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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Integration, Migration and Expulsion (IMEX Expulsion)
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Subject:	Regulation on establishing a common system for the return of third-country nationals staying illegaly in the EU - Compilation of drafting proposals and comments on Articles 12 to 19

Delegations will find attached the compilation of Member States' drafting proposals and comments on Articles 12 to 19 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 4-5 June 2025.

New Return Regulation Art 12-19 Deadline: ***16 June 2025***
From: AT, BE, BG, CH, CZ, DK, EE, EL, ES, FI, FR, HR, IE, IS, IT, LT, LU, LV, MT, NL, NO, RO, SE, SK **Updated:**
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Guidelines to be followed

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	SE (Comments): **SE retains a scrutiny reservation on the proposal as a whole.**
Proposal for a	
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	

PUBLIC

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

PUBLIC

Commission proposal	Drafting Suggestions and Comments
SECTION 4 **ENFORCEMENT OF RETURN**	EL (Comments): - We support the structure proposed by the Commission with regards to Section 4 and in particular regarding the sequence of the Articles. - We wouldn't be in favour of a radical re-arrangement of the Articles or a new text here, which would weaken the clear message that needs to be sent. Namely, that the TCN to whom a return decision has been issued shall cooperate with the competent authorities and shall not move to another Member State, while the TCN has the option to return voluntarily at any moment. - In general, we consider that by regulating at first the removal in a clear way, in terms of the cases where it is applicable, but also by providing enough room for flexibility (see comments in paragraph 6), the possibilities for the voluntary return to be the preferred option will be reinforced. - The combination of Articles 12 and 13 in conjuction with the mandatory mutual recognition and enforcement of the return decisions and the provision for the establishment of return hubs, will indirectly increase the effectiveness of voluntary returns, including the efficiency of the return border procedure and will disincentivise unauthorised movements.

PUBLIC

Article 12	CH (Comments): CH is in favour of a more flexible Art. 12 that – unlike the proposal by the Commission – does not introduce a binary system of "removal vs. voluntary return". The MS/SAC authorities need to be able to choose which procedure ist the most appropriate. Furthermore, the treatment of non-refoulement in removal requires greater clarity. Therefore, CH and NL jointly propose an alternative drafting suggestion. DK (Comments): Over the last years, it has been proven that voluntary return is the safest, most dignified and sustainable way of returning third-country nationals from the territory of the Member States. This should be reflected in the proposed regulation. It should therefore be up to the Member State to choose whether they prefer to allow for voluntary return or to remove the person. This decision should be based on the specific case. Our drafting suggestions reflect the need to go away from the dichotomy of either voluntary return or removal. FI (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	This Article is difficult to understand for us because we don't have a separate enforcing decision or removal order. We only have one return decision, which is made at the same time as the permit decision. Should we intepret this Article so that these are points that we should take into account in the enforcement of return, even if no decision is taken on the matter? Or does this Article mean that not only the return decision but also the removal order have to be made? FR (Drafting Suggestions): An amendment proposal will be submitted shortly. FR (Comments): S'agissant des articles 12 et 13, **la France souhaite avant tout inverser la primauté donnée par la directive « retour » au <u>délai</u> de départ volontaire, de façon à ce que ce dernier devienne une exception extrêmement circonscrite**. En effet, l'article 13, dans sa rédaction proposée par la Commission, maintient l'obligation d'accorder un délai de départ volontaire à l'étranger en situation irrégulière, avec l'impossibilité pour l'État membre de prendre d'office des mesures de contrainte pendant ce délai, dans toute autre hypothèse que celles mentionnées à l'article 12. Le délai de départ volontaire reste donc le principe, et les quatre hypothèses prévues à l'article 12 l'exception.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Afin de renverser ce principe et de sortir de cette logique binaire opposant délai de départ volontaire et éloignement forcé, la France souhaite que l'article 12 permette à l'État membre d'assortir l'ensemble de ses décisions de mesures d'aide au retour et/ou de mesures de contrainte (assignation à résidence, rétention, alternatives à la rétention), tout en lui laissant la liberté de choisir la modalité finale d'exécution de la décision de retour (forcé/volontaire). L'ensemble de ces mesures doivent pouvoir être prises cumulativement ou alternativement, simultanément ou successivement, et l'État membre doit à tout stade de la procédure pouvoir adapter les modalités d'exécution de la décision de retour (passer du retour forcé au retour volontaire, ou inversement). L'article 12 ne poserait ainsi qu'une obligation de moyens (en référence à l'article 7(1) de la directive de 2008), avec la possibilité de prendre des mesures d'aide au retour et/ou de contrainte, précisées par les références aux articles 23 (maintien à disposition de l'étranger en situation irrégulière le temps de la procédure de retour), 29 (rétention) et 31 (alternatives à la rétention). ⇨ **Ces observations seront détaillées, voire amendées, avec une proposition rédactionnelle d'amendement transmise prochainement.** NL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	NL would propose to switch the placing of articles 13 before 12. Please find enclosed a first drafting suggestion for articles 12 and 13; NL is however reconsindering the phrasing and will send additional text suggestions.
Removal	
	LU (Comments): In general, LU believes that Article 12 does not give Member States enough flexibility. Member States should be able to decide on a case-by-case basis whether removal or voluntary return is appropriate. Voluntary return should always be possible.
1. The third-country national subject to a return decision shall be removed when:	AT (Comments): As already mentioned, AT is in strong favor for the primacy of voluntary return, which should be reflected in this Article. The whole AT system is based oon the primacy of voluntary return, which is in line with the current Return Directive and the COM Strategiy for voluntary return. We consider this article too restrictive aund it seems to offer nit enough flexibility to grant voluntary return at every stage of the return process. We suggest to switch Art 12 and 13, whereas Art 12 (6) could be the first Para and be redraftetd in

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	a way, which guarantees a simple procedure without the obligation to issue an order. CH (Drafting Suggestions): 1. The **Member States have the competence to remove** a third-country national subject to a return decision **if no period for voluntary departure has been granted in accordance with Article 13 or if the obligation to return has not been complied with within the period for voluntary departure.**~~shall be removed when:~~ CH (Comments): With the proposed wording the possibility for return by the third-country national on his or her own without after the the expiration of the voluntary departure period should be retained (see the definition on 'voluntary return' in Art. 4(6) as proposed by DE, AT and CH). CZ (Comments): What is the relation of grounds for removal to risk of absconding and possible detention? DK

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): The third-country national subject to a return decision ~~shall~~ **may** be removed when: DK (Comments): "Shall" should be changed to "may" in order to reflect the need of flexibility of the Member States. If the TCN has not returned within the deadline for voluntary departure in accordance with Article 13, they should still be allowed to leave voluntarily without force, if they cooperate. The same goes with TCN's who fall within the scope of Article 16; if they want to return voluntarily, there is no need to remove them. EE (Drafting Suggestions): 1. The third-country national subject to a return decision ~~shall~~ **may** be removed when: EE (Comments): The competent authorities should have the right of discretion when deciding whether to grant a period for voluntary return or not. We suggest that the "shall" clause should be changed to a "may" clause. Compared to Article 7(4) of the Return Directive, the proposal narrows down considerably the grounds for removal. Today, MS may refrain from granting a

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	period for voluntary return if there is a risk of absconding based on all criteria fixed in the national legislation. Article 12 (1) of the proposal allows MS to remove the person only if there is a risk of absconding based on criteria mentioned in Article 30 (1) point a (the returnee has moved to the other MS without authorisation); in Article 30 (2) point c (the returnee has not left the territory of the MS within the period for voluntary return) or in Article 30 (2) point d (non-compliance with the obligation to cooperate). This means that MS cannot refrain from granting a period for voluntary return in cases where e.g., the third country national has re-entered the Union in violation of a valid entry ban or he/she has provided false or forged documents. This approach contradicts MS obligation to take all necessary measures to ensure effective returns, incl. apply detention if the third country national poses a risk of absconding (Article 7(10) in conjunction with Article 29 (3)). In order to prevent secondary movements within the EU, MS should have the right to refrain from granting voluntary return to a third country nationals who poses a risk of absconding, taking into account individual circumstances and the criteria listed in Article 30 (1) and (2) of the Return Regulation. FI (Comments): Here states that MS's shall remove. We want to have the possibility to decide per case whether or not removal or voluntary return is in place. Voluntary return should always be possible. NL (Drafting Suggestions): The Member States have the competence to remove a third-country national subject to a return decision if no period for voluntary departure has been

