Drafting Suggestions): ~~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;	AT (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	opposing the return procedure violently or by other acts of defiance; AT (Comments): Other forms of resistance such as hunger strikes, self-harm or shouting must also be clearly encompassed. EE (Drafting Suggestions): ~~g. opposing the return procedure violently;~~ EE (Comments): See comment under para 1. LT (Drafting Suggestions): ~~g. opposing the return procedure violently;~~ LT (Comments): See comment under para 1. FR (Drafting Suggestions): ~~g. opposing the return procedure violently ;~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	EL (Drafting Suggestions): Deletion EL (Comments): Moved to paragraph 1 NL (Drafting Suggestions): opposing the return procedure violently. This includes verbal and physical opposition. ES (Drafting Suggestions): ~~opposing the return procedure violently~~ ES (Comments): Moved to paragraph 1. FI (Drafting Suggestions): ~~g. opposing the return procedure violently;~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
h. re-entering the Union in violation of a valid entry ban.	AT (Drafting Suggestions): re-entering the Union in violation of a valid entry ban. AT (Comments): This should me moved to (1) because it is a serious violation of entry regulations. EE (Drafting Suggestions): h. ~~re-entering the Union in violation of a valid entry ban.~~ EE (Comments): See comment under para 1. LT (Drafting Suggestions): ~~h. re-entering the Union in violation of a valid entry ban.~~ LT (Comments): See comment under para 1. FR

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): ~~h. re-entering the Union in violation of a valid entry ban~~. EL (Drafting Suggestions): Deletion EL (Comments): Moved to paragraph 1 NL (Drafting Suggestions): re-entering the Member State in violation of a national measure and/or the Union in violation of a valid entry ban. Member States may lay down the criteria of paragrapah 2 a until h in national law and may provide for other criteria to determine the risk of absconding in national law. CH (Drafting Suggestions): h. ~~re-entering the Union in violation of~~ **violating** a valid entry ban. CH (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	The wording should be changed from "re-entering the Union in violation of a valid entry-ban" to "violating a valid entry ban" as this would include the Associated States and third-country nationals with a residency permit in another Member State. ES (Drafting Suggestions): ~~re-entering the Union in violation of a valid entry ban.~~ ES (Comments): Moved to paragraph 1. FI (Drafting Suggestions): ~~h. re-entering the Union in violation of a valid entry ban.~~
	AT (Drafting Suggestions): New lit. i: lack of social anchoring—particularly the absence of family ties, engagement in illegal employment, or insufficient means of subsistence. AT (Comments): This is one of the most crucial reasons that must be included in the new Return Regulation. Individuals lacking social anchoring are often no longer

Commission proposal	Drafting Suggestions and Comments
	reachable by authorities once released from security measures. This is particularly the case when they have been involved in illegal employment or lack financial resources, which frequently prevents them from securing adequate accommodation. PL (Drafting Suggestions): **i. remaining in the territory of a Member State after the expiry of a visa,** **j. committing a serious crime,** **k. other circumstances which the Member State considers relevant to determining the risk of the foreigner absconding.** PL (Comments): We should leave this to the decision of the court; the use of the word 'expression' is sufficient. In our opinion, a provision as it is proposed may lead to an increase in complaints about the use of administrative detention NL (Drafting Suggestions): 3. In case a risk of absconding has been determined in an earlier procedure concerning the third-country national this risk shall continue to exist during the return procedure, unless the third country national proves otherwise.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	NL (Comments): We propose to add paragraph 3 to article 30. We must envisage a holistic approach to the risk of absconding throughout migration procedures. The mere situation that a risk of absconding existed pending an asylum / Dublin procedure does not cease to exist when the retun procedure commences. LV (Drafting Suggestions): **i. other proceedings have revealed signs of absconding of a third-country national.** LV (Comments): Please see comment for Article 30(2)(b).

PUBLIC

Article 31 ***Alternatives to detention***	NO (Comments): NO suggest a different order of the articles in Chapter 5, to start with the least intrusive measure to the most intrusive measures. We propose to start with art 30, followed by art. 31 and then art. 29 EE (Comments): As option 1 we suggest to combine the measures set out in Articles 23 and 31. In cases where there is a ground for detention referred to in Article 29 (3), one or more measures should be imposed on the person who is not detained, taken into account the principle of proportionality. In other cases the application of the measures could be decided by the competent authority based on the necessity assessment. As option 2 we propose the following amendments: FR (Drafting Suggestions): Cette logique s'apparente à celle de l'article 9, paragraphe 1 de la directive accueil, qui a assoupli les conditions d'assignation à résidence. FR (Comments):

Commission proposal	Drafting Suggestions and Comments
	Sur les alternatives à la rétention, la France souhaite indiquer que, dans son droit national, les mesures d'assignation à résidence ne sont pas conditionnées à un risque de fuite. **Il importe de donner un maximum de souplesse aux Etats membres pour s'assurer de la disponibilité de l'étranger tout au long de la procédure de retour, qu'il y ait risque de fuite ou non,** faute de quoi nous risquons de manquer de nombreux éloignements. A titre d'illustration, près de 1 500 éloignements sont réalisés par an en France à l'issue d'une mesure d'assignation à résidence. De la même manière, la France considère que l'obligation de remettre aux autorités des documents de voyage ou d'identité (point b. du paragraphe 2) devrait figurer à l'article 21 sur les obligations générales incombant aux étrangers en situation irrégulière, et ne devrait donc pas non plus être une alternative à la rétention. De la même manière, la France considère que l'obligation de remettre aux autorités des documents de voyage ou d'identité (point b. du paragraphe 2) devrait figurer à l'article 21 sur les obligations générales incombant aux étrangers en situation irrégulière, et ne devrait donc pas non plus être une alternative à la rétention. Enfin, la France estime que : - Dans l'absolu, les alternatives à la rétention devraient être proportionnées, sans pour autant faire référence explicitement au risque de fuite : en effet s'il faut un motif de placement en rétention pour permettre l'utilisation d'une alternative à la rétention, le risque de fuite est induit ; - La référence à la vulnérabilité au premier paragraphe relève plutôt de l'article 34 ; - Enfin, le juge ne devrait pas pouvoir se saisir d'office pour invalider une mesure d'alternative à la rétention : cela n'apporterait aucune garantie supplémentaire dès

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	lors qu'un droit au recours est ouvert à l'étranger contre la décision de placement sous alternative à la rétention. Cette logique s'apparente à celle de l'article 9, paragraphe 1 de la directive accueil, qui a assoupli les conditions d'assignation à résidence. NL (Comments): We propose to delete this article in reference to article 23 and article 29 paragraph 1. BE (Comments): This is a very important article for BE. We support the inclusion of a separate article on alternatives to detention, however, it needs thorough rewriting. FI (Comments): The relationship between Articles 31 and 23 is unclear. Both Articles should also be examined in relation to the restrictions on freedom of movement laid down in Article 9 of the Reception Condititions Directive.
	SK

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): The Ministry of Justice of the Slovak Republic has provided the following comments: In relation to Art. 31 of the draft regulation, this inevitably leads us to the conclusion that a more fundamental elaboration of the legal regulation of the Administrative Court Procedure is necessary. However, the scope of the changes is directly dependent on the regulation of alternative measures in Act No. 404/2011 Coll., and therefore any of our opinions on the above provision are conditioned by the positions of the Ministry of the Interior of the Slovak Republic as the main substantive sponsor of the draft regulation. Several approaches are considered, from defining a new special procedure in matters of measures alternative to detention to reworking the zoning in matters of detention, or reviewing the decision of the administrative authority through a general administrative appeal with minimal modifications. Whichever approach is chosen, the above provision will require changes to the Administrative Court Procedure.
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.	AT (Drafting Suggestions): ~~Member States shall provide for alternative measures to detention in national law~~. Such measures shall be ordered taking into account the individual

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	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. AT (Comments): Article 31 refers to the "risk of absconding" mentioned in Article 30. From this, it can be inferred that alternatives to detention may only be applied if a risk of absconding exists, as defined in Article 30. This interpretation could imply that alternatives to detention are limited to cases of detention under Article 29(3)(a), while the other grounds for detention under Article 29(3)(b) to (e)—which do not require the establishment of a risk of absconding—would be excluded. However, alternatives to detention should also be applicable to the other grounds listed in letters (b) to (e). Otherwise, this provision would significantly restrict the authorities' flexibility and available options for measures. Therefore, it is requested that the regulation be clarified to explicitly allow the use of alternatives to detention for all grounds in Article 29(3)(b) to (e), even where the risk of absconding is not a decisive factor. NO (Comments):

Commission proposal	Drafting Suggestions and Comments
	NO support that alternatives to detention are regulated in a separate provision and are in Chapter 5, as this is coercive measures. EE (Drafting Suggestions): 1. Member States shall provide for alternative measures to detention in national law. **Without prejudice to Article 29,** such measures ~~shall~~ **may** 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~~. EE (Comments): The competent authorities should have the right of discretion when deciding whether to impose detention or alternative measures to detention on third country national concerned. Article 31 (1) should be worded similarly to Article 29(1), i.e using "may"- clause. Alternatives to detention can be applied on the basis of one or more grounds for detention listed in Article 29(3). There should be no need to assess the levelt of the risk of absconding when an alternative measure to detention is applied on other ground(s) than risk of absconding, e.g on one of the grounds listed in point b - e of the Article 29 (3). CZ

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): The relation to Article 30 (paragraph 1) is not clear. If there is a risk of absconding, is it obligatory to assess alternatives to detention? What is the advantage of Article 30 paragraph 1 compared to Article 30 paragraph 2 in relation to alternatives to detention? LT (Comments): Could the MS provide for other alternative measures? If only the measures provided for in paragraph 2 are possible, we suggest including additional measure(s) that would be effective in MS in transit (e.g. accommodating the third-country national in a centre, only allowing him/her to leave the centre if the risk of absconding is managed, etc.). Another alternative is to establish a non-exhaustive list (allowing MS to determine other effective and proportionate alternative measures). FR (Drafting Suggestions): 1. Member States shall provide for alternative measures to detention in national law. Such measures, **to which third-country nationals may be subject for the duration of the return and readmission procedures**, 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.~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	IT (Comments): It is unclear whether Member States may provide for additional alternative measures to detention in their national law in addition to those envisaged in Article 31. NL (Drafting Suggestions): ~~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.~~ BE (Comments): The article implies that the MS authorities will have to take a written decision in order to apply alternatives to detention. BE pleads that no formal decisions need to be taken, seeing as it would be counterproductive, it would decrease flexibility and increase administrative burden. We need to keep alternatives to detention as accessible as possible. We also have questions on how alternatives to detention fit in the return procedure: can alternatives to detention be applied before as well as after detention? Or is there a cascade system? Or do MS have complete flexibility

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	in this regard? Also, it is unclear when the application of this article ceases. These questions need to be resolved, otherwise we fear a lot of legal uncertainty. CH (Drafting Suggestions): 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. CH (Comments): Switzerland considers that the reference to vulnerabilities should be deleted for the same reason as in Article 29 because vulnerability is already included in the individual and proportionality assessment mentioned in this paragraph. ES (Drafting Suggestions): 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

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	vulnerabilities, and be **necessary and** proportionate to the level of the risk of absconding assessed in accordance with Article 30. ES (Comments): In line with previous comments, both principles of necessity and proportionality should be assessed. SE (Comments): SE would like to thank the COM for the explanations at the IMEX WP 8-9 July with regard to how this provision relates to the measures in Art. 23. However, we still think that it might need some further clarifications in some parts (see also SE comment for Art. 23). BG (Drafting Suggestions): 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~~ BG

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): See our comments under Article 29, paragraph 1.
2. For that purpose, Member States shall provide for any of the following measures:	NO (Drafting Suggestions): For that purpose, Member States ~~shall~~ **may in particular** provide for any of the following measures: NO (Comments): NO already have national rules on "house search", “seizure of documents”, “tickets etc to prove identity”, “duty to report and stay in specific places”, “arrest and detention” and “risk of absconding", which we think are relevant alternatives to detention. SK (Comments): The Ministry of Justice of the Slovak Republic has provided the following comments: In this context, we state that since the provision is formulated as a set of measures, from which the selection of specific measures applicable in the territory of the Slovak Republic is at the disposal of the Slovak Republic (a Member State), we have no reservations in principle regarding the

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	wording, as we do not assume that the mentioned alternative measure (using electronic monitoring, including the guarantees and procedures set out in national law) will be implemented in the Slovak Republic in the form in which the Slovak legal order recognizes it for the purposes of criminal proceedings. However, if, during the negotiations, the wording of paragraph 2 were to be amended in the sense that it would not be an exemplary list of measures from which a Member State makes a selection, but a list of measures that each Member State must have in its "national catalogue", we would have fundamental reservations with such wording to the extent that the system of control of the execution of certain decisions by technical means known from criminal proceedings cannot be "adopted" for the purposes of the execution of the draft regulation in question, which means that if the national main material manager of the aforementioned legally binding EU act wanted to implement the alternative measure in question in the Slovak Republic, it must do so for the purposes of special types of administrative proceedings in a special implementing regulation. EE (Drafting Suggestions): 2. ~~For that purpose, Member States shall provide for any of the following measures~~ **Without prejudice to the right of Member State to provide**

Commission proposal	Drafting Suggestions and Comments
	additional measures in national law, one or more of the following alternatives to detention may be applied: EE (Comments): We do not support the regulation to stipulate an exhaustive list of alternatives to detention. MS should be left flexibility in imposing and modifying alternatives to detention under national law if the modus operandi of illegal migration changes. The competent authorities should have the right of discretion when deciding whether to impose alternative measures to detention or detention. We suggest that the "shall" clause should be changed to a "may" clause similarly to Article 29(1). CZ (Drafting Suggestions): For that purpose, Member States shall provide for any of the following measures **or their combination**: CZ (Comments): It shall be possible to decide on more than one/a "combined" alternative measure. FR

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): 2. For that purpose, **and without prejudice to measures ordered pursuant to Article 23**, Member States shall provide for any **or all** of the following measures: IT (Comments): The wording in paragraph 2 is unclear. Does the phrase "shall provide for one or more of the following measures" mean that Member States may only provide for and apply only one or more of the measures listed in the paragraph? We would prefer it to be specified that Member States may provide and apply one or more measures, to be understood as cumulative. EL (Comments): Clarifications are necessary with regard to the sentence 'shall provide for any of the following measures'. Does it mean that the Member States are allowed to provide for and apply only one or more of those measures or does it mean that the Member States should provide for all those measures, out of which they may apply just one or more of them? NL (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~For that purpose, Member States shall provide for any of the following measures:~~ BE (Comments): We are not in favour of a closed list. We believe it is up to the MS to determine which alternatives deliver effective results according to their national experiences. If our proposal for adding a measure regarding individual case management is not withheld, then we cannot accept a shall-clause in this provision. ES (Drafting Suggestions): For that purpose, Member States ~~shall~~ **may** provide for any of the following measures: ES (Comments): An interpretation whereby Member States shall impose alternative measures in all cases should be avoided. SE (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	2. For that purpose, Member States shall **in particular** provide for any of the following measures: SE (Comments): SE thinks that it should be clarified in the provision that there is room for manouvre for the MS to add alternative measures. BG (Comments): We would like to see a text that allows alternatives to detention to be applied cumulatively.
a. the obligation to regularly report to competent authorities with a frequency of up to 3 days, based on the individual circumstances;	AT (Drafting Suggestions): the obligation to regularly report to competent authorities with a frequency of up up to daily ~~to 3 days~~, based on the individual circumstances; AT (Comments): In important cases, imposing a daily reporting requirement must be possible. This is standard practice in many countries with similar regulations, and the proposed wording would significantly weaken the current rules on

Commission proposal	Drafting Suggestions and Comments
	reachability. Therefore, a daily reporting obligation should be maintained. This measure is by no means an excessive intrusion, as affected individuals have no employment opportunities and should be focused on planning their departure. EE (Drafting Suggestions): a. the obligation to regularly report to competent authorities ~~with a frequency of up to 3 days~~, based on the individual circumstances; EE (Comments): Reporting obligation should base on the individual circumstances without setting concrete time limits. CZ (Drafting Suggestions): the obligation to regularly report to competent authorities with a frequency ~~**of up to 3 days**~~**laid down by national law**, based on the individual circumstances; CZ (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We prefer an option of more than 3 days. LT (Drafting Suggestions): b. the obligation to regularly report to competent authorities ~~with a frequency of up to 3 days~~, based on the individual circumstances; LT (Comments): Frequency of reporting to the reporting authority should be determined according to the specific situation (it may be more appropriate (given the administrative burden) to set a longer timeframe). FR (Drafting Suggestions): ~~a. the obligation to regularly report to competent authorities with a frequency of up to 3 days, based on the individual circumstances ;~~ IT (Comments): The sentence "a frequency of up to 3 days" (what exactly does this mean? Every three days?) needs to be clarified to avoid any possible misinterpretation. NL

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): ~~the obligation to regularly report to competent authorities with a frequency of up to 3 days, based on the individual circumstances;~~ CH (Drafting Suggestions): a. the obligation to regularly report to competent authorities ~~with a frequency of up to 3 days~~, based on the individual circumstances; CH (Comments): Switzerland questions that the frequency of the reporting requirement under Letter a is limited to up to three days in this regulation and based on individual circumstances. The national authorities should be able to decide on the frequency of reporting. Thus, the wording concerning the frequency of the reporting requirement should be deleted. ES (Drafting Suggestions): the obligation to regularly report to competent authorities with ~~a~~ **the** frequency **established under national law** ~~of up to 3 days~~, based on the individual circumstances; BG (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	a. the obligation to regularly report to competent authorities ~~with a frequency of up to 3 days~~, based on the individual circumstances; BG (Comments): We propose this amendment because we believe that the frequency of reporting should not be strictly regulated but rather left to the discretion of the Member States in accordance with their legislation.
b. the obligation to surrender identity or travel documents to the competent authorities;	AT (Drafting Suggestions): the obligation to obtain and/or surrender identity or travel documents to the competent authorities; AT (Comments): Some individuals claim they do not possess a travel document. Authorities must have the power to require these individuals to obtain a travel document from their consular post within a reasonable timeframe, and to promptly hand it over to the authorities once received. FR (Drafting Suggestions): ~~b. the obligation to surrender identity or travel documents to the competent authorities ;~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	IT (Comments): Clarification is requested on paragraph 2 letter b), namely, the obligation to surrender documents, which recurs several times in the regulation. NL (Drafting Suggestions): ~~the obligation to surrender identity or travel documents to the competent authorities;~~
c. the obligation to reside in a place designated by competent authorities;	LT (Comments): It is not clear how the place designated by the authorities should be understood - a building, an area, a geographical location? FR (Drafting Suggestions): ~~c. the obligation to reside in a place designated by competent authorities~~ ; NL (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	~~the obligation to reside in a place designated by competent authorities;~~
d. deposit of an adequate financial guarantee;	HR (Comments): Clarification of adequate financial guarantee is needed. FR (Drafting Suggestions): ~~d~~a. deposit of an adequate financial guarantee ; NL (Drafting Suggestions): ~~deposit of an adequate financial guarantee;~~
e. the use of electronic monitoring, including guarantees and procedures provided for under national law.	EE (Drafting Suggestions): e. the use of electronic monitoring, ~~including guarantees and procedures~~ **if** provided for under national law. EE (Comments): We suggest to specify electronic monitoring can be used only if this measure is provided for in national law.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	LT (Drafting Suggestions): e. the use of electronic monitoring, ~~including guarantees and procedures~~ **if** provided for under national law. LT (Comments): We suggest to specify electronic monitoring can be used only if this measure is provided for in national law. FR (Drafting Suggestions): ~~e~~b. the use of electronic monitoring, including guarantees and procedures provided for under national law. NL (Drafting Suggestions): ~~the use of electronic monitoring, including guarantees and procedures provided for under national law.~~ SI (Drafting Suggestions): **Definition of electronic monitoring should be added** (preferably in the Art. 4):

Commission proposal	Drafting Suggestions and Comments
	"Electronic monitoring" means the use of technological means, including geolocation systems, mobile applications, biometric tools, or artificial intelligence-based monitoring systems, to supervise compliance with obligations under this Regulation, without resorting to detention. SI (Comments): As regards the term "electronic monitoring", we believe that tools based on artificial intelligence or newer technologies should also be included. It would make sense to define it in Article 4 of the proposal in such a way that it also covers geolocation, mobile applications, biometric tools or AI-based monitoring systems: CH (Drafting Suggestions): ~~e. the use of electronic monitoring, including guarantees and procedures provided for under national law.~~ CH (Comments): Switzerland considers the use of electronic monitoring mentioned in letter e not as an alternative to detention but as a tool to verify compliance with an alternative to detention and another measure such as allocation to a specific