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	granted in accordance with Article 13 or if the obligation to return has not been complied with within the period for voluntary departure. ~~shall be removed when:~~ NO (Comments): How does art. 12 (1) align with art. 13 (4), and how is this shift between voluntary return and removal is to be handled in practise? This is an important issue in the relation between these two articles. In essence, we need to still have the possibility to decide per case whether or not removal or voluntarily return is the right option, and voluntary return should always be possible. A solution to ensure this important aim could be to change the word "shall" to "may". SE (Comments): We are skeptical to linking an obligation to remove a third country national to the time limit for voluntary departure. For example, there are situations where a third country national leaves the Member State in accordance with a return decision but after the time limit for voluntary departure has expired. Sweden prefers a procedure that does not become too binary with a negative impact on the efficiency of the return procedure. We are not convinced that the possibility of indicating a new date for voluntary departure, under the current wording, in paragraph 6 provides for sufficient flexibility. We will submit a drafting proposal for this Article as soon as possible.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	SK (Comments): The Slovak Republic positively perceives the expansion of the possibilities for implementing forced return in paragraph 1 and believes that it is a good step towards achieving increased efficiency in the field of returns.
	ES (Comments): Flexibilise the scope of application in order to have the possibility to resort to voluntary return in cases where it is fit for the final objective, which is to return more effectively and efficiently.
a. the third-country national is refusing to cooperate with the authorities during the return process;	AT (Comments): A specific reference to article 21 would be helpful to clarify the obligations of cooperation that apply to foreigners. It also remains unclear to what extent this letter is compatible with the departure waiting period outlined in letter d. CH (Drafting Suggestions): ~~a. the third-country national is refusing to cooperate with the authorities during the return process;~~ EE (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	a. ~~the third-country national is refusing to cooperate with the authorities during the return process~~ **there is risk of absconding based on individual assessment and criteria set out in Article 30** ; EE (Comments): See comment above EL (Drafting Suggestions): a. the third-country national is ~~refusing to cooperate~~ **not cooperating** with the authorities during the return process**, by not complying, in particular, with the obligations set out in Article 21**; EL (Comments): The wording 'is refusing to cooperate' seems to narrow down the non-cooperation behaviors and to our understanding it covers only the cases that the TCN does not cooperate at all. There are cases where the TCN cooperates only in part and we consider that those cases should also be covered by the 'shall clause'. Therefore we propose a more general wording here and, for reasons of further clariry, a reference to Article 21, accompanied by the term 'in particular' (indicative cases of non-cooperation), could be made. ES

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): a. the third-country national **does not** ~~is refusing~~ ~~to~~ cooperate with the authorities during the return process, **in particular, by not complying with the obligations laid down in Article 21.** ES (Comments): The focus should be placed on the fact of non-cooperation, rather than on intentions. Any subjectivity or margin of interpretation should be avoided. The addition of the reference to Article 21 is merely indicative, but may be useful for the authorities to justify the lack of cooperation. MT (Drafting Suggestions): a. the third-country national is ~~refusing to cooperate~~ **not cooperating** with the authorities during the return process**, by not complying, in particular, with the obligations set out in Article 21**; MT (Comments): The wording 'is refusing to cooperate' seems to narrow down the non-cooperation behaviors and to our understanding it covers only cases where the TCN does not cooperate at all. However, there are cases where the TCN

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	cooperates only in part and we consider that those cases should also be covered by the 'shall' clause. Therefore we propose a more general wording here. In addition, for reasons of further clarity, we are also proposing a reference to Article 21, accompanied by the term 'in particular' (indicative cases of non-cooperation). NL (Drafting Suggestions): ~~the third-country national is refusing to cooperate with the authorities during the return process;~~ NO (Comments): We have a couple of questions regarding the understanding of these alternatives in letter a-c: - If a TCN has been given a date to depart, but refuses to cooperate, will it be possible for the authorities to transfer the TCN to the removal procedure before the date for voluntary return has passed?
b. the third-country national moves to another Member State without authorisation, including during the period set in accordance with Article 13;	CH (Drafting Suggestions): ~~b. the third-country national moves to another Member State without authorisation, including during the period set in accordance with Article 13;~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	EE (Drafting Suggestions): b. ~~the third-country national moves to another Member State without authorisation, including during the period set in accordance with Article 13~~; EE (Comments): See comment above IE (Comments): This provision suggests that there are circumstances where a TCN subject to a RD can move to another MS with authorisation. IE would welcome the intention behind this provision to be clarified. LT (Comments): The wording of point (b) is not clear as to which authorisation is being referred to (should it be clarified that it is the authorisation referred to in paragraph 23(3)?). Furthermore, it is important how the authorities will be able to easily check whether a TCN has such an authorisation. NL (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~the third-country national moves to another Member State without authorisation, including during the period set in accordance with Article 13;~~ NO (Comments): Who is the "authorising" authority in this regard? The MS that has issued the return decision, or the MS where he/she is moving to? And which MS should issue the removal, the MS where he/she resides illegaly, or the MS that issued the initial return decision? RO (Comments): Clarification of the term "authorisation". who issues the authorisation?
c. the third-country national falls within the scope of Article 16;	AT (Comments): It must be ensured, that Art 12 (6) is applicable CH (Drafting Suggestions): ~~c. the third-country national falls within the scope of Article 16;~~ NL (Drafting Suggestions): ~~the third-country national falls within the scope of Article 16;~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
d. the third-country national has not left the territory of Member States by the date set in accordance with Article 13.	BE (Drafting Suggestions): Deletion or retain this wording as a may provision. BE (Comments): In our view, in this situation, there should be no automatic legal obligation to remove these persons. We perceive this shall provision as setting up an additional obstacle to the use of voluntary return and feel that this situation should rather be formulated as a may provision. We would like to recall here our general position that our priority is sustainable return. The separation in the Regulation between voluntary return and removal is too strict, the Regulation should not create unreasonable obstacles to voluntary return and should facilitate flexiblle transition to voluntary return in a later stage of the return procedure without administrative burden. CH (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~d. the third-country national has not left the territory of Member States by the date set in accordance with Article 13.~~ EE (Drafting Suggestions): d. ~~the third-country national has not left the territory of Member States by the date set in accordance with Article 13~~. EE (Comments): See comment above LU (Comments): LU believes that voluntary return should remain possible, even if the third-country national has not left the territory of the Member States by the date set in accordance with Article 13. NL (Drafting Suggestions): ~~the third-country national has not left the territory of Member States by the date set in accordance with Article 13.~~ NO (Comments): As already stated, the possibility to be able to switch between voluntary return and removal as we do today, irrespective if the TCN has overstayed the deadline for departure, is highly important to us.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We have recently seen this with returnees to Ethiopia. Some of them had stayed on illegally for more than 8 years, because it was impossible to forcibly return them. Then, thanks to a common European effort, forced returns to Ethiopia became possible again. This directly affected the applications for voluntary returns, also among those that had stayed on illegally for many years. It is less expensive for Norway, more dignified for the person returning and easier for local authorities to accept voluntary returns. The suggestion at the table does not reflect this realty at all.
	IT (Drafting Suggestions): **e. <u>in other cases, when necessary, following an individual assessment.</u>** IT (Comments): In order to increase flexibility for MS, we would suggest adding a generic clause at the end of the paragraph authorizing MS to use forced return even outside the 4 cases provided in letters a/d of para. 1, where it deems it necessary on a case-by-case basis. LT (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	e. in other cases, when proportionate and necessary, following an individual assessment. LT (Comments): In order to increase flexibility, and taking into account that situations can be very different, we would suggest adding a new general basis that would allow MSs to remove TCNs in other cases as well, if necessary after an individual assessment.
2. Member States' competent authorities may issue a separate administrative or judicial decision in writing ordering the removal.	BG (Drafting Suggestions): Member States' competent authorities may issue a separate administrative or judicial decision **or act** in writing ordering the removal. BG (Comments): We propose that amendment in order to reflect better the national administrative system. Current Return Directive uses both words: decision or act and we believe that restoring this wording would not affect the proposal of the Commission at all. CH

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): Member States' competent authorities may issue **a decision on removal together with a return decision in a single administrative or judicial decision or act or in** a separate administrative or judicial decision **or act** ~~in writing ordering the removal~~. CH (Comments): This provision is ambiguous as it can be read as a requirement to issue a separate removal order that is subject to appeal and that would become compulsory in all cases where the person fails to comply with his or her obligation to return under the return decision and should be deleted. The proposed wording corresponds to Art. 6(6) of Directive 2008/115/EC allowing one return decision which outlines the consequences of failure to comply with an obligation to return. In case the wording of Art. 6(6) is copied into Art. 7 (see CH comments on Art. 7(6)), it would be possible to delete Art. 12(2). As indicated in CH comments on Art. 9,

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	one aspect of concern in relation to mutual recognition is the possible requirement under the proposal for the executing MS/SAC to issue a separate removal order, which in itself would render mutual recognition less effective In order to make mutual recognition an attractive option, mutual recognition without a separate removal order should be made possible explicitly. CZ (Comments): This is a "may provision", because ordering removal may already be part of a return decision. EE (Drafting Suggestions): 2. ~~Member States' competent authorities may issue a separate administrative or judicial decision in writing ordering the removal.~~ **A country of removal shall be determined either in a return decision when a period for volunatry return has not been granted or in a separate administrative act or judicial decision when the return decision is enforced.** EE (Comments): We suggest looking Article 12 (2) in conjunction with Art 7 (4). We do not support the obligation under Article 7(4) to determine the country of return or countries of return in the return decision. The country of return may not be known at the time the return decision is issued. Furthermore, in case of voluntary return, the person should be allowed to return to any third country