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	geographical area. Therefore, it would make sense to mention the use of electronic monitoring in another paragraph.
	LT (Drafting Suggestions): ~~h.~~**a. accommodating the third-country national in a centre, only allowing him/her to leave the centre if the risk of absconding is managed.** LT (Comments): See comment under para 1. BE (Drafting Suggestions): d. the use of individual case management coaching BE (Comments): We would strongly plead to add another measure which would make it possible to continue our national practice of individual case management coaching. Our national experience shows that the only measure that effectively works is intensive coaching. The other proposed measures in this article are rather means that support or are part of coaching.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	CH (Drafting Suggestions): **f. allocation to a geographical area within the Member State's territory in which they are able to move freely;** CH (Comments): Switzerland also proposes to include the allocation to a specific geographical area under paragraph 2. As indicated in the comment regarding Article 23, Switzerland sees this measure not as a means to secure availability in the return process for all third-country nationals but as an alternative to detention for those with a risk of absconding. Alternatives to detention should also be linked to violations of the obligation to cooperate (Article 22), possibly specific obligations, as a possibility before detention can be ordered.
3. A decision to apply measures referred to in paragraph 2 shall state the relevant reasons in fact and in law.	LT (Comments): Shouldn't the decision also set a time limit for the duration of the alternative measure? NL (Drafting Suggestions): ~~A decision to apply measures referred to in paragraph 2 shall state the relevant reasons in fact and in law.~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
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.	NL (Drafting Suggestions): ~~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.	IE (Comments): IE requests that there be a reference included to an "independent administrative authority" in light of its common law system. AT (Drafting Suggestions): 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.~~ SK (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	The Ministry of Justice of the Slovak Republic has provided the following comments: Within the scope of Art. 31, paragraph 5 of the draft regulation, we would like to apply a reservation concerning the assumption of initiation of proceedings ex officio, i. e. by an administrative court ex officio. In view of the concept introduced in the Administrative Court Procedure (always initiated on the basis of an administrative action), we do not agree with the proposed wording and request the deletion of the relevant words "or ex officio" from the draft regulation. We do not see in the provision in question a special reason whose protection would justify a fundamental departure from the current concept, since even in matters of detention, the personal initiative of the detained person is required for the judicial review of the administrative decision. In our opinion, this principle should also be maintained in matters of imposing measures alternative to detention. EE (Drafting Suggestions): 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~~. EE (Comments):

Commission proposal	Drafting Suggestions and Comments
	Setting specific deadlines for judicial review may have negative impact on the quality of court decisions. The judicial review should take place only at the request of the person concerned. CZ (Drafting Suggestions): Option 1) 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**~~. Option 2) ~~**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.**~~ CZ (Comments): Option 1) We strongly oppose any obligatory ex officio judicial reviews. Option 2) Alternatives are well known from the current acquis and no difficulties in review has been detected. LU (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	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. LU (Comments): LU wants to avoids a mandatory ex officio review, and therefor requests the deletion of "or *ex officio*" LT (Drafting Suggestions): 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. LT (Comments): This provision is not clear to us and we have questions about its implementation: Are there no maximum time limits for alternative measures?

Commission proposal	Drafting Suggestions and Comments
	Also, is it not necessary to periodically review the alternative measure imposed (either by the authority or by the court), i.e. is it sufficient that the court has already reviewed it once (as provided for in Article 31(5))? How many times (after how much time) can the TCN again appeal to the court against the imposition of such a measure? Does the TCN have to be granted free legal aid in the context of 31(5)? PL (Drafting Suggestions): ~~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.~~ PL (Comments): We propose deleting the entire paragraph 5. The introduction of such provision would place an additional burden on administrative courts. Alternative measures only serve to ensure a person's participation in return proceedings. In conditions of alternative to detention , we do not use judical review “ex officio”. The foreigner has the right to

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	lodge to judical authority a complaint against the application of such a measure. IT (Comments): Paragraph 5 refers to the fact that the decisions are reviewed but makes no mention of the validation of alternative measures. Therefore is unclear whether a judicial review is required when the measures are adopted, and whether validation also includes subsequent escort to the border. Furthermore, it is not specified how long such measures should last, nor whether effective monitoring mechanisms are in place to prevent the risk of absconding during their application. EL (Comments): We place a scrutiny reservation and in any case further flexibility should be provided with regard to the period of two months. NL (Drafting Suggestions): ~~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.~~ HU (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	~~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.~~ HU (Comments): We do not support such a provision as it would cause unbalanced administrative burder to Member States. CH (Drafting Suggestions): 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~~. CH (Comments): Switzerland is against providing for an automatic judicial review of alternatives to detention within two months, moreover an ex-officio review. Alternatives to detention are less invasive than detention and therefore do not

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	require such a burdensome review process unless of course the third-country national requests a review. ES (Drafting Suggestions): ~~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.~~ ES (Comments): ES believes that alternatives to detention do not requiere judicial review, since they do not imply deprivation of liberty. SE (Drafting Suggestions): 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 **with regard to decisions referred to in point (e), and at the latest within six months with regard to decisions referred to in points (a)–(d).**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	SE (Comments): SE: The interval for review should be longer than two months, with the exception of electronic monitoring, which is a more intrusive measure. BG (Drafting Suggestions): 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 in accordance with national law~~. **within a time limit provided for in national law.** BG (Comments): This provision should take into account that decisions are made within the time limits set by national legislation. Furthermore, we would like the review to be carried out only at the request of the TCNs. FI (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Alternatives to detention should not be subject to an automatic court review within two months. The proposed text is problematic with regard to the independence of courts.
	CH (Drafting Suggestions): **6. In case third-country nationals do not comply with one or several of the measures referred to in paragraph 2 of this Article the competent authorities may employ the use of electronic monitoring, including guarantees and procedures provided for under national law.** CH (Comments): See comment regarding Article 31(2)(e).

PUBLIC

Commission proposal	Drafting Suggestions and Comments
Article 32 ***Detention period***	MT (Comments): Malta calls for clarity on the counting of the detention period if the person absconds and for the possibility to re-detain the person if the circumstances change. FR (Comments): Sur l'article 32, la France accueille favorablement les paragraphes 2 et 4 permettant l'enchaînement entre la rétention et les alternatives à la rétention. Nous suggérons toutefois d'ajouter les mesures figurant à l'article 23 dans cet enchaînement, en plus de celles figurant à l'article 31. HU (Comments): We support the setting of the detention period at 12+12 months and that it should be made clear that the detention period should be restarted in the event of a person absconding. We ask for clarification on the period of detention of unaccompanied minors, given that the draft Regulation provides that the detention of this category of minors should be reviewed every three months, but the Regulation does not set a specific time limit for their detention.
	LU

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): This article lacks clarity regarding the calculation of detention periods. It is unclear whether detention periods in different Member States are cumulative and whether, when a third-country national who has been returned re-enters the Schengen area, the counters are reset to zero. LU wants a clear provision that does provide for non-cumulative detention periods between Member States and allows for counters to be reset to zero after re-entry.
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.	IE (Comments): IE consider that the option to re-detain a TCN should new information come to light, or a change in circumstances arise, should be included in this provision. NL (Drafting Suggestions): 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 and/or removal.
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	CZ (Comments):

Commission proposal	Drafting Suggestions and Comments
of measures to prevent the risk of absconding in accordance with Article 31.	We suggest to rather transfer this paragraph to Article 29 as it does not regulate the detention period. FR (Drafting Suggestions): 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 **taken in accordance with Articles 23 or 31**. EL (Drafting Suggestions): 2. When it appears that the conditions laid down in Article 29 are no longer fulfilled, detention **pursuant to this Regulation** shall cease to be ~~-~~**applied** ~~justified and the third-country national shall be released. Such release shall not preclude t~~**T**he application of measures to prevent the risk of absconding in accordance with Article 31 **shall not be precluded**. EL (Comments): Amendments are necessary in order to avoid possible misinterpretations in connection with any applicable national criminal law. NL

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): 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~~23. NL (Comments): Please note here that paragraph 2 cannot exist in the rationale of the Commission. According to the Commission a ground for detention must be available in order to set an alternative to detention. However, this paragraph would allow for an alternative to detention when there is no longer a ground for detention. NL urges other Member States to revisit this approach and create a simple system of supervisory measures, including detention as a last resort.
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.	HR (Comments): We would like to clarify 12 months detention LT (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We welcome the prolongation of the time limit from 6 to 12 months. We understand, that the provision ("in a given Member State") means that in each MS, the TCN can be detained for a maximum period of time (detention periods are not cumulative)? EL (Comments): We welcome the increase of the time limit from 6 to 12 months, and the introduction of the term 'given'. For the latter, we understand that the detention time limit is calculated separately in each Member State. NL (Drafting Suggestions): ~~The~~ Every single detention measure shall not exceed 12 months in a given Member State. ~~Detention~~ The detention measure 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 NL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	It must be clear that with every single detention measure the maximum duration of detention restarts. According to the NL it must be avoided that a third-country national would be detained for a maximum of 24 months in a given MS during his life. In cases where the third-country national frustrates his return, MS would be limited in their use of detention which would hamper the effectiveness of this Regulation. When issuing a second or further detention measure, the proportionality thereof must be assessed by the administrative authority and/or judiciary (including the fact that the third-country national has been detained before). We'll make a suggestion for the recitals to support this. CH (Drafting Suggestions): 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~~**6** 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. CH (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Switzerland does not see a need for a maximum 24-month detention period for all third-country nationals that is proposed in paragraph 2. Therefore, the current maximum detention period of 18 months may remain in place. That said, Switzerland remains in favour of Article 16 (3)(d) which already allows going beyond the maximum detention period for third-country nationals posing security risks. However, Switzerland proposes the inclusion of an additional phrase that states that the clock starts running with each new detention order that would become necessary as the situation is changing. This would offer the clarity that the CJEU is currently litigating in the Aroja case C-150/24 whose forthcoming judgment may result in the impossibility to order detention despite risk of absconding in case that several years back the third-country national has already been detained for successive periods totalling18 months. Since the Member States have to prove risk of absconding anyway and the detention has to be reviewed, there are sufficient safeguards in place. Therefore, Switzerland believes that Article 32 should not allow any ambiguity. ES (Drafting Suggestions): The detention shall not exceed 12 months in a given Member State **following the addition of all the differents periods where the third-country**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	national has been in detention. 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. ES (Comments): The possibility to "redetain" should be clarified in the regulation, including in the recitals. SE (Comments): SE welcomes that the maximun detention period is extended.
	FI (Drafting Suggestions): **4. Re-detention beyond this period, of the same person at a later stage, may be legitimate if an important change of relevant circumstances has taken place due to which change a reasonable prospect of removal rises or a significant lapse of time has occurred. Such re-detention shall be maintained for as short a period as possible and no longer than the maximum period as laid down in paragraph 3.**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	FI (Comments): Article 32 should also provide for a calculation of the maximum duration of detention in order to allow for re-detention in the event of a delay in removal under certain conditions. Further clarity on the situation of re-detention is needed due to the Aroja case C-150/24 currently examined by the CJEU.
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.	CZ (Drafting Suggestions): The expiry of the maximum detention period in accordance with paragraph 3 does not preclude the application of measures in accordance with Article 31 **and does not preclude the issuance of a new detention decision after release when circumstances change on condition there is a prospect of removal**. CZ (Comments): We want to lay down a possiblity of re-detention after release when circumstances has changed, e.g. when the removal has become possible. It is also necessary to make possible that if the person enters Schengen area after (voluntary or forced) return, they may be detained again. FR

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): 4. The expiry of the maximum detention period in accordance with paragraph 3 does not preclude the application of measures **taken** in accordance with Article**s 23 or** 31. NL (Drafting Suggestions): The expiry of the maximum detention period in accordance with paragraph 3 does not preclude the application of measures in accordance with Article 23~~31~~. FI (Drafting Suggestions): ~~4.~~ **5.** The expiry of the maximum detention period in accordance with paragraph 3 does not preclude the application of measures in accordance with Article 31.
	AT (Drafting Suggestions): NEW: By way of exception, where a voluntary return is authorised during a period of ongoing detention, the voluntary departure of the third-country national concerned shall be organised without delay. Detention may, however, be maintained until the date of departure where necessary to ensure the individual's effective cooperation with the procedures required for their return.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	AT (Comments): Voluntary return from detention constitutes an important instrument to promote voluntary compliance with return decisions and to alleviate pressure on detention facilities. Nonetheless, practice has demonstrated that the early release of third-country nationals for the purpose of voluntary return, well in advance of the scheduled departure date, sometimes results in the withdrawal of the individual's willingness to return, non-cooperation in the issuance of travel documents, or absconding. In order to safeguard the effectiveness of the return procedure and to ensure the individual's continued cooperation, it is appropriate to provide for the possibility of maintaining detention until the date of departure, even in cases where voluntary return has been authorised. EE (Drafting Suggestions): **5. The expiry of the maximum detention period of an individual in accordance with paragraph 3 does not preclude re-detention of the same individual if the relevant circumstances have changed or the individual has been apprehended in the territory of another Member State.** EE

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): We propose to add a new paragraph 5 stating explicitly MS right to re-detain third country nationals in cases where the relevant circumstances have changed or the person has absconded and apprehended in the territory of the other MS. HU (Comments): We do suggest to add an extra paragraph, highlighting and make it clear that the detention period begins again if the person concerned commits an absconding.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
Article 33 ***Review of detention orders***	FR (Comments): La France n'a pas de commentaire sur l'article 33, qui correspond à sa pratique nationale. NL (Comments): We propose to rewrite this article in accordance with the view of the Commission. BG (Drafting Suggestions): 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*.	IE (Comments): Is it the intention of this Article that reviews of detention will arise on an ex officio basis at least every 3 months? If so, is there a need for a review to arise on application? EE (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	1. Detention **ordered or extended by judicial authorities** shall be reviewed at regular intervals of time and at least every ~~three~~ **four** months either on application by the third-country national concerned or *ex officio***.** EE (Comments): We believe that detention of illegally staying third country nationals should be subject to judicial review as soon as possible. However, if the court has already given a permission for detaining the person, to reduce administrative burden on courts, the review period should be longer, e.g. at least every 4 months. CZ (Drafting Suggestions): Option 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*. Option 2) ~~**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*.**~~**Member States shall allow to review detention at least every three months either by allowing the third-country national concerned to apply for such review, or ex officio.**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	CZ (Comments): We strongly oppose any obligatory ex officio judicial reviews. LU (Drafting Suggestions): 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***~~**.** LU (Comments): LU opposes mandatory ex officio review for every detention order. It should remain an option for Member States to include this in their national legislation. We therefor request the deletion of "or *ex officio*" MT (Drafting Suggestions): Detention shall be reviewed at regular intervals of time and **at reasonable intervals of time** ~~**least every three months**~~ either on application by the third-country national concerned or *ex officio***.** MT (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	MT believes that the frequency of the review ought to remain in line with the current Return Directive. PL (Drafting Suggestions): 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*. PL (Comments): Such proposal as it is in current wording does not seem pragmatic and could place a significant burden on administrative resources EL (Drafting Suggestions): 1. Detention shall be reviewed **by the authority that issued the detention order** at regular intervals of time and at least every ~~three~~ **six** months either on application by the third-country national concerned or ex officio. EL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We deem necessary to clarify that the review should be made by the competent authority that issued the detention order. In addition to that we would suggest having the 3 months replaced by 6 months. NL (Drafting Suggestions): 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*.~~ CH (Drafting Suggestions): 1. **In every case,** detention shall be reviewed at regular intervals of time and at least every ~~three~~**six** months either on application by the third-country national concerned or *ex officio*. CH (Comments): Switzerland is against the introduction of a three-month review interval in paragraphs 1 and 2. As the request for review may be filed by the third-country nationals and considering that national administrative procedure law requires free legal assistance for such cases of deprivation of liberty, there are sufficient

Commission proposal	Drafting Suggestions and Comments
	safeguards to ensure a release within hours or days when the conditions are no longer met and even when the migration authorities are slow to act. Therefore, the maximum three-month review interval would be an additional burden on Member States that does not take into account the possibility to request release. Consequently, Switzerland considers that paragraph 1 and 2 should be replaced with the wording similar to Article 15(3) of the Return Directive which reflects this position and provides for a maximum interval of six months for purposes of legal security. ES (Drafting Suggestions): Detention shall be reviewed **by the competent authorities on detention** at regular intervals of time and at least every ~~three~~ **six** months either on application by the third-country national concerned ~~or *ex officio*~~**.** BG (Drafting Suggestions): 1. Detention shall be reviewed at regular intervals of time and at least every ~~three~~ **six** months either on application by the third-country national concerned ~~or ex officio~~, **provided that new relevant findings and circumstances have arisen.** BG

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): We propose this amendment to the text because reviewing the detention order would increase administrative and judicial burdens and could lead to TCNs abusing their rights. Furthermore, we would like the review to be carried out only at the request of the TCNs
2. Detention of unaccompanied minors shall be reviewed *ex officio* at regular intervals of time and at least every three months.	AT (Comments): What is the added value here? EE (Drafting Suggestions): 2. Detention of unaccompanied minors shall be reviewed *ex officio* at regular intervals of time and at least every ~~three~~ **two** months. EE (Comments): On the other hand, to ensure that child's best interest is taken into consideration, we would propose shortening the review of thehe detention of unaccompanied minors at least every two months. CZ

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): ~~**Detention of unaccompanied minors shall be reviewed *ex officio* at regular intervals of time and at least every three months.**~~ CZ (Comments): Unaccompanied minors shall have a guardian/a representative who may arrange/ask for review. We ask for the deletion of this provision. LU (Comments): As an exception to our position on other parts of the proposal, **we can accept the *ex officio* review for UAMs.** PL (Drafting Suggestions): Detention of unaccompanied minors shall be reviewed *ex officio* at regular intervals of time ~~and at least every three months~~ PL (Comments): Such proposal as it is in current wording does not seem pragmatic and could place a significant burden on administrative resources. NL (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	2. ~~Detention of unaccompanied minors shall be reviewed *ex officio* at regular intervals of time and at least every three months.~~ NL (Comments): This proposal by the Commission would in fact deteriorate the position of the unaccompanied minor as the possibility to apply for a review himself/or through the legal guardian is deleted. Please see the new paragraph 2, that is applicable to all third-country nationals, including unaccompanied minors. SI (Drafting Suggestions): Detention of unaccompanied minors shall be reviewed *ex officio* at regular intervals of time and at least every ~~three~~ **two** months. SI (Comments): MBS detention should be reviewed at regular intervals of less than three months. CH (Drafting Suggestions): ~~2. Detention of unaccompanied minors shall be reviewed ex officio at regular intervals of time and at least every three months.~~ CH

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): See comment regarding Article 33(1). BG (Drafting Suggestions): .
	EL (Drafting Suggestions): **3. Where detention has been ordered by administrative authorities, the third-country national concerned shall 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].** EL (Comments): Regarding the judicial review in the case where the detention was ordered or extended by an administrative authority, we deem appropriate to differentiate further, in paragraph 3, the cases of the ex officio review and the review based on an application by the TCN, as we consider that the ex officio judicial review is necessary only where an extension of detention was decided by an administrative authority. In any case, the TCN will have the

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	right to initiate the relevant proceedings upon detention. We also place a scrutiny reservation for the time limit provided for (15 days) and we suggest the deletion of the last sentence of point (b), as being unnecessary, taking into account the provision of Article 29 (5) (information about the available legal remedies is included in the detention decision). Therefore, we propose splitting paragraph 3 into two paragraphs.
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:	SK (Comments): The Ministry of Justice of the Slovak Republic has provided the following comments: Although this is not explicitly stated in the provision of Article 33 para. 3 of the draft regulation, we perceive the provision in question as offering Member States a choice between the alternatives described in letters a) and b), probably due to the different national legal systems of the individual Member States. From this perspective, the provision may not appear problematic in relation to the legal regulation of the Administrative Court Procedure and the procedure and examination carried out in detention proceedings regulated therein. However, since the Administrative Court Procedure in Art. 228, second sentence, assumes that the seven-working-day period for a court decision in detention proceedings does not apply if the plaintiff has been released from detention, we reserve the right to further

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	review the wording and the maximum period of 15 days from the filing of the administrative appeal (formulated without the possibility of exceptions) proposed therein. In the minimalist alternative, we require that the period specified in the provision of Art. 33 para. 3(b) was stated in working days, not regular calendar days. In addition to the identified areas of regulation, we would like to state that the provided draft regulation will most likely also require amendments to Act No. 327/2005 Coll. on the Provision of Legal Aid to persons in material need and on amendments to Act No. 586/2003 Coll. on Advocacy and on amendments to Act No. 455/1991 Coll. on Trade entrepreneurship (Trade Act), as amended, as amended by Act No. 8/2005 Coll., as amended, at least to the extent of the provisions of Art. 24© (automatic provision of free legal aid to minors within the meaning of Art. 25 para. 2 of the draft regulation). CZ (Comments): We strongly ask for amending this text according to RCD. EL (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	~~3.~~ **4.** 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~~ **the relevant decision** ~~are~~ **is** subject to judicial review, by providing that: NL (Drafting Suggestions): 1. 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~~:~~ ~~any~~ the judicial review of the lawfulness of the initial detention order be concluded as speedily as possible after the beginning of the detention, and no later than 15 days thereafter, or in exceptional situations no later than 21 days. NL (Comments): The old paragraph 3 and sub paragraph 3a. become paragraph 1. In addition we suggest to maintain the same time limites as provided in the Reception Directive. CY (Comments): **'subject to judicial review':** This expands the jurisdiction of the courts and may generate additional workload for them.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
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	IE (Comments): What is meant by judicial review in 33(3)(a)? IE considers 15 days is likely too short a timeframe to complete a judicial review, and are concerned about the administrative burden such a time limit would give rise to. EL (Drafting Suggestions): a. any judicial review of the lawfulness of detention be concluded as speedily as possible after the beginning of the ~~detention~~ **extension[**, and no later than 15 days thereafter**]**; or NL (Drafting Suggestions): ~~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~~ NL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	The old paragraph 3 and sub paragraph 3a. become paragraph 1. ES (Drafting Suggestions): any judicial review of the lawfulness of detention be concluded as speedily as possible after the beginning of the detention, **in accordance with national law** ~~and no later than 15 days thereafter~~; or SE (Drafting Suggestions): 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 SE (Comments): SE thinks that the current interval for judicial review and the wording of the Return Directive should be kept. Alternatively, the provision should at least be be aligned with the corresponding provisions for judicial review of detention orders according to the RCD which stipulates no later than 15 days or, but allows for up to 21 days in exceptional circumstances. BG