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	he/she has right to enter. The country of removal should be determined 1) in a return decision when the Member State has decided to refrain from granting a period for voluntary departure; 2) in a separate administrative act or judicial decision when the return decision allowing for a period for voluntary return is enforced. FI (Comments): Can the removal order be joint with the return decision? LU (Comments): It should be possible to issue the return decision and the decision ordering removal in the same administrative or judicial decision. NL (Drafting Suggestions): Member States' competent authorities may issue a decision on removal together with a return decision in a single administrative or judicial decision or act or in a separate administrative or judicial decision or act ~~in writing ordering the removal~~. SK (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	In para. 2, it is essential for the Slovak Republic to maintain the wording "may issue" (since in our legal system there is no issuance of a separate decision ordering removal).
3. The competent authorities shall assess compliance with the principle of non-refoulement by reference to the country of return. They may rely on an existing thorough assessment of all relevant circumstances in previous stages of the procedure. Changes in circumstances and new elements evidencing a risk shall be duly examined. The third-country national concerned shall bring forward as soon as possible any relevant elements concerning his or her own personal circumstances.	BE (Comments): After an initial examination of this provision, we have no draft suggestion to improve the wording. However, we would recall our general position that the assessment of non-refoulement should not be done at the stage of issuing the return decision, the assessment should be done at the time of drafting the removal order because at that moment the country of removal is known and the assessment of non refoulement can be done thoroughly at that moment. BG (Drafting Suggestions): 3. The competent authorities shall assess compliance with the principle of non-refoulement by reference to the country of **removal** ~~return~~. They may rely on an existing thorough assessment of all relevant circumstances in previous stages of the **return** procedure **or other relevant procedures**. Changes in circumstances and new elements evidencing a risk shall be duly

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	examined. ~~The third country national concerned shall bring forward as soon as possible any relevant elements concerning his or her own personal circumstances.~~ BG (Comments): We are concerned that, if the return decision specifies more than one potential country of return, we will have to carry out an assessment for each country. This would entail an additional administrative burden. The assessment of the compliance with the principle of non-refoulement should be made only at limited and certain cases, namely at the removal stage and if there is no assessment of all relevant circumstances in previous stages of the return procedure or other procedures. CH (Drafting Suggestions): 3. The competent authorities shall **remove third country nationals in** ~~assess~~ compliance with the principle of non-refoulement ~~by reference to the country of return~~. **When the third country national or the authorities of the Member States indicate that the removal would breach the principle of non-refoulement,**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	the Member States may refer the third country national to the appropriate asylum procedure provided by the [APR] or national law, or otherwise consider whether the removal is in compliance with the risk of non-refoulement. Member States may rely on any **previous consideration of non-refoulement** ~~existing thorough assessment of all relevant circumstances in previous stages of the procedure. Changes in circumstances and new elements evidencing a risk shall be duly examined~~. The third-country national concerned shall bring forward as soon as possible any relevant elements concerning his or her own personal circumstances **in order to substantiate his claim that the removal would breach the principle of non-refoulement**. **In case new information and physical documentation necessary for establishing or verifying identity of the third-country national or otherwise relevant within the return and readmission procedure make it apparent that the third-country national has violated the obligation to cooperate in accordance with Article 21(2)(b), the Member States shall not amend a prior return decision or decision on removal.** CH (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	The posposed wording constitutes a pragmatic solution on non-refoulement: - creation of the possibility of a referral to asylum authorities so that return authorities are at least not required to consider non-refoulement by themselves, for which they often do not have the capacity or expertise; - extension of the possibility to consider previous documents on non-refoulement in the same case; - avoidance of the MS/SAC assuming the burden of the consequences in cases of violations of the obligations to cooperate, which would result in delays: In case new information and physical documentation necessary for establishing or verifying identity of the third-country national or otherwise relevant within the return and readmission procedure make it apparent that the third-country national has violated the obligation to cooperate in accordance with Article 21(2)(b), the Member States shall not not amend a prior return decision or decision on removal. This would prevent a further development of evolving CJEU case law on the basis of Directive 2008/115/EC. CZ (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	In case a removal is ordered in a return decision, the principle of non-refoulement shall be (so far) assesed alerady in the return decision. Then the MS is obliged to do it again when removing the person. There is no obligation to issue a removal decision, but it is obligatory to assess the principle of non-refoulement (again). The regulation does not mention which legal means are to be used. Removal is not necessarily a separate administrative procedure. For CZ this is the red line. We need to have the assessment of the principle of non-refoulement more simple and only once. EL (Drafting Suggestions): 3. **For ensuring compliance with the principle of non-refoulement,** ~~T~~the competent authorities ~~shall assess compliance with the principle of non-refoulement by reference to the country of return. They~~ may rely **exclusively** on an existing thorough assessment of all relevant circumstances in previous stages of the **return** procedure **or in other previous relevant procedures**. Changes in circumstances and new elements evidencing a risk shall be duly examined. ~~The third-country national concerned shall bring forward as soon as possible any relevant elements concerning his or her own personal circumstances.~~**, provided that they are substantiated and not considered**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	to have been brought forward by the third-country national merely in order to delay or frustrate the enforcement of the return decision. EL (Comments): - The obligation to comply with the principle of non-refoulment is already provided for in Article 5 and we are of the opinion that this principle is to be respected in connection with the removal. - By reitering this obligation in this Article, which regulates removal, we understand that the intetion of the Commission is to make clear that the compliance with the principle of non-refoulement is to be ensured at the removal stage and not necessarily when issuing the return decision. - In order to avoid any misinterpretations and taking into account that this obligation is already stated in Article 5, we consider that it is more appropriate not to reiterate the obligation here, but to refer only to the possibility to rely exclusively on previous assessments conducted under either the return procedure or other relevant procedures, such as the asylum procedure (i.e. when the country of return is the country of origin). A new compliance-check should be necessary only if it is needed, in particular when new elements evidencing a risk or changes of the circumstances have arisen or are brought forward by the TCN, provided that they are not considered to

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	have been brought forward merely in order to delay or frustrate the enforcement of the return decision. ES (Drafting Suggestions): The competent authorities shall assess compliance with the principle of non-refoulement by reference to the country of ~~return~~ **removal**. ~~They may rely on an~~ **E**xisting ~~thorough~~ assessment**s** of all relevant circumstances in previous stages of **the return procedure or other previous administratives** or **judicial** ~~the~~ procedure**s or proceedings shall be considered sufficient for this purpose**. ~~Changes in circumstances and new elements evidencing a risk shall be duly examined. The third-country national concerned shall bring forward as soon as possible any relevant elements concerning his or her own personal circumstances~~. ES (Comments): The reference to the country of return should be changed to country of removal, since several countries of return (or none) may have been established in the return decision. At this stage of the procedure, the key reference should be the country of removal. In addition, administrative

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	burden should be avoided and previous assessments should be considered as sufficient to fulfil this obligation. IE (Comments): On the point that compliance with the principle of non-refoulement is to be assessed with reference to the country of return, it is noted that an assessment carried out at the previous stage of the 'procedure' can be relied on. IE requests greater clarity on what is meant by the word procedure. Is it to refer to the return procedure or another procedure, for instance, the IP procedure? IT (Drafting Suggestions): 3. **For ensuring compliance with the principle of non-refoulement,** ~~T~~**t**he competent authorities ~~shall assess compliance with the principle of non-refoulement by reference to the country of return. They~~ may rely **exclusively** on an existing thorough assessment of all relevant circumstances in previous stages of the **return** procedure **or in other previous relevant procedures**. Changes in circumstances and new elements evidencing a risk shall be duly examined. The third-country national concerned shall bring forward as soon as possible any relevant elements concerning his or her own personal circumstances

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	IT (Comments): We believe that the assessment of compliance with the principle of non-refoulement should be minimized at the executive stage of return, as a thorough assessment should have already been made when the return decision is issued (especially if it is related to the rejection of the application for international protection). LT (Drafting Suggestions): The competent authorities shall assess compliance with the principle of non-refoulement by reference to the country of return. They may rely on an existing thorough assessment of all relevant circumstances in previous stages of the procedure. Changes in circumstances and new elements evidencing a risk shall be duly examined~~. The third-country national concerned shall bring forward as soon as possible any relevant elements concerning his or her own personal circumstances.~~**, unless they are not substantial and have been brought forward by the third-country national with the sole purpose of delaying or preventing his/her removal.** LT (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	In view of the abuses and attempts by the TCN to suspend removal proceedings, we consider that an exception should be made in this paragraph to the effect that a new assessment of a possible violation of the principle of non-refoulement does not have to be carried out in the case where the TCN has presented new circumstances which are not substantial and with the sole aim of delaying or preventing his/her removal. LV (Drafting Suggestions): 3. The competent authorities shall assess compliance with the principle of non-refoulement by reference to the country of **removal**~~return~~. LV (Comments): Latvia is of the opinion that the principle of non-refoulement should be assessed only in relation to the country of return referred to in the decision ordering the removal (forced expulsion). Assessing the principle of non-refoulement in relation to those third countries to which a person may return voluntarily would be impractical use of resources that are already scarce. MT (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	3. **For ensuring compliance with the principle of non-refoulement,** ~~T~~the competent authorities ~~shall assess compliance with the principle of non-refoulement by reference to the country of return. They~~ may rely **exclusively** on an existing thorough assessment of all relevant circumstances in previous stages of the **return** procedure **or in other previous relevant procedures including the asylum procedure**. Changes in circumstances and new elements evidencing a risk shall be duly examined~~. The third-country national concerned shall bring forward as soon as possible any relevant elements concerning his or her own personal circumstances.~~**, provided that they are substantiated and not considered to have been brought forward by the third-country national merely in order to delay or frustrate the enforcement of the return decision.** MT (Comments): The obligation to comply with the principle of non-refoulment is already provided for in Article 5 and we are of the opinion that this principle is to be respected in connection with the removal. By reitering this obligation in this Article, which regulates removal, we understand that the intention of the Commission is to make clear that the