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): 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 BG (Comments): We would like the time limits to be in compliance with the national legislation of the Member States.
	NL (Drafting Suggestions): 2. Continuation of 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*. Member States shall inform the third-country national concerned about the possibility of initiating such proceedings. NL (Comments): We propose to add this paragraph.
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	LU (Comments): LU opposes mandatory ex officio review. It should remain an option for Member States to include this in their national legislation.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
detention inform the third-country national concerned about the possibility of initiating such proceedings.	EL (Drafting Suggestions): 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.~~ NL (Drafting Suggestions): ~~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.~~ ES (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	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, **in line with national law** ~~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. SE (Drafting Suggestions): 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. SE (Comments): SE thinks that the current interval for judicial review and wording of the Return Directive should be kept. Alternatively, the provision should at least be be aligned with the corresponding provisions for judicial review of

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	detention orders according to the RCD (Art. 11), which stipulates that it should be concluded no later than 15 days after the launch of the relevant proceedings, but allows for up to 21 days in exceptional circumstances. BG (Drafting Suggestions): 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. BG (Comments): See our comments under letter „a“.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
Article 34 ***Detention conditions***	NO (Comments): NO support art. 34. The content is in line with national law and practice. FR (Comments): Sur l'article 34, la France a deux remarques : - Au paragraphe 5, le droit de visite des membres de la famille et de l'avocat devrait se faire sur demande préalable de l'étranger, et donc figurer au troisième paragraphe ; - Au paragraphe 4 sur la prise en compte des besoins des personnes vulnérables, la France demande le maintien de la rédaction actuellement en vigueur sous l'empire de la directive de 2008, qui ne fait pas apparaître les aménagements particuliers dédiés aux personnes vulnérables. IT (Comments): Based on practical experiences in national centers for return, we emphasise that it would be appropriate to regulate in detail in this article the issue of visits, which in some cases must be authorised in advance so as not to interfere with the normal activities of the centers and cause problems related to the management of public order.
	PL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Article 34 allows for the placement of third country nationals in prison accomodation, while ensuring separation from prisoners. This possibility cannot apply to children, regardless of the circumstances – both from the perspective of their dignity and their mental well-being and development. We would welcome a clear exclusion in the text.
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.	EE (Drafting Suggestions): 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 **or the person's transportation proves disproportional in view of the enforcement of the return decision** and is obliged to resort to prison accommodation, the third-country nationals shall be kept separated from ordinary prisoners. EE (Comments): In our view, it is not reasonable nor practical to require that third country nationals subject to return are immediately placed in a special detention centre. First, it is unfeasible to establish special detention centres in every region where the person might be apprehended. Second, it is not practical to transport the returnee to a special detention centre in cases when the person is readmitted next day. MS should be granted flexibility to detain the person for a short period of time in arrest houses or prison facilities if person's transportation to the special facility would be disproportional in view of the enforcement of the return decision.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	IT (Comments): It is necessary to clarify when detention facilities may be used (e.g. only when there are no more places available in other facilities specifically designed for return?) and whether this form of detention should be reserved for particular categories of TCNs (e.g. those considered socially dangerous). EL (Drafting Suggestions): 1. Detention shall take place, ~~as a rule~~ **generally and as soon as reasonably possible**, 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, **where appropriate**. EL (Comments): Concerning the first sentence of this paragraph, we propose replacing the term ‘as a rule’ by the term ‘generally’, as it was agreed in the 2019 general approach on the recast Return Directive. Furthermore, we propose adding the

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	phrase 'as soon as reasonably possible', in order to provide for some flexibility, taking into account the geographical particularities of the Member States. With regard to the second sentence of this paragraph, due to the building structures or the composition of the ordinary prisoners, the separation is not always in the benefit of the TCNs. Therefore we propose to include the term 'where appropriate' at the end of the sentence. CH (Drafting Suggestions): 1. Detention shall take place, as a rule, in specialised facilities, including those in dedicated branches **in the same or separate buildings** 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. **Any carceral nature of the material conditions and regime in detention centres shall be reduced to a reasonable extent, taking into account in particular the building infrastructure, that may go beyond the strict minimum necessary to ensure the third-country national does not abscond.** CH (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Switzerland welcomes the insertion in paragraph 1 that explicitly mentions that it is possible to detain third-country nationals in dedicated branches of other facilities, which specifies better than the Return Directive what is meant under the term of separation. Switzerland also suggests that the wording is slightly adjusted to state "dedicated branches in the same or separate buildings of other facilities". This would address the issue that is currently litigated in the CJEU cases Wajir C-217/25 and Wompou C-218/25 where the main issue is whether there is sufficient separation in case of a building that is also used as a penitentiary. In the Gifhorn case C-519/20, the Court has ruled in 2022 the separate buildings of other facilities may meet the requirements of the Return Directive. Also in relation to both cases, Switzerland believes it is important to specify in Paragraph 1 that any carceral nature of the material conditions and regime in detention centres shall be reduced to a reasonable extent, taking into account in particular the building infrastructure, that may go beyond the strict minimum necessary to ensure the third-country national does not abscond. Otherwise, and depending on the outcome of the cases, Member States would have to close all specialised facilities that have not been built recently for the sole purpose of detention of third-country nationals. Since new facilities take years to build, this would effectively prevent affected Member States from

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	detaining third-country nationals who fulfil grounds for detention. It would result in absconding and also in findings in Schengen evaluations that the Member State not only has inadequate facilities but does not make the required efforts to ensure effective returns. ES (Drafting Suggestions): Detention shall take place~~, as a rule,~~ **generally** 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. ES (Comments): Inspired by Article 8 of the Screening Regulation.
2. Detained third-country nationals shall have access to open-air space.	IE (Comments): IE would welcome more specificity in this provision, in particular in relation to the length of time a TCN ought to have access to open-air space. LT

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): There are questions about how access to the outdoor space is to be guaranteed (permanently or on a defined schedule). EL (Drafting Suggestions): Deletion EL (Comments): We deem that the provision for specialised facilities under paragraph 1 is sufficient and we propose the deletion of this paragraph. HU (Comments): We do not consider paragraph 2 to be eligible and ask to delete it. CH (Drafting Suggestions): 2. Detained third-country nationals shall have access to open-air space. **Access to open-air space may be restricted to a reasonable extent to one hour per day and to courtyards that have buildings on all four sides.** CH (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Paragraph 2 is new, has a similar wording like Article 12(2) of the revised Reception Conditions Directive and concerns access to open-air space. In light of the Wajir case that also seeks clarification of the term of "access to open-air space" for return by taking into account the current Reception Conditions Directive, Switzerland would suggest an addition that the access to open-air space may be restricted to a reasonable extent to one hour per day as is the minimum standard in soft law today and to courtyards that have buildings on all four sides.
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.	FR (Drafting Suggestions): 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. **They shall be allowed, upon request, to family visits and visits of their legal representatives.** SI (Drafting Suggestions): Third-country nationals in detention shall be allowed, on request, to establish ~~in due time~~ **without undue delay** contact with legal representatives, family members and competent consular authorities SI

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): Contact with family members, legal representatives and consular authorities is an extremely important right for people in detention. The term "in due time" would be replaced by "without undue delay" SE (Drafting Suggestions): 3. Third-country nationals in detention shall be allowed, on request, to establish in due time contact with legal representatives, family members**,** **friends** and competent consular authorities. SE (Comments): Since this is an important way in remaining in a meaningful contact with the outside world and since family members not always are present in the MS where the third-country national is detained, it is of importance that the right to establish contact through visits also may be extended to friends.
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.	CZ (Drafting Suggestions): Particular attention shall be paid to~~**, and special accommodation provided for,**~~ the special needs of detained vulnerable persons. Emergency health care

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	and essential treatment of illness shall be provided to detained third-country nationals. CZ (Comments): It is rather a text of a recital. It is not clear what "special accommodation" means. We consider the words "particular attention paid to the special needs" as sufficient. FR (Drafting Suggestions): 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. PL (Comments): With regard to paragraph 4, an elaboration on the special accommodation arrangements in a more specific manner would be appreciated as such an explanation is needed for Schengen evaluations. IT (Comments):

Commission proposal	Drafting Suggestions and Comments
	In paragraph 4, we request confirmation of the possibility of reserving dedicated areas of the detention faciites (rather than ad hoc facilities) for vulnerable persons. EL (Drafting Suggestions): 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. EL (Comments): Providing for particular attention to the special needs of vulnerable persons is adequate. Vulnerable persons should receive the care and treatment that it is necessary to cover their needs, which does not mean in all cases that special accommodation is a prerequisite. NL (Drafting Suggestions): 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. HU

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): The definition of vulnerable group in paragraph (4) should be included in the draft definitions. ES (Drafting Suggestions): 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.	IE (Drafting Suggestions): Legal representatives, family members, competent consular authorities and relevant and competent national, international and non-governmental organisations and bodies **may, upon request** ~~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. IE (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	IE consider that visitation should only arise upon request and prior authorisation. HR (Drafting Suggestions): 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. CZ (Drafting Suggestions): Legal representatives, family members, competent consular authorities and relevant and competent national, international and non-governmental organisations and bodies shall have the possibility to visit any detention facility and communicate with the third-country nationals and visit them in conditions that respect privacy. Such visits may be subject to authorisation **and other appropriate rules**. CZ (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	There are different types of visitors, so it is important that the specific conditions of visits might be laid down differently. LT (Drafting Suggestions): 5. Legal representatives, family members, competent consular authorities and relevant and competent national, international and non-governmental organisations and bodies shall have the possibility to visit any detention facility and communicate with the third-country nationals and visit them in conditions that respect privacy. Such visits may be subject to authorisation **and conducted in accordance with the established rules and procedures of the detention facility**. LT (Comments): The provision on access to the centres by legal representatives and relevant organisations is not entirely clear - what does this entail, apart from the possibility of meeting and interacting with the TCNs? We also suggest adding that such meetings and visits are not only subject to authorisation, but also subject to established rules. FR (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	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 **by competent national authorities**. HU (Comments): For the categories in paragraph 5, please further clarify the conditions under which it is possible to restrict access to these bodies. ES (Drafting Suggestions): 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, **at the request of the third-country national** ~~in conditions that respect privacy~~. **Such visits may be subject to authorisation and to the prior issuance of an appropriate security clearance issued by a competent authority in accordance with national law**. **Member States may impose limits to such access by virtue of national law where such limits are objectively**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	necessary for the security, public order or administrative management of the facility. ES (Comments): Alignment with the Screening Regulation (Articles 7 and 10).
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.	AT (Comments): This should be formulated as in the current Return Directive. In any case, it should be avoided that the full set of rules—often extending beyond ten pages—must be provided to the individual. Therefore, if a return to the current wording is not supported, it should be ensured that only the most essential rules are communicated in a concise manner. NL (Drafting Suggestions): Third-country nationals kept in detention shall be provided ~~in writing~~ with information which explains the rules applied in the facility and sets out their rights and obligations in ~~plain intelligible language and in~~ a language they understand or may reasonably be preasumed to understand. Such information shall include information on their

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	entitlement under national law to contact the persons or bodies referred to in paragraphs 3 and 5.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
Article 35 ***Conditions for detention of minors and families***	FR (Comments): Nous n'avons pas de commentaires sur l'article 35 – les mineurs ne font pas l'objet de placements en rétention en France. IT (Comments): The detention of minors and families is not permitted under the Italian national law, thus we ask how this prohibition relates to the provision of the regulation. HU (Comments): We also consider it necessary to clarify the concepts of "family" and "family member" in the definitions. CH (Comments): Switzerland generally welcomes that the provision matches Article 17 paragraphs 1 to 3 of the Return Directive.
	PL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We propose that the project specify a minimum age limit below which detention against unaccompanied minor will not be applied
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.	IE (Comments): IE is concerned about the existence of a provision that allows for the detention of minors. IE asks for clarification on the basis for which it is considered appropriate to detain a minor. Are the grounds the same as is the case on TCNs of age? Furthermore, IE would like some clarity on how the role of the guardian appointed to safeguard the interests of the child is envisaged to apply in such instances? IE currently does not detain minors or family units as a whole. CZ (Drafting Suggestions): Unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest ~~**appropriate**~~**reasonable** 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	NO (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
take into account the needs of persons of their age and of their gender, including appropriate hygiene, food, health services and other infrastructure.	Families **with minors** 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. NO (Comments): Para 1 and 2 should define families similarly. COMM agreed that it is the same concept of family which are covered by both paragraphs, and that this is families with children. In the meeting NO asked why "in preparation for return" is in para 2, and COMM replied that they want to delete it because it is a prerequisite for detention in art. 29 (2). EE (Drafting Suggestions): 2. Families and unaccompanied minors detained in preparation for return **or carrying out the removal** shall be provided with separate ~~accommodation~~ **rooms** 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.~~ EE

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): According to Article 29 (2), third country nationals may be detained for the purpose of preparing the return or carrying out the removal. MS should have the possibility to accommodate the families and unaccompanied minors in separate rooms which guarantee adequate privacy from the other detainees. We propose to delete the last sentence as this would cause heavy and disproportionate administrative and financial burden on MS. CZ (Drafting Suggestions): 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. CZ (Comments): We do not see any added value in mentioning "gender" here. There is no difference in "gender matters" between "regular" detainees and "family" detainees. CH (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	2. Families and unaccompanied minors detained in preparation for return shall be provided with separate ~~accommodation~~**rooms** 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. CH (Comments): The only problem Switzerland sees with Article 17 of the Return Directive is that the term "accommodation" is vague, perhaps intentionally so. For the purposes of greater clarity, Switzerland proposes that the word "accommodation" in Article 35 is replaced with "rooms". SE (Drafting Suggestions): 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~~. SE

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): SE: The proposal seems to go further than the RCD in specifying how the facilities are to be adapted to take into account the needs of the persons concerned.
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.	NL (Drafting Suggestions): Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have-, depending on the length of their stay, access to education ~~access to education in the format most appropriate to the length of their detention.~~ LV (Comments): In our view it would be necessary to clarify Article 35(3) with regard to which education – primary / secondary education – it is necessary to provide to minor third-country nationals in detention. It is also our view that some clarifications are needed regarding what does it exactly mean “education in the format most appropriate to the lenght of their detention”. For example, from which point education would be required to be provided, what would be the appropriate period of detention that would point

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	to the need to provide education, what would be the language in which education would be required to be provided.
Chapter VI **READMISSION**	NO (Comments): NO support the proposal for Art. 36 and the importance of having a standard readmission procedure. We support to regulate some of the proposed steps in a readmission procedure, so at least these are common for the entire Union. This will help us to carry out more returns more efficiently and could also help prevent secondary movements within Schengen, e.g. by systematically using SIS to enter information about any previous readmission procedures, ID or travel documents etc.
	ES (Drafting Suggestions): *OPTION A* Complete deletion of the Chapter. *OPTION B* Amend the Chapter as suggested below.

PUBLIC

Article 36 ***Readmission procedure***	HR (Comments): In the discussion about Art. 4. we emphasized that the definition "Readmission procedure" is not an adequate definition. The readmission procedure in a practical sense includes submitting a request for readmission in formal procedure, submitting a request in accelerated procedure and transit. In the existing EU readmission agreements with third countries, it is stated that the readmission request includes: personal data, proof of previous residence in a third country, a photo of the person and all other data important for readmission. In HR applications for readmission to the third countries, identity determination is not required or carried out, but an announcement of readmission return of tcn is made if there is evidence of previous residence in that third country. CZ (Comments): The text of the Regulation must explicitly recognize the existence and content of readmission agreements that has been concluded by the EU and MSs as well as stipulated forms so that it is not necessary to renegotiate them.

Commission proposal	Drafting Suggestions and Comments
	Should a uniform procedure for readmission, including the requirements for readmission requests, be introduced without adequate safeguards, it may result in readmission agreements falling within the exclusive competence of the European Union. FR (Comments): **Sur l'article 36**, cet article pose de nombreuses difficultés et dans l'absolu, la France estime qu'il n'y a pas de valeur ajoutée à légiférer au niveau européen sur la procédure de réadmission, qui relève des accords européens ou bilatéraux négociés par les Etats membres**. La France préfèrerait la suppression pure et simple de cet article, et plus largement de ce chapitre.** A défaut, et plus précisément : - L'article impose d'initier une demande de réadmission lors de l'édiction d'une décision de retour « exécutoire » et fait référence à l'effet suspensif d'un recours en application de l'article 28. Or, il serait contre-productif de s'interdire de commencer la reconnaissance de l'étranger tant que court le délai de recours ou si la décision est suspendue par le juge. Au vu des délais qu'imposent ces procédures et les temps de réponse des Etats tiers, il faut pouvoir débuter ces échanges le plus rapidement possible. - A l'inverse, il n'est pas non plus pertinent d'introduire une demande de réadmission pour chaque décision de retour émise : en effet la France rappelle que l'obligation de retour repose sur l'étranger et non sur l'Etat membre. En outre, pour la France, cela supposerait de suivre concomitamment près de 130 000 demandes de réadmission en parallèle, ce qui n'est pas envisageable. Quand les étrangers sont documentés, aucuneprocédure particulière de réadmission n'est nécessaire.

Commission proposal	Drafting Suggestions and Comments
	En définitive, l'identification et la demande de document de voyage ne devraient intervenir qu'en cas de retour forcé d'un étranger non documenté. En outre, la France estime que : - Au paragraphe 4, l'information dans le SIS du résultat des demandes d'identification ainsi que du laissez-passer est une charge administrative injustifiée au regard des volumes concernés. La France a introduit 14 000 demandes de reconnaissance l'an dernier, la surcharge serait disproportionnée ; - Le format des demandes de réadmission est souvent dépendant des accords bilatéraux : il n'y a donc aucune valeur ajoutée à disposer d'un formulaire unique qui remettrait en cause nos pratiques nationales ; - Les Etats membres ne devraient pas avoir à passer par Frontex pour introduire leur demande de réadmission, mais devraient pouvoir choisir au cas par cas ce qui semble le plus efficace. En règle générale, toute référence à Frontex doit figurer dans le règlement EBCG, et non dans le règlement Retour. IT (Comments): Article 36 is welcomed insofar as, by aiming to standardise readmission procedures among Member States, it does not undermine the good results achieved by our country thanks to bilateral agreements that provide for simplified identification procedures and allow for streamlined and fast returns. EL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	As we have already commented, we consider readmission to be an integral part of the return procedure and not a separate procedure. Therefore, we propose changing the title into 'Readmission process' or 'Readmission phase'and adjusting accordingly the text within the article. NL (Comments): We propose to delete this article entirely. If the article is not deleted completely we propose to make the following changes to the article. CY (Comments): CY would like a clarification on the provisions of this article. We would like to know when the readmission procedure actually starts and what constitutes readmission according to this article. BE (Comments): We thank the Commission for the additional explanations on this article, however, we are not fully convinced. If this article remains, then it should be thoroughly reformulated in order to meet the different concerns expressed by the MS. It should be made clearer in the text that there is in no way an obligation for MS to automatically send a readmission request after the

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	issuance of a return decision: this would constitute an excessive administrative burden. It is also important not to depart from a one-size-fits-all principle and to leave sufficient flexibility for the MS to act as they deem necessary regarding the readmission procedure. We understand the idea behind the standard form, however, we also need to take into account that there are specific procedures in place with third countries. HU (Drafting Suggestions): ~~Article 36~~ ~~**Readmission procedure**~~ HU (Comments): We would support either the complete deletion, or the minimalise of the whole Article, as the existing bilateral agreements and current practice generally already ensure that these procedures are properly conducted and hence there is no need for such provisions in the regulation. CH

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): Switzerland prefers to handle its bilateral relationships with third-countries the way it deems appropriate and would prefer if this is not regulated in Article 36. This rigid system follows from the binary approach of "removal versus voluntary return" proposed in Articles 12 and 13 that Switzerland does not find most effective. ES (Drafting Suggestions): *Article 36* ***Readmission ~~procedure~~ process*** ES (Comments): Readmission should be considered a process (not a procedure). BG (Drafting Suggestions): Article 36 **Readmission procedure** FI (Comments): It is good that the SIS will now show whether another MS has already identified a person. This will speed up the readmission process.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
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.	HR (Drafting Suggestions): Delete HR (Comments): HR does not support paragraph 1. that after issuing a return decision, a readmission procedure shall systematically be initiated without undue delay. A readmission application is submitted if there is evidence that the person entered directly from the territory of a third country and that he/she has previously resided in that country. In cases where there is no evidence of previous residence in a third country, the application is not submitted because it will be rejected as unfounded, and it only represents a large administrative burden not only for the MS but also for the third country that exhausts its already insufficient capacities, and each application must be answered in writing. AT (Comments): AT is in favour to redraft this article to ensure greatest possible flexibility. It must be granted, that existing biletaeral and EU agreements and their already

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	existing forms remain valid. AT welcomes the support of Frontex. AT highlightes the need to monitor the new possibilities and underlines that the argument that persons "cannot be identified" no longer holds true due to the constant advances in most countries with biometric enrolment of the population. Austria uses a webpage called https://www.biometricupdate.com/ to check on the latest news for biometric identification initiatives and processes in third countries. RO (Drafting Suggestions): Upon issuance of an enforceable return decision and notwithstanding Article 28, competent authorities, with the support of Frontex where applicable, **may** systematically and without undue delay initiate the readmission procedure RO (Comments): RO considers that "shall" should be replaced by "may," because in cases of accelerated readmission with third countries at the Schengen external border, the procedure can be efficiently carried out immediately. RO considers that a clarification is needed regarding the term "readmission" used in this context, since the "readmission procedure" refers to a procedure initiated after an enforceable return decision is issued, which is not consistent with or overlaps with the accelerated readmission procedure provided for in the EURA (EU Readmission Agreements with third countries).