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	compliance with the principle of non-refoulement is to be ensured at the removal stage and not necessarily when issuing the return decision. In order to avoid any misinterpretations, and taking into account that this obligation is already stated in Article 5, we consider that it is more appropriate not to reiterate the obligation here, but to refer only to the possibility to rely exclusively on previous assessments conducted under either the return procedure or other relevant procedures, such as the asylum procedure (i.e. when the country of return is the country of origin). A new compliance-check should be necessary only if it is needed, in particular when new elements evidencing a risk or changes of the circumstances have arisen, or are brought forward by the TCN, provided that they are not considered to have been brought forward merely in order to delay or frustrate the enforcement of the return decision. NL (Drafting Suggestions): The competent authorities shall ~~assess~~ remove third country nationals in compliance with the principle of non-refoulement ~~by reference to the country of return~~removal

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	When the third country national or the authorities of the Member States indicate that the removal would breach the principle of non-refoulement, the Member States ~~They~~ may refer the third country national to the appropriate asylum procedure provided by the [APR] or national law, or otherwise consider –whether the removal is in compliance with the principle of non-refoulement. Member States may rely on any previous ~~existing thorough~~ consideration of non-refoulement ~~assessment of all relevant circumstances in previous stages of the procedure~~. ~~Changes in circumstances and new elements evidencing a risk shall be duly examined.~~ The third-country national concerned shall bring forward as soon as possible any relevant elements concerning his or her own personal circumstances in order to substantiate his claim that the removal would breach the principle of non-refoulement. In the absence of relevant changes or new elements, no further assessment shall be required. In case new information and physical documentation necessary for establishing or verifying the identity of the third-country national or otherwise relevant within the return and readmission procedure make it apparent that the third-country national has violated the obligation to cooperate in accordance with Article 21(2)(b), the Member States shall not not amend a prior return decision or decision on removal. NL (Comments): For NL the rephrasing of this paragraph is essential. The assessment of the principle of non-refoulement without the third country national indicating that there would be a breach would create a 'international protection assessment' within the return procedure. This would not only frustrate the speediness of the return procedure, but create an additional procedure for the

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	administrative authorities and the judiciary. Whenever there is a question for international protection, one should be redirected to the asylum procedure for a proper assessment. Only when the country of removal would be different from the country of origin, and the third country national indicates that removal would breach the principal of non-refoulement, this authorities must check this claim. NO (Comments): COM stated in the last IMEX that it is possible to issue a return decision that also entails a removal order, a so called comprehensive return decision (a 2-in-1-decision). However, if we in a case have to make a new non-refoulement assessment, must this be in writing, thus making it a new decision which can be subject to appeal and suspensive effect, cf. Art. 27 and 28? Or is it sufficient to just check or consider the non-refoulement before the actual removal, for example through a fast track-procedure (like Norway does today)? If we need to make a new removal order in addition to the former comprehensive decision, this will be counterproductive for the effectiveness of the return procedure, and a way for the TCN to stall the removal.
	CH (Drafting Suggestions): a
4. Coercive measures taken to ensure removal shall be necessary and proportionate and shall, in any case, not exceed the threshold of	

PUBLIC

Commission proposal	Drafting Suggestions and Comments
reasonable force. They shall be implemented in accordance with national law respecting fundamental rights and with due respect for the dignity and physical integrity of the third-country national concerned.	
5. In carrying out removals by air, Member States shall take into account the common guidelines on security provisions for joint removals by air set out in the Annex to Council Decision 2004/573/EC[1].	DK (Comments): Consider moving this to the recitals. ES (Drafting Suggestions): In carrying out removals by air, Member States shall take into account the common guidelines on security provisions for joint removals by air. ~~set out in the Annex to Council Decision 2004/573/EC[2].~~ ES (Comments): The Council Decision of reference should not be petrified. This reference may be included in the preamble, if so required. IT (Drafting Suggestions):

[1] Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders (OJ L 261, 6.8.2004, p. 28, ELI: http://data.europa.eu/eli/dec/2004/573/oj).

[2] Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders (OJ L 261, 6.8.2004, p. 28, ELI: http://data.europa.eu/eli/dec/2004/573/oj).

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	5 ~~In carrying out removals by air, Member States shall take into account the common guidelines on security provisions for joint removals by air set out in the Annex to Council Decision 2004/573/EC.~~ IT (Comments): We would suggest the deletion of the reference to Decision No.2004/573 from para. 5.
6. In duly justified cases and when the third-country national is clearly cooperating, competent authorities may decide to indicate a date by which the third-country national shall leave the territory of the Member States in accordance with Article 13. In such cases, competent authorities shall closely monitor the compliance of the third-country national, including by organising transport assistance to the relevant point of departure from the Union.	AT (Drafting Suggestions): In ~~duly~~ justified cases and when the third-country national is ~~clearly~~ cooperating, competent authorities may ~~decide to~~ indicate a date by which the third-country national shall leave the territory of the Member States in accordance with Article 13. In such cases, competent authorities shall closely monitor the compliance of the third-country national, including by organising transport assistance to the relevant point of departure from the Union. The set deadline may be roveked at any time. AT (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	It would be important here that the date is not set with a new decision (bureaucratic effort, resources, etc.), but rather by means of an informal writing~~.~~ A decision should not be necessary here, as it is at the discretion of the authority to grant such a new deadline in accordance with Art. 12 para. 6. And granting a period to leave the country is solely for the benefit of the thrid country national.There should be no subjective entitlement to such a grant. Practical example: Currently, a new date for the purpose of assisted voluntary departure is granted by a letter of approval from the BFA after the deadline for voluntary departure specified in the decision has expired. The monitoring of voluntary departure could be explicitly included here. It is important to note that Article 12 para. 6 also provides for the revocation of the granted voluntary departure at any time. BE (Drafting Suggestions): ~~In duly justified cases~~ and when the third-country national is ~~clearly~~ cooperating, competent authorities may decide to indicate a date by which the third-country national shall leave the territory of the Member States in accordance with Article 13. In such cases, competent authorities shall closely

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	monitor the compliance of the third-country national, including by organising transport assistance to the relevant point of departure from the Union. BE (Comments): BE supports the MS who called for the deletion of "in duly justified cases" and "clearly". However, in our opinion, these modifications would not solve the fundamental issues regarding this article: 1/ We refer to the general comments made above regarding article 12 (1d). We are open to different possible solutions: clarify this provision in a horizontal way, delete the provision or integrate it in article 13. 2/ The meaning of the last sentence is still unclear. 3/ The provision entails too much administrative burden. It should be avoided that changing from removal to voluntary return would be accompanied with a full fledged administrative decision. BG (Drafting Suggestions): ~~In duly justified cases and~~ **W**hen the third-country national is clearly cooperating, competent authorities may decide to indicate a date by which the third-country national shall leave the territory of the Member States in accordance with Article 13. In such cases of the Member States in

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	accordance with Article 13. In such cases competent authorities shall closely monitor the compliance of the third-country national, including by organising transport assistance to the relevant point of departure from the Union. BG (Comments): We propose the wording 'In duly justified cases' be deleted because it could lead to legal uncertainty and mass appeals. CH (Drafting Suggestions): ~~6. In duly justified cases and when the third-country national is clearly cooperating, competent authorities may decide to indicate a date by which the third-country national shall leave the territory of the Member States in accordance with Article 13. In such cases, competent authorities shall closely monitor the compliance of the third-country national, including by organising transport assistance to the relevant point of departure from the Union.~~ CH (Comments): Art. 12(6) would essentially require MS/SAC to allocate resources to escorting third-country nationals who want to return to airports. In such cases there should be a possibility like today that would allow the MS/SAC to let