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	For the situations provided under Article 28, where there is a suspension of the return decision during the appeals procedure, clarification is needed regarding accelerated border readmission cases, in the sense that these cannot be carried out immediately if the suspension provided under Article 28 applies. NO (Drafting Suggestions): 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 **if there is reason to believe that the third country national will not comply with the return decision.** NO (Comments): It is important to define "enforceable return decision", for instance in article 4, as this is the starting point for when to initiate the procedure. EE (Drafting Suggestions): 1. ~~Upon issuance of an enforceable return decision and notwithstanding Article 28, competent~~ **Competent** authorities, with the support of Frontex where applicable, shall ~~systematically and~~ without undue delay initiate the readmission procedure **if it is necessary to establish or verify the identity or nationality of the person concerned or obtain travel documents enabling him or her to return**.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	EE (Comments): Although we support the idea that return procedure should be better linked to the readmission procedure we belive that MS should have the right to decide whether to initiate the readmission procedure or not. Readmission procedure could be initiated in cases where the person's identity or nationality needs to be established or where the request for travel documents is to be submitted by the competent authorities. LU (Comments): LU wants more flexibility on when to initiate the readmission procedure. IT (Comments): With regard to the reference in para. 1 to "notwithstanding Article 28", it is unclear whether, within the 14-day time limit for appealing against the return decision, it is still possible to initiate the process of identifying the returnee. NL (Drafting Suggestions): ~~Upon issuance of an enforceable return decision and notwithstanding Article 28, competent authorities, with the support of Frontex where applicable,~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~shall systematically and without undue delay initiate the readmission procedure.~~ OR ~~Upon~~ After issuing~~ance of a~~n ~~enforceable~~ return decision ~~and notwithstanding Article 28~~, competent authorities, with the support of Frontex where applicable, ~~shall~~ may ~~systematically and without undue delay~~ initiate the readmission procedure. HU (Drafting Suggestions): Upon issuance of an enforceable return decision and notwithstanding Article 28, competent authorities, with the support of Frontex ~~where applicable,~~ where necessary upon the request of the Member States, shall systematically and without undue delay initiate the readmission procedure. HU (Comments): In our view, the reference to Frontex in paragraph 1 is inappropriate, as requesting assistance from the Agency is essentially a Member State competence. We therefore propose to delete this part and to clarify in the text or in the recitals that Frontex only provides assistance upon request of a Member State. CH (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	1. Upon issuance of a~~n enforceable~~ return decision and notwithstanding Article 28, competent authorities, with the support of Frontex where applicable, ~~shall~~**may** systematically and without undue delay initiate the readmission procedure. CH (Comments): Paragraph 1 unnecessarily obliges Member States to initiate a readmission procedure at one single point in time when the return decision becomes enforceable. In case the third-country national communicates that he or she opts for a voluntary return at the time the return decision becomes enforceable and has a travel document, there should be no requirement such as in paragraph 1 that would require the Member State to initiate a readmission procedure, which as defined in Article 4(9) would involve confirming nationality, obtaining travel documents and organising a return operation. If a readmission procedure would be carried out, this would also result in an unnecessary transfer of personal data of the third-country national, which would at least not be in the spirit of the regulation. Switzerland believes that the migration authorities know the third-country national and what is most effective should have the flexibility when it comes to deciding what is best in such a situation. They should decide whether to

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	initiate a readmission procedure or whether the to provide the opportunity of voluntary returns, which is easier to organise and should be the preferred option, even in many cases after the voluntary departure period has expired. If this rigid framework is preserved, Switzerland believes that it does make sense that the readmission procedure is launched as early as possible in cases where the person does not want to or does not have the documents to return voluntarily by his or her own. This can even be before a return decision is enforceable, which is what Switzerland's national legislation provides. This is also not problematic as the launch or initiation of such a readmission procedure in itself does not require the transfer of personal data to a third county. This helps to gain precious time in preparing the return of those third-country nationals who will become subject to removal. It would be awkward if the new regulation would oblige Member States to delay the initiation of the readmission procedure for the sake of harmonisation. Therefore, if Paragraph 1 is to be maintained, Switzerland considers it would need to be redrafted accordingly. ES (Drafting Suggestions): Upon issuance of an enforceable return decision and nowithstanding Article 28, competent authorities, with the support of Frontex where applicable, shall

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~systematically and without undue delay~~ , **where appropriate and on the basis of an individual assessment**, initiate the readmission ~~procedure~~ **process**. ES (Comments): Member States should be entitled to decide whether or not a readmission procedure should be initiated based on an individual assessment. Readmission should be considered a process (not a procedure). SE (Drafting Suggestions): 1. Upon issuance of an enforceable return decision and notwithstanding Article 28 **and without prejudice to the prime responsibility of the third country national subject to a return decision to comply with the obligation to leave the territory of the Member States**, competent authorities, with the support of Frontex where applicable, shall ~~systematically and~~ without undue delay initiate the readmission procedure. SE (Comments): SE is in principle positive to the clarification of the readmission procedure and a more uniform and joint approach when it comes to what we should

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	expect from the third countries in question in terms of facilitating the readmission of their own nationals. However, we are still not convinced about the added value of regulating the readmission procedure in the Regulation. For effectiveness there must be more flexibility for the MS to to adapt the readmission procedure to specific types of cases and to the specific cooperation with individual third countries that may vary, also over time. We do not think that the text, as it currently stands, caters for that. It is also necessary to be able to adapt the measures to the circumstances of the individual cases so that impediments to the enforcement of the return decision do not arise, notably in sensitive cases involving security aspects. Moreover, it is important to emphasize that it is primarily the responsibility of the third-country national to make necessary arrangements for his/her own travel document and/or cooperate to make this possible. It is a matter of principle that we think should be clarified either in the operative text or in the recitals. BG (Comments): We place a scrutiny reservation for the whole Article. We have serious concerns that this approach could hamper the implementation of readmission

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	agreements with third countries. In order to avoid any wrong interpretations or disputes with the third countries we prefer the texts regarding the readmission to be deleted or as a compromise to be modified in a more general way that respects the existing legal base on readmission and the bilateral agreements of the Member States.
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.	AT (Drafting Suggestions): When a travel document needs to be obtained ~~from the third country authorities~~, the competent authorities shall submit a readmission application to the responsible authorities of the third country. Such readmission application shall include, when/if ~~as~~ relevant, a request for confirmation of nationality and a request for issuance of travel document respectively the acceptance of the EU Standard Document for Return (EU-Laissez Passer). Readmission applications shall be submitted ~~without delay and~~ where possible in due time by using electronic means of communication and a standard form pursuant to paragraph 6. AT (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Argument 1 (bureaucratization on the EU-MS side): Readmission application in well-documented cases or also with regard to the identity/nationality evidence already recognized in some agreements no longer needs a "Confirmation of nationality". Furthermore, there are obligations in readmission agreements and Chicago Convention Annex 9, Chapter 5 regarding not very likely "Error in Readmission" Argument 2: In some cases, two or more authorities are responsible on the third country side (as in AT for instance: Ministry of the Interior/Migration Service for confirmation of nationality, Laissez-Passer at the Ministry of Foreign Affairs); the point of acceptance for readmission is usually one (for both procedural steps, i.e. either via the embassy or via the migration service). Argument 3: As absconding of persons with an obligation to leave Austria is a relevant factor; the readmission request might be submitted only when actually relevant (known adress) in order to keep the focus in readmission cooperation with the third countries on the relevant cases. Keeping additionlly in mind the consent to readmission has to be renewed in most readmission agreements if the time of transfer upon confirmation of nationality (e.g. EU-RA Azerbaijan"person concerned shall be transferred

Commission proposal	Drafting Suggestions and Comments
	within three months. On request of the Requesting State, this time-limit may be extended by the time taken to deal with legal or practical obstacles.”). NO (Drafting Suggestions): When a travel document needs to be obtained from the third country authorities, the competent authorities shall submit a readmission **request** ~~application~~. Such readmission ~~application~~ **request** shall include, as relevant, ~~a request for~~ confirmation of nationality and a request for issuance of travel document. Readmission **requests** ~~applications~~ shall be submitted without delay and where possible using a standard form pursuant to paragraph 6. NO (Comments): On para 2, we support CH's proposal to find another expression than "re-admission application" and suggest “request” EE (Drafting Suggestions): 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~~.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	EE (Comments): We do not support the establishment of a standard form for readmission applications. CZ (Drafting Suggestions): 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 **or a form pursuant to the relevant readmission instrument**. CZ (Comments): In our view, the words “where possible” in the last sentence are not sufficient to indicate that the forms from the readmission instruments would be used. NL (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	~~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.~~ OR When a travel document needs to be obtained from the third country authorities, the competent authorities ~~shall~~ may submit a readmission application. Such readmission application shall include, as relevant, a request for confirmation of identity and/or nationality and a request for issuance of a travel document. Readmission applications ~~shall~~ may be submitted ~~without delay and~~ where possible using a standard form pursuant to paragraph 6. CH (Drafting Suggestions): ~~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.~~ CH (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	The terminology especially in paragraph 2 does not reflect the practice, in particular when it comes to what is described as a "readmission application". In fact there is no standardised formal written readmission application in which the Member State requests the confirmation of nationality of a third-country national subject to a consular interview or questioning in an identification mission. In fact, very often Member States do not send any lists of names before identification and instead limit themselves to a general invitation. Likewise, the modalities to request travel documents also vary from third country to third country. The core of the problems of paragraphs 2 to 6 is that first – the conditions for third country cooperation cannot and should not be imposed by a European regulation but are defined bilaterally, and second – the Member States to some extent depend on the third country and should be flexible when it comes to the information they need. Another aspect that Switzerland noticed is that the proposed form for readmission requests to third-countries mentioned in paragraphs 2 and 6 would be contrary to forms used under existing bilateral readmission agreements. Member States have heard the explanations on the form from the Commission on 23 April that the form should be purely optional and may be useful for both the Member State and the third country in particular if there is a low caseload and no such form has been agreed. However, in Switzerland's

Commission proposal	Drafting Suggestions and Comments
	experience of third-country cooperation what matters is the quality of cooperation and the form for requests is one of the least important elements. Therefore, Switzerland recommends to delete paragraphs 2 to 6. ES (Drafting Suggestions): 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~~. ES (Comments): In coherence with the suggestion under paragraph 1, where the readmission process is not triggered immediately and in all cases, the last sentence should be consequently deleted. In addition, given the existing readmission agreements and practices with third countries, the development of a standard form SE (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	2. When a travel document needs to be obtained from the third country authorities~~,~~ **by** the competent 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**, be** using a standard form pursuant to paragraph 6. BG (Comments): It should be explicitly stipulated that Member States may use the standard forms of the readmission applications provided for in the existing readmission agreements at EU and/or national level.
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	AT (Comments): The wider use of EU-LP should be highlighted as the better option to minimize the administrative burden in the readmission procedure for all sides. NL (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
compliance with the applicable readmission instrument and Regulation (EU) 2016/1953[1].	~~The competent authorities may submit the request for travel document separately where it is preferable for legal or operational reasons, including due to the duration of the validity of the travel document to be issued and the non-availability of the third-country national to receive the travel document immediately after the confirmation of nationality. Where applicable, the European travel document for return shall be used in compliance with the applicable readmission instrument and Regulation (EU) 2016/1953[2].~~ OR The competent authorities may submit the request for a travel document separately where it is preferable for legal or operational reasons, including due to the duration of the validity of the travel document to be issued and the non-availability of the third-country national to receive the travel document immediately after the confirmation of nationality. Where applicable, the European travel document for return shall be used in compliance with the applicable readmission instrument and Regulation (EU) 2016/1953[3].