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	the third-country nationals to return without being escorted to the airport. Since effective departure can be checked by records of airlines and other means and does not require escorting, the proposal's binary approach is not necessary and Art. 12(6) should be deleted. CZ (Drafting Suggestions): *Option 1* **~~In duly justified cases and w~~W**hen the third-country national is clearly cooperating, competent authorities may decide to indicate a date by which the third-country national shall leave the territory of the Member States in accordance with Article 13. In such cases, competent authorities shall closely monitor the compliance of the third-country national**~~, including by organising transport assistance to the relevant point of departure from the Union~~**. *Option 2* **~~In duly justified cases and when the third-country national is clearly cooperating, c~~C**ompetent authorities may at any time **~~decide to~~** indicate a date by which the third-country national shall leave the territory of the Member States in accordance with Article 13 **instead of removal**. **~~In such cases, competent authorities shall closely monitor the compliance of the~~**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~**third-country national, including by organising transport assistance to the relevant point of departure from the Union.**~~ CZ (Comments): The text should be clear that this is absolutely at MSs' discretion and the MSs are not obliged to give reasons in every decision why they did not make use of the exception. "In duly justified cases" shall be deleted as it opposes the discretion of MSs. The end of para is too burdensome and has no added value. Moreover, in a regulation, as a principle, we should avoid (when possible) such a text that requires national law to adapt to it. EE (Drafting Suggestions): 6. In duly justified cases and when the third-country national is clearly cooperating, competent authorities may decide to indicate a date by which the third-country national shall leave the territory of the Member States in accordance with Article 13, **unless the third country national is without a valid travel document or falls within the scope of Article 16**. In such cases, competent authorities shall closely monitor the compliance of the third-country national, including by organising transport assistance to the relevant point of departure from the Union. EE (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We agree that we need to find appropriate instruments to motivate third country nationals subject to removal to cooperate. However, it remains unclear which actions mentioned in Article 21 (2) clearly demonstrate the person's intention to cooperate and justify granting a period for volunatry return. To avoid court claims, voluntary return should be possible only for those third country nationals who have obtained travel documents thanks to their cooperation. A third country national who poses a risk to public policy, public security or the national security of the Member States, should not be granted a period for voluntary return. EL (Drafting Suggestions): 6. ~~In duly justified cases and w~~**W**hen the third-country national is clearly cooperating, competent authorities may decide to indicate a**n appropriate** date **setting out a time period, which does not exceed 30 days and during** ~~by~~ which the third-country national shall leave the territory of the Member States ~~in accordance with Article 13~~. In such cases, competent authorities shall closely monitor the compliance of the third-country national, including by organising transport assistance to the relevant point of departure from the Union. EL (Comments): - In order to provide for further flexibility in switching from removal to voluntary return with no complications in terms of applicable time limits, we

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	propose the deletion of the phrase 'in duly justified cases' and set up a maximum time limit in this paragraph. The fact that the TCN starts cooperating in a clearly evident way and not delaying further the return should be considered as a sufficient condition. - We could also consider the deletion of the last phrase 'including … Union', in case it is suggested and supported by the majority. * Another option could be the transfer of this paragraph to Article 13. It could be added as a second subparagraph in paragraph 1: *'When the third-country national is subject to removal in accordance with Article 12 and is clearly cooperating, competent authorities may decide to indicate an appropriate date by which the third-country national shall leave the territory of the Member States. In such cases, competent authorities shall closely monitor the compliance of the third-country national'* This option would add further flexibility, as paragraph 3 of Article 13 would be applicable in those cases as well. ES (Drafting Suggestions): ~~In duly justified cases and when the third-country national is clearly cooperating,~~ **C**Competent authorities may decide, **at any time of the**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	procedure, to resort to voluntary return~~. indicate a date by which the third-country national shall leave the territory of the Member States~~ in accordance with Article 13. In such cases, competent authorities shall closely monitor the compliance of the third-country national **of the obligation to leave the territory of the Member State**~~, including by organising transport assistance to the relevant point of departure from the Union~~ FI (Comments): How does this relate to the fact that, according to Article 13, the period for voluntary return must not exceed 30 days from the date of notification of the decision? Such a situation can probably be detected only after the return decision has been issued, so can the period for voluntary return be granted later? If paragraph 6 is to be applied before the return decision is made, it is actually impossible to assess the level of cooperation at that stage of the process. HR (Drafting Suggestions): ~~In duly justified cases~~ HR (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We propose the deletion of the phrase "in duly justified cases" IE (Comments): What is meant by 'in duly justified cases'? What circumstances should a MS consider in characterising a case as duly justified? IT (Drafting Suggestions): 6. ~~**In duly justified cases and wW**~~hen the third-country national is clearly cooperating**, for example by having access to assisted return and reintegration programs,** competent authorities may decide to indicate a date by which the third-country national shall leave the territory of the Member States in accordance with Article 13. In such cases, competent authorities shall closely monitor the compliance of the third-country national, including by organising transport assistance to the relevant point of departure from the Union IT (Comments): - In order to provide for further flexibility in switching from removal to voluntary return, we propose the deletion of the phrase 'in duly justified cases'.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We also propose adding a reference to the TCN's access to assisted return and reintegration programs, as an indicator of willingness of the TCN to cooperate. The final part of the paragraph seems unclear regarding "*organising transport assistance to the relevant point of departure from the Union*" (is "partial" accompaniment planned, i.e., up to the point of exit from the external border?). LT (Drafting Suggestions): ~~In duly justified cases and w~~**W**hen the third-country national is clearly cooperating, competent authorities may decide to indicate a date by which the third-country national shall leave the territory of the Member States in accordance with Article 13. In such cases, competent authorities shall closely monitor the compliance of the third-country national~~, including by organising transport assistance to the relevant point of departure from the Union~~. LT (Comments): We think that provision "In duly justified cases" is not entirely clear - we would like to avoid potential litigation with TCNs. In addition, we consider

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	that assistance in transporting TCNs to their place of departure will not be provided in all cases, therefore we suggest deleting the last phrase. MT (Drafting Suggestions): 6. ~~In duly justified cases and w~~**W**hen the third-country national is clearly cooperating, competent authorities may decide to indicate a**n appropriate** date **setting out a time period, which does not exceed 30 days and during** ~~by~~ which the third-country national shall leave the territory of the Member States ~~in accordance with Article 13~~. In such cases, competent authorities shall closely monitor the compliance of the third-country national, including by organising transport assistance to the relevant point of departure from the Union. MT (Comments): In order to provide for further flexibility in switching from removal to voluntary return with no complications in terms of applicable time limits, we propose the deletion of the phrase 'in duly justified cases' and the introducition of a maximum time limit in this paragraph. In this regard, in our

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	view, the fact that the TCN starts cooperating in a clearly evident way and not delaying further the return should be considered as a sufficient condition. In addition, we could also consider the deletion of the last phrase 'including … Union'. Another option could be the transfer of this paragraph to Article 13, where it could be added as a second subparagraph in paragraph 1, and would read as follows: *'When the third-country national is subject to removal in accordance with Article 12 and is clearly cooperating, competent authorities may decide to indicate an appropriate date by which the third-country national shall leave the territory of the Member States. In such cases, competent authorities shall closely monitor the compliance of the third-country national'* This option would add further flexibility, as paragraph 3 of Article 13 would be applicable in those cases as well. NL (Drafting Suggestions): ~~In duly justified cases and when the third-country national is clearly cooperating, competent authorities may decide to indicate a date by which the~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~third-country national shall leave the territory of the Member States in accordance with Article 13. In such cases, competent authorities shall closely monitor the compliance of the third-country national, including by organising transport assistance to the relevant point of departure from the Union.~~ NO (Comments): Art. 12 (6) regulate voluntary return. It seems to only include cases where the TCN fully cooperates, after which the TCN can get a time of voluntary departure. This is provided that the authorities ensure that departure actually takes place, including providing transport to the place of departure. It is unclear what is meant to be "duly justified cases", and who is to decide if a case falls within this scope or not. Voluntary return and forced return/removal include a wide range of cases, including different degrees of cooperation. It is important that the regulation facilitate the most effective return for the state, regardless of the degree of cooperation from the person. This will give the MS the flexibility they need to choose the most effective return alternative in the specific case at hand. SE (Comments): See comment for paragraph 1 above. SK (Comments): As regards para. 6, the Slovak Republic is of the opinion that if the third-country national was not allowed to return voluntarily immediately, this was

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	justified and that the additional possibility of voluntary return could entail an increased risk of absconding. Monitoring in such cases would be too demanding and represent a disproportionate burden.

PUBLIC

Article 13	DK (Comments): We refer to our general comment to Article 12. FI (Comments): This should be before removal (Art. 12). FR (Drafting Suggestions): An amendment proposal will be submitted shortly. FR (Comments): La France souhaite que le délai de départ volontaire devienne l'exception, et non la règle, afin de limiter le risque de risque de fuite des étrangers en situation irrégulière et d'échec de l'éloignement, notamment pour ceux qui représentent une menace pour l'ordre public. L'octroi d'un délai de départ volontaire doit donc devenir une possibilité, une « may clause », jamais un droit définitif : en cas de non-coopération, les autorités compétentes qui l'ont accordé peuvent toujours y mettre un terme. En outre, si l'étranger en situation irrégulière n'est pas parti dans le délai de départ volontaire, il devra être soumis aux mesures d'exécution d'office prévues à l'article 12, ainsi qu'aux mesures dissuasives ou sanctions prévues à l'article 22. ⇨ **Ces observations seront détaillées, voire amendées, avec une proposition rédactionnelle d'amendement transmise prochainement.**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	NO (Comments): This article is closely linked to what is already said about article 12.
Voluntary return	CH (Comments): Like Art. 12, this article is the reflection of a binary approach of the proposal and of the narrow definition of "voluntary return" in Art. 4(6) that excludes returns before issuance of a return decision and the possibility of voluntary return when the third-country national does not comply with his or her obligation to return within the time limit set in the return decision. Together with DE and AT, CH has proposed an alternative definition of “voluntary return” in Art. 4(6) that offers more flexibility (see the relevant CH comments). In case this more flexible alternative proposal will hopefully be adopted, Article 13 will have to be redrafted accordingly. In the redrafting, the wording of Art. 7 of Directive 2008/115/EC should be used as a basis and only be amended where this is absolutely necessary due

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	to new provisions of the regulation that have not yet existed in Directive 2008/115/EC.
	IT (Comments): More flexibility is requested as to whether the case where the TCN voluntarily leaves the territory of the MS after the expiration of the term can also be considered a voluntary return. More clarity on the calculation of the time limit is also called for. We agree that there should always be a return decision even for voluntary returns.
1. When the third-country national is not subject to removal in accordance with Article 12, the return decision shall indicate a date by which the third-country national shall leave the territory of the Member States and shall state the possibility for the third-country national to leave earlier.	AT (Drafting Suggestions): When the third-country national is not subject to removal in accordance with Article 12, the return decision may ~~shall~~ indicate a date by which the third-country national shall leave the territory of the Member States and shall state the possibility for the third-country national to leave earlier. BE (Drafting Suggestions): When the third-country national is not subject to removal in accordance with Article 12, the return decision shall indicate a date by which the third-country national shall leave the territory of the Member States and shall state the

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	possibility for the third-country national to leave earlier. **Member States may refrain from granting a period for voluntary return.** BE (Comments): In general, Belgium is quite satisfied with this article 13. We would like to recall, in line with our previous comments, that voluntary return should always imply the issuance of a return decision as well as the fact that this decision should indicate a date for voluntary return. However, in (1) we would like to add one sentence to clarify that indeed giving no period for volunatry return at all is stil possible and this won't be changed in the future through case law. BG (Drafting Suggestions): When the third-country national is not subject to removal in accordance with Article 12, the return decision shall indicate a date by which the third-country national shall leave the territory of the Member States and shall state the possibility for the third-country national to leave earlier. **Voluntary return may only be imposed on third-country nationals whose identity has been established and who are in possession of a valid travel document**.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	BG (Comments): We believe that voluntary return should not be permitted for unidentified persons. To return voluntarily, third-country nationals must have an established identity and a valid travel document. We have made the same comment under Article 4, paragraph 6, so it is up to the Presidency to decide how to reflect better the proposed amendment. CH (Comments): Like other MS/SAC, CH considers that the possibility to refrain from setting a date by which the third-country national shall leave the territory of the Member States has to be explicitly stated similar to Art. 7(4) in Directive 2008/115/EC. In case the wording is not changed and as mentioned by other MS/SAC, an indication of "zero days" as suggested by the Commission (or the date of the return decision for that matter) as period in the return decision would not offer the necessary legal security and likely become subject to litigation: In that case, third-country nationals could with reasonable chance of success argue that the structure of the article requires a date or period in the future.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	CZ (Drafting Suggestions): When the third-country national is not subject to removal in accordance with Article 12, the return decision shall indicate a date by which the third-country national shall leave the territory of the Member States ~~**and shall state the possibility for the third-country national to leave earlier**~~. CZ (Comments): According to the text the return decision shall state two rulings on period for voluntary departure. The other has no added value. DK (Drafting Suggestions): ~~When the third-country national is not subject to removal in accordance with Article 12, the~~ **The** return decision shall indicate a ~~date~~ **period** by which the third-country national shall leave the territory of the Member States and shall state the possibility for the third-country national to leave earlier. EL (Drafting Suggestions): 1. When the third-country national is not subject to removal in accordance with Article 12, the return decision shall indicate a**n appropriate** date by

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	which the third-country national shall leave the territory of the Member States and shall state the possibility for the third-country national to leave earlier. EL (Comments): -We suggest using the term 'appropriate' similar to the relevant provision of Article 7 of the Return Directive, in order to define the date for returning voluntarily and avoiding introducing such a long text in paragraph 2. ES (Drafting Suggestions): ~~When the third-country national is not subject to removal in accordance with Article 12,~~ The ~~return decision~~ **competent authorities** ~~shall~~ **may** indicate a date by which the third-country national shall leave **voluntarily** the territory of the Member States and **may** ~~shall~~ state the possibility for the third-country national to leave earlier. ES (Comments): Regarding voluntary return, its definition and regulation should be flexibilise, bringing it closer to the programs provided for in Article 46 (3). In particular, this procedure should not be necessarily subject to a prior return decision.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	IE (Comments): IE can support MS colleagues like **FR**, in calls for increased MS flexiblity. MT (Drafting Suggestions): 1. When the third-country national is not subject to removal in accordance with Article 12, the return decision shall indicate a**n appropriate** date by which the third-country national shall leave the territory of the Member States and shall state the possibility for the third-country national to leave earlier. MT (Comments): We suggest using the term 'appropriate' similar to the relevant provision of Article 7 of the Return Directive, in order to define the date for returning voluntarily and avoiding introducing such a long text in paragraph 2. NL (Drafting Suggestions): ~~When the third-country national is not subject to removal in accordance with Article 12,~~ T~~t~~he return decision may~~shall~~ indicate a ~~date~~ period for voluntary departure with a maximum of thirty days, in~~by~~ which the third-country national shall leave the territory of the Member States ~~and shall state the possibility for the third-country national to leave earlier~~. Member States may

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	provide for a minimum number of days in their national law. The time period provided for in the first subparagraph shall not exclude the possibility for the third-country nationals concerned to leave earlier. NL (Comments): NL advocates to keep the 'period' of voluntary departure in the same way as is now laid down in the Directive. The novelty of a 'date' would be less efficient when the decision is suspended. Indeed, when the suspension ceases to exit, the remainder of the period of voluntary return can be reactivated.
2. The date referred to in paragraph 1 shall be determined with due regard to the specific circumstances of the individual case. The date by which the third-country national shall leave shall not exceed 30 days from the date of notification of the return decision.	AT (Drafting Suggestions): The date referred to in paragraph 1 shall be determined with due regard to the specific circumstances of the individual case. The date by which the third-country national shall leave shall not exceed 30 days from the date of enforcement ~~notification~~ of the return decision, by way of derogation from the provisions of Article 4 (5) of the Border Prcedure Regulation.~~.~~ AT (Comments): Art 4 (5) BPR provides a deadline of 15 days, which should be reflected here as a lex specialis.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	CH (Comments): See comment on Art. 13(1). Furthermore, the mention "from the date of notification of the return decision" is problematic and will likely result in litigation. The absence of such a mention in Art. 7 of Directive 2008/115/EC has not been problematic and should not be changed. EL (Drafting Suggestions): 2. ~~The date referred to in paragraph 1 shall be determined with due regard to the specific circumstances of the individual case.~~ The date by which the third-country national shall leave shall not exceed 30 days from the date of notification of the return decision. **Member States may provide in national law for setting out a shorter time limit as a general rule.** EL (Comments): - We consider that the Member States should be able to introduce a shorter time limit as a general rule, for reasons of avoiding unnecessary administrative burden.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	ES (Drafting Suggestions): The date referred to in paragraph 1 shall be determined with due regard to the specific circumstances of the individual case. The date by which the third-country national shall leave shall not exceed 30 days from the date of notification of ~~the return~~ decision **setting such a date**. ES (Comments): Consistent with the proposal under paragraph 1 of this article. IS (Comments): As mentioned during the IMEX meeting on June 4th, this would present practical challenges for Iceland. The limited presence of foreign embassies in the country hampers the process of obtaining travel documents, and the restricted travel connections to relevant third countries further complicate matters. Consequently, planning and organizing most voluntary returns typically takes longer than 30 days, making it difficult for us to comply in many cases. MT (Drafting Suggestions): 2. ~~The date referred to in paragraph 1 shall be determined with due regard to the specific circumstances of the individual case.~~ The date by which the

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	third-country national shall leave shall not exceed 30 days from the date of notification of the return decision. MT (Comments): We do not see any added value in the first sentence since the specific circumstnaces of the case will always be taken into account when indicating the appropriate date by which the TCN shall leave the territory of the Member States. NL (Drafting Suggestions): ~~The date referred to in paragraph 1 shall be determined with due regard to the specific circumstances of the individual case. The date by which the third-country national shall leave shall not exceed 30 days from the date of notification of the return decision.~~ NL (Comments): This paragraph is deleted as it adds unnecissarily to the administrative burden. NO (Drafting Suggestions): The date referred to in paragraph 1 shall be determined with due regard to the specific circumstances of the individual case. The date by which the third-

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	country national shall leave **shall be set to between 0 and** ~~not exceed~~ 30 days from the date of notification of the return decision. NO (Comments): We are positive that it is possible to set a date for departure between 0 and 30 days. For clarity we would prefer that it is clearly stated in the text that 0 days is possible, and not just that the date can "not exceed 30 days". It should also be possible to waive a time period for voluntary departure if a return decision is enforced immediately, in order to prevent a person from absconding or to prevent a delay in enforcing a return decision. By expliciting setting the "time limit" to between 0 and 30 days, this will be possible. RO (Drafting Suggestions): The date by which the third-country national shall leave shall not exceed 30 days from the date of notification of the return decision, **as set out in Article 21 (5)***".* RO (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	The methods of communication and the point in time at which the communication is considered notified is described in Article 21 (5) . SE (Drafting Suggestions): The date referred to in paragraph 1 shall be determined with due regard to the specific circumstances of the individual case. The date by which the third-country national shall leave shall not exceed 30 days ~~from the date of notification of the return decision~~. SE (Comments): Sweden is of the opinion that the period, by which the third country national should leave, should start to run when the return decision enters into force. In our opinion it is not feasible that the period for voluntary departure should start to run while the return decision is still appealable. This may lead to a situation where the time limit for voluntary departure may expire before the litigation process is concluded. SK (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	The Slovak Republic positively perceives the removal of the lower limit of 7 days for leaving the territory in the event of voluntary return
3. Member States may provide for a longer period or extend the period to leave their territory in accordance with paragraph 1 taking into account the specific circumstances of the individual case, such as family links, the existence of children attending school, participation in a programme supporting return and reintegration pursuant to Article 46(3) and compliance with the obligation to cooperate as set out in Article 21. Any extension of the period to leave shall be provided in writing to the third-country national.	AT (Drafting Suggestions): Member States may provide for a longer period or extend the period to leave their territory in accordance with paragraph 1 taking into account the specific circumstances of the individual case, which is in the discretion of the authority. ~~such as family links, the existence of children attending school, participation in a programme supporting return and reintegration pursuant to Article 46(3) and compliance with the obligation to cooperate as set out in Article 21~~. Any extension of the period to leave shall be provided in writing through informal writing to the third-country national. AT (Comments): Since granting a deadline for voluntary return can only be to the applicant's benefit, a written notification should suffice. BE (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	The proposed text is fine to us. The extension of the period to leave, however, can not evolve into a full fledged administrative decision since this would disproportionately increase the administrative burden. CZ (Drafting Suggestions): Member States may **on request** provide for a longer period or extend the period to leave their territory in accordance with paragraph 1 taking into account the specific circumstances of the individual case, such as family links, the existence of children attending school, participation in a programme supporting return and reintegration pursuant to Article 46(3) and compliance with the obligation to cooperate as set out in Article 21. Any extension **or non-extension** of the period to leave shall be ~~**provided in writing**~~**communicated** to the third-country national **and may not need to take a form of administrative procedure and/or decision.** CZ (Comments): CZ suggests having this rule clearer and stricly insists on having a rule that any non-prolongation may not take a form of administrative procedure. ES (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Member States may provide for a longer period or extend the period to leave their territory in accordance with paragraph 1 taking into account the specific circumstances of the individual case, ~~such as family links, the existence of children attending school, participation in a programme supporting return and reintegration pursuant to Article 46(3) and compliance with the obligation to cooperate as set out in Article 21~~. Any extension of the period to leave shall be provided in writing to the third-country national ES (Comments): The examples provided therein could be transferred to the preamble. IS (Drafting Suggestions): Member States may provide for a longer period or extend the period to leave their territory in accordance with paragraph 1, **taking into account the individual's compliance with the obligation to cooperate as set out in Article 21** IS (Comments): We refer to the comment above. It is mainly the overall conditions specific to Iceland, rather than individual circumstances, that prevent voluntary returns from being carried out within the 30-day period. Additionally, we believe that referencing specific circumstances, such as family ties, could further complicate the assessment of these cases for the relevant authorities.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Therefore, we consider it preferable to avoid mentioning such individual factors. Finally, in our view, the requirement to issue any extension in writing would place an additional administrative burden on the relevant authority. LT (Comments): The reference to paragraph 1 is not entirely accurate as it does not set out the procedure for extension of the period. NL (Drafting Suggestions): Member States may shorten or put a term to the period for voluntary departure before it expires if the third-country national is refusing to cooperate. Member States may provide for a longer period or extend the period to leave their territory in accordance with paragraph 1 taking into account the specific circumstances of the individual case~~, such as family links, the existence of children attending school, participation in a programme supporting return and reintegration pursuant to Article 46(3) and compliance with the obligation to cooperate as set out in Article 21~~. Any extension of the period to leave shall be provided in writing to the third-country national. NL (Comments): In orde to sanction non cooperation (or indications in that regard) Member States must be able to withdraw the period for voluntary departure. This

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	would also coincide with the premise of current art. 12 (1)(a). The examples named when the period can be prolonged should be moved to the recitals.
4. The third-country national shall leave the territory of the Member States by the date determined pursuant to paragraph 1. If not, the third-country national shall be subject of removal in accordance with Article 12.	AT (Drafting Suggestions): The third-country national shall leave the territory of the Member States by the date determined pursuant to paragraph 1, which may be informally extended by the authority at any time. If not, the third-country national shall be subject of removal in accordance with Article 12 DK (Drafting Suggestions): 4. The third-country national shall leave the territory of the Member States by the date determined pursuant to paragraph 1. If not, the third-country national ~~shall~~ **may** be subject of removal in accordance with Article 12. EL (Drafting Suggestions): 4. The third-country national shall leave the territory of the Member States by the date determined pursuant to paragraph 1 **of this Article or paragraph 6 of Article 12**. If not, the third-country national shall be subject of removal in accordance with Article 12.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	EL (Comments): For alignment reasons, based on our suggestion concerning Article 12(6). ES (Drafting Suggestions): 4. The third-country national shall leave the territory of the Member States by the date determined pursuant to paragraph 1 **of this Article or paragraph 6 of Article 12**. ~~If not, the third-country national shall be subject of removal in accordance with Article 12.~~ MT (Drafting Suggestions): 4. The third-country national shall leave the territory of the Member States by the date determined pursuant to paragraph 1 **of this Article or paragraph 6 of Article 12**. If not, the third-country national shall be subject of removal in accordance with Article 12. MT (Comments): For alignment reasons, based on our suggestion concerning Article 12(6). NL (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~The third-country national shall leave the territory of the Member States by the date determined pursuant to paragraph 1. If not, the third-country national shall be subject of removal in accordance with Article 12~~ If there is a risk of absconding, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a security risk in accordance with Article 16, Member States may refrain from granting a period for voluntary departure. NL (Comments): This text from the Return Directive (art. 7) makes clear that there are explicit circumstances in which the Member State may refrain from providing a voluntary departure period. The Netherlands still sees the neccesity to keep these circumstances in the new Regulation. NO (Comments): Please see the comment above for Art. 12.1 and how the shift between voluntary return and removal is to be handled in practise.
	ES (Drafting Suggestions): 5. **Competent authorities shall register the unequivocal decision of the third country national to return voluntarily and closely monitor the**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	compliance of the third-country national of the obligation to leave the territory of the Member State ES (Comments): This obligation to register and monitor should enable information sharing and data gathering given the absence of an obligation to issue a return decision.

PUBLIC

Article 14	BE (Comments): Belgium does not support this article in general. The possibility of taking into account postponement of removal already exists in the Return Directive and Belgium agrees with the principle. But now in the COM proposal, it is fully written out as a separate procedural step including determining the modalities and the obligation of taking a decision in writing agaist which an appeal is possible or a revaluation is mandatory. We think that Article 14 as proposed by the Commission creates too much administrative burden and the temporal relation with other procedural steps such as the suspensive effect of appeals is unclear. The procedure is perceived too heavy, wheras Member States need more discretion to tackle those situaton, therefore this article does not contribute to an improvement of return policy. CH (Comments): The definition of conditions for the postponement of removal will offset the drawbacks of a potentially burdensome process on obstacles to removal in Art. 12 and demonstrates that a mechanism is in place to prevent removals in cases of obstacles to removal. However, the postponement in itself should not become an additional burden.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Furthermore, the regulation must take into account MS/SAC such as CH which order postponement of removal to third-country nationals subject to a return decision but who due to origin from a third-country in conflict benefit from an order postponementof of removal in the same document as the return decision that results in the granting of subsidiary protection, again in the same return decision. Such subsidiary protection may last for years and even decades. In CH over 40'000 third-country nationals. Art. 14 is oriented to third-country nationals whose postponement is of shorter duration. The regulation needs to also take into account and offer a feasible solution for the above-mentioned situations. FR (Comments): L'article 14 nécessite plusieurs ajustements
Conditions for postponing removal	EE (Drafting Suggestions): **Conditions for <u>suspending or</u> postponing removal** EE (Comments):

	In practice, the conditions for suspending or postponing removal are the same. Therefore, we propose combining the provisions of Article 14 and Article 28. The provisions of Article 14 should be thus modified accordingly. Article 28 could only regulate the suspension or postponement of removal by judicial authority of first instance in ensuring effective remedy. MS may not be always able to determine the exact period of time during which the suspension or postponement of the enforcement of the return decision is required. It mainly depends on the result of the lodging of appeal, or in case of removal of an unaccompanied minors, on the result of the family tracing. Similary, it is very difficult to predict when the situation in third country will improve so that the removal would not violate the principle of *non-refoulement*. We propose the deletion of all references to a specific period of time, e.g. in Article 14(2) and (4). Taking into account that postponement/ suspension of the enforcement of the return decision has no negative consequences with regard to the returnee, we suggest to delete Article 14(4) and (5) as they cause disproportional administrative burden. If necessary, a written confirmation on suspension or postponement of the enforcement of the return decision should be provided only upon request of a third country national concerned. In cases where the removal has been suspended or postponed by the court decision, a confirmation should be not required. According to Return Directive, automatic suspensive effect is required only in cases in which 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. Therefore, we propose to amend Article 14(1) point b and stipulate clearly that the removal of the third country national shall only be suspended or postponed if the court decides it as appropriate.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	According to Article 20 (3), MS are allowed to remove an unaccompanied minor to his/her family member, a nominated guardian or adequate reception facility in the country of return. To ensure legal clarity and reduce "grey areas" where return decisions are not issued to unaccompanied minors staying illegally in the EU, Article 14 (1) should be complemented with a point providing that MS should postpone or suspend the removal of an unaccompanied minor until the conditions for enforcing the return decision are met. In addition, according to Article 6(2) of the directive 2004/81/EC MS are not allowed to enforce any expulsion order against victims of human trafficking during the reflection period and while awaiting the decision of the competent authorities. As MS are required to transpose the mentioned directive into national legislation, we propose that the suspension or postponement of the enforcement of the return decision should also be possible based on national law, when this obligation comes from EU law or it is justified due to humanitarian considerations or 'force majeure'.
1. Removal pursuant to Article 12 shall be postponed in the following circumstances:	AT (Comments): In general, AT considers this Article too confusiong since it is mixing up the system of suspensive effect and tolerated stay. EE (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	1. Removal pursuant to Article 12 shall be **suspended or** postponed in the following circumstances: EE (Comments): See comment above RO (Drafting Suggestions): Add: **c. basic needs;** **d. family unity with family members present in the Member State's territory;** **e. emergency health care and essential treatment of illness;** **f. access of minors to the basic education system subject to the length of their stay;** **g. special needs of vulnerable persons** RO (Comments): For text reading fluency, RO proposes the conditions from para. (6) to be moved to para (1), as they concerned motives of suspension of the removal.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	In the way the text in currently drafted, there is no connection between the only two possibilities for the removal to be postponed provided for in para. (1) and the five situations provided for in para (6) to be taken into account for the assessment of the possibility for the removal to be postponed.
a. when it would violate the principle of non-refoulement; or	AT (Comments): This constitutes a tolerated stay in AT
b. when and for as long as suspension of the return decision in accordance with Article 28 is in place.	AT (Drafting Suggestions): ~~when and for as long as suspension of the return decision in accordance with Article 28 is in place.~~ **New: The stay is only tolerated as long as the removal is not possible for factual reasons which are not in the sphere of the third country national.** AT (Comments): This is a suspensive effect in regard of the return decision, which has nothing to do with removal itself. DK

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): Please note that this must be viewed in light of Article 28. We therefore have reservations to this Article in light of the discussions on Article 28. EE (Drafting Suggestions): b. when ~~and for as long as suspension of~~ **a judicial authority has suspended** or **postponed** the return decision ~~in accordance with Article 28~~ ~~is in place~~. EE (Comments): See comment above EL (Comments): We place a scrutiny reservation. Although this provision is similar to the one included in the current Return Directive, it seems that it creates ambiguities with regards to the distinct notions of postponement of removal and suspension of return decision. Therefore, the option of deleting this point should be further explored. ES

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): ~~b.when and for as long as suspension of the return decision in accordance with Article 28 is in place~~ ES (Comments): Objection to the automatic suspensive effect laid down in Article 28 and, consequently, to this ground. IT (Drafting Suggestions): b. when ~~and for as long as suspension of~~ **a judicial authority has suspended** or **postponed** the return decision ~~in accordance with Article 28 is in place~~. IT (Comments): We propose to amend the text as the removal could also be postponed due to a judicial decision that imposes the TCN's permanence in the territory. NL (Drafting Suggestions): ~~when and for as long as suspension of the return decision in accordance with Article 28 is in place~~. NL

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): NL would like to see this provision deleted as NL cannot accept the suspensive effect as stipulated in article 28; this would create a right to basic needs pending the suspensive effect. This in great contrast with the aim of this regulation. Moreover, what is the difference between postponement of removal and suspensive effect? Must a suspensive effect be regarded as the postponement of removal?
	EE (Drafting Suggestions): **c. <u>when the conditions for enforcing the return decision with regard to an unaccopmanied minor are not met; or</u>** **d. <u>when provided by national law.</u>** EE (Comments): See comment above
2. Removal pursuant to Article 12 may be postponed for an appropriate period, taking into account the specific circumstances of the individual case.	EE (Drafting Suggestions): 2. ~~Removal pursuant to Article 12 may be postponed for an appropriate period, taking into account the specific circumstances of the individual case.~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	EE (Comments): See comment above FR (Drafting Suggestions): 2. Removal pursuant to Article 12 may be postponed for an appropriate period, taking into account the specific circumstances of the individual case, **and in particular the necessity of criminal proceedings where a judicial decision requires the third-country national's presence on the territory of the Member State**. FR (Comments): Sur le §2 : la France souhaite faire préciser que la prise en compte des situations individuelles permet, pour les États qui le souhaitent, de reporter l'éloignement lorsqu'une décision judiciaire impose la présence de l'étranger en situation irrégulière dans le cadre d'une procédure pénale. Cette prise en compte doit permettre ce report, sans l'imposer *;* HR (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	What is the maximum period of postponement of forced removal. We have a provision in national legislation that the decision on the temporary postponement of forced removal will determine the period of the temporary postponement, which cannot be longer than one year.
	IE (Comments): IE would welcome some clarity on the differences between subheads (2) and (3). (2) provides that the postponement can arise having considered the sepecific circumstances of the case, whilst (3) provides that a third-country national can request postponement. Should these subheads be read as forming part of the same process, i.e., does (3) preceed (2) in application? If so, it would be more appropriate to rearrange the text to reflect that these provisions form part of a logical process.
3. If the third-country national requests postponement of removal, the request shall be duly substantiated.	AT (Drafting Suggestions): This should be an additional insert in Art 28 → **a request according to Art 14 (3) does not have suspensive effect.** EE (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	3. If the third-country national requests **<u>suspension or</u>** postponement of removal, the request shall be duly substantiated. EE (Comments): See comment above EL (Drafting Suggestions): **Deletion** EL (Comments): This provision has no added value and it may complicate the whole process of removal. We suggest its deletion in combination with our wording suggestion in Art. 12 (3). ES (Drafting Suggestions): ~~If the third-country national requests postponement of removal, the request shall be duly substantiated.~~ ES (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Spain deems unnecessary to regulate this issue specifically at EU level. Postponements should be decided *ex officio* and TCN may, in any case, make any request in accordance with national law and the general rules of the administrative procedures. FI (Comments): This gives TCN the right to request a postponement of its removal; unclear why this provision is necessary? We already have Art 28(2), isn't it enough? IE (Drafting Suggestions): ~~If the third-country national requests postponement of removal, the request shall be duly substantiated~~. Insert: 3. **The third-country national shall inform the competent authorities of any change in circumstances that may impact upon their removal from the State.** IE (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	On what grounds could a third-country national request the postponement of their removal from the State? Is this not better dealt with under the Appeals Process outlined under Articles 26, 27 and 28? It may be preferable to delete (3) in totality and in its place provide an obligation to advise the relevant competent authorities of any circumstances that may impact on the removal process. IT (Drafting Suggestions): ~~3. If the third-country national requests postponement of removal, the request shall be duly substantiated.~~ IT (Comments): We propose the deletion of para.3 as redundant, since it reiterates what is already in Article 12.3. NO (Comments): What is the relation between this article and Art. 28 about suspensive effect? They seem to cover much of the same situations, and it is difficult to

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	understand where the difference is. What is meant to be assessed when, and as it stands now, Art. 14.3 just seem to add to the administrative burden for the Member States.
	CZ (Drafting Suggestions): **3a. Postponement and non-postponement of removal may not need to take a form of administrative procedure and/or decision.**
4. When taking a decision in accordance with paragraph 1 or paragraph 2, Member States shall provide the third-country national concerned with a written confirmation setting out the period of postponement and their rights during that period.	CZ (Drafting Suggestions): ~~**When taking a decision in accordance with paragraph 1 or paragraph 2,**~~ Member States shall provide the third-country national concerned with a written confirmation setting out the period of postponement ~~**and their rights during that period**~~. CZ (Comments): A decision (with the suspensive effect) would be a new burden. EE (Drafting Suggestions): 4. ~~When taking a decision in accordance with paragraph 1 or paragraph 2, Member States shall provide the third-country national concerned with a written confirmation setting out the period of postponement and their rights during that period.~~ **Without prejudice to right of the judicial**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	authority to suspend or postpone the return of a third country national, the competent auhtority shall, upon request, provide a written confirmation on suspension or postponement of the enforcement of the return decision. EE (Comments): See comment above FI (Comments): This creates a new administrative burden. HR (Drafting Suggestions): When taking a decision in accordance with paragraph 1 or paragraph 2, Member States shall provide the third-country national concerned with a written confirmation setting out the period of postponement and their rights **and obligations** during that period. LT (Drafting Suggestions): When taking a decision in accordance with paragraph 1 or paragraph 2, Member States shall provide the third-country national concerned with a written confirmation setting out the period of postponement and their rights

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	during that period**, unless these circumstances have already been assessed at the time of the adoption of the decision and are set out therein**. LT (Comments): There may be cases where the objective reasons are already known at the time the return decision is taken, in which case no separate decision will be needed. Therefore, it should be added to paragraph 4 that a separate decision to suspend removal