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

~~[2] Regulation (EU) 2016/1953 of the European Parliament and of the Council of 26 October 2016 on the establishment of a European travel document for the return of illegally staying third-country nationals, and repealing the Council Recommendation of 30 November 1994 (OJ L 311, 17.11.2016, p. 13, ELI: http://data.europa.eu/eli/reg/2016/1953/oj).~~

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

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	CH (Drafting Suggestions): ~~3. The competent authorities may submit the request for travel document separately where it is preferable for legal or operational reasons, including due to the duration of the validity of the travel document to be issued and the non-availability of the third-country national to receive the travel document immediately after the confirmation of nationality. Where applicable, the European travel document for return shall be used in compliance with the applicable readmission instrument and Regulation (EU) 2016/1953.~~ CH (Comments): See comment regarding Article 36(2). SE (Drafting Suggestions): 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~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~travel document immediately after the confirmation of nationality.~~ Where applicable, the European travel document for return shall be used in compliance with the applicable readmission instrument and Regulation (EU) 2016/1953 . BG (Drafting Suggestions): .
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.	AT (Comments): The existence of such proof of nationality respectivley Travel document should be visible for other MS authorities concerned. The confirmation and/or the travel document shall be made available to the competent authorities of other Member States upon request. It would be helpful to see at least the information about a "positive confirmation of nationaltiy" and not only upon request. Upon request the actual information (proof of nationality, eg. relevant confirmation of the third country authority) should be shared with other MS in order to facilitate the readmission (obtaining the consent to the needed travel document or having the possibility of using the EU-LP for return)

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	CZ (Drafting Suggestions): 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**~~**The** travel document **obtained** shall be made available to the competent authorities of other Member States upon request. CZ (Comments): We suppose only the travel document shall be made available upon request, not the information. LT (Comments): It's not clear what needs to be uploaded to SIS? If the answer is positive - readmission has been approved and a travel document has been issued - would it not be sufficient to upload the travel document received to the SIS? NL (Drafting Suggestions): ~~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~~

Commission proposal	Drafting Suggestions and Comments
	~~information and travel document shall be made available to the competent authorities of other Member States upon request.~~ CH (Drafting Suggestions): ~~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.~~ CH (Comments): See comment regarding Article 36(2). BG (Drafting Suggestions): .
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.	AT (Drafting Suggestions):

Commission proposal	Drafting Suggestions and Comments
	MS shall facilitate the practical organisation of identification interviews and may use also virtual means for such interviews. AT (Comments): why are arrangements necessary? NL (Drafting Suggestions): ~~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~~ CH (Drafting Suggestions): ~~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.~~ CH (Comments): See comment regarding Article 36(2). ES

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): Reservations will be placed on 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:	NO (Drafting Suggestions): 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 **requests** ~~applications~~ referred to in paragraph 2. Such standard form shall set out: EE (Drafting Suggestions): ~~11.~~4. ~~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:~~ EE (Comments): We do not support the establishment of a standard form for readmission applications. CZ (Comments):

Commission proposal	Drafting Suggestions and Comments
	MSs should participate in creating the the content (and format) of the form. NL (Drafting Suggestions): ~~12. 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:~~ CH (Drafting Suggestions): ~~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:~~ CH (Comments): See comment regarding Article 36(2). BG (Drafting Suggestions): :

PUBLIC

Commission proposal	Drafting Suggestions and Comments
a. the format for readmission applications;	NO (Drafting Suggestions): the format for readmission ~~applications~~ **requests** EE (Drafting Suggestions): ~~a. the format for readmission applications;~~ EE (Comments): We do not support the establishment of a standard form for readmission applications. NL (Drafting Suggestions): ~~the format for readmission applications~~ CH (Drafting Suggestions): ~~a. the format for readmission applications;~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
b. the elements of a readmission application including the request for confirmation of nationality and the request for issuance of travel document.	AT (Drafting Suggestions): the elements of a readmission application including the request for confirmation of nationality and the request for issuance of travel document, respectively the request for accepting the European travel document for return. AT (Comments): As a matter of fact the use of EU-LP becomes more common and therefore should be considered and communicated more actively. NO (Drafting Suggestions): ~~the elements of a readmission application including~~ the request for confirmation of nationality and ~~the request for~~ issuance of travel document. EE (Drafting Suggestions): ~~b. the elements of a readmission application including the request for confirmation of nationality and the request for issuance of travel document.~~ EE

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): We do not support the establishment of a standard form for readmission applications. NL (Drafting Suggestions): ~~the elements of a readmission application including the request for confirmation of nationality and the request for issuance of travel document.~~ CH (Drafting Suggestions): ~~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.	NO (Comments): NO are happy with the proposal that such liaison officers (now termed EURLO) should be part of EU delegations, as this would both link return to other topics in the various EU-delegations, and as an important signal to host

Commission proposal	Drafting Suggestions and Comments
	countries that readmission is an EU interest and that we expect all MS to be treated similarly. NL (Drafting Suggestions): ~~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.~~ CH (Drafting Suggestions): ~~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.~~ CH (Comments): Switzerland considers the formulation that EURLO (European Return Liaison Officers) are part of the structure of Union Delegations not precise since many EURLO are based in the embassies of their own Member States.

PUBLIC

Article 37 ***Communication with non-recognised third-country entities***	EE (Drafting Suggestions): ~~**Article 37**~~ ~~**Communication with non-recognised third-country entities**~~ EE (Comments): We propose to delete Article 37 as the regulation should not affect the foreign policy of MS. FR (Comments): **Sur l'article 37**, **la France demande sa suppression.** Même si cette communication serait une possibilité introduite pour une ou plusieurs étapes de la procédure de réadmission, limitée à ce qui est nécessaire, nous identifions plusieurs difficultés : - L'article 36 dispose qu'une procédure de réadmission est engagée sans délai pour toute décision de retour adoptée/émise par les autorités compétentes (art. 36.1). Or, **la procédure de réadmission (art. 36.2) relève de prérogatives étatiques** (ex : la demande de délivrance d'un document de voyage ou la confirmation de la nationalité de l'étranger en situation irrégulière). Il n'est par ailleurs pas non plus précisé comment cette clause s'articulerait avec les accords (ou arrangements) en matière de réadmission permettant les retours ; - **S'agissant du droit de l'Union, l'entretien de relations avec des entités non-reconnues relève de la conduite des relations extérieures des États membres, et n'a pas sa place dans un texte *a fortiori* pris sur une base légale JAI. En outre, il semblerait qu'une telle clause est inédite dans un texte de droit de l'UE**, et qu'il convient d'être très vigilant sur le précédent peu souhaitable que cela pourrait créer à l'avenir ;

Commission proposal	Drafting Suggestions and Comments
	- **Ce type de communication, même limité à des considérations techniques liées au retour, pourrait être utilisé comme un levier par ces entités en vue d'une reconnaissance diplomatique**. En effet, la simple mention dans le corps de l'article que cette communication n'emporterait pas de reconnaissance diplomatique n'est pas de nature à l'exclure *de facto* et apparaît seulement déclaratoire (comme le rappelle la Commission) ; - **Cela reviendrait enfin à reconnaître que ces entités ont juridiction sur la situation concernée au sens de la CEDH** (Güzelyurtlu et autres c. Chypre et Turquie [GC], n°36925/07, 29 janvier 2019, §§ 193 et s.). IT (Comments): The wording of Article 37 is not entirely clear. EL (Comments): We place a scrutiny reservation for the whole article. The term 'entities' should be further clarified, as also is the case with regard to the **legal** reasons for including such a provision in this Regulation. NL (Comments): The Netherlands is not providing any comments at this time due to the large number of questions from other Member States, but we too will need to conduct further research into this article. CY

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): We would like to ask for the **deletion of Article 37**. In the opposite case, we have the following comments: 1. We do not agree with the use of the term "entities" since it is not specific enough, and as such, it is open to multiple interpretations. The wording should be adjusted as to be clear that the communication could occur with non-recognised governmental authorities of recognised States (e.g. the current administration in Afghanistan), rather than **unlawful/secessionist entities** (e.g. the one installed by Turkey in the occupied part of Cyprus). In this respect, we would like to highlight that the obligation not to cooperate with entities established in breach of peremptory norms of international law (*ius cogens*) and not to render aid or assistance is an absolute one and entails the international responsibility of States and international organisations not observing it (arts 40-41 of the Articles on the Responsibility of States for Internationally Wrongful Acts, arts 41-42 of the Draft Articles on the Responsibility of International Organizations). 2. Furthermore, the phrase "as necessary" in Article 37 is particularly broad and implies that any form of cooperation may be pursued if

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	deemed necessary. Consequently, in our opinion, this type of cooperation — regardless of the explicit disclaimer in the proposal that it does not constitute diplomatic recognition — may, under international law, be regarded as such and entail a violation of the rules on the international responsibility of States and international organisations. 3. Moreover, the reference in the proposal to a "non-recognised third country," as currently formulated, does not preclude the application of the Regulation or the envisaged cooperation with the so-called "trnc." We recall that the United Nations Security Council has explicitly called on all States **not to recognise** or in any way assist the secessionist entity established in the northern part of Cyprus, and to respect the sovereignty, independence, and territorial integrity of the Republic of Cyprus (see UNSC Resolutions 541 (1983) and 550 (1984)). ES (Drafting Suggestions): ~~*Article 37*~~ ~~***Communication with non-recognised third-country entities***~~ ES

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): Cooperation with these entities can be developed without the need of including this Article in the Regulation. Since recognition of entities remains a national competence, the mere inclusion of such a provision may lead to undesired interpretations and legal consequences. BG (Comments): We place a scrutiny reservation for the whole Article due to the ongoing consultations at national level.
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.	EE (Drafting Suggestions): ~~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.~~ CH (Drafting Suggestions): ~~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.~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	CH (Comments): Switzerland does not see an added value of a provision that Member States may take up contact with non-recognised third-country entities for readmission purposes: Member States may take up contact with these entities even without this article. ES (Drafting Suggestions): ~~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.~~ SE (Comments): SE: As stated during the IMEX WP 8-9 July, we understand and acknowledge the intention of Article 37 but think that the proposal raises several delicate political and legal questions that needs to be further reflected upon. Not least the fact that these aspects are primarily governed by the principals of internationlal law. Also, we are not convinced that the best solution is to address this issue in this Regulation or, if so, if this Regulation is the place where this should be addressed.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
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.	EE (Drafting Suggestions): ~~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.~~ CH (Drafting Suggestions): ~~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.~~ CH (Comments): See comment regarding Article 37(1). ES (Drafting Suggestions): ~~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.~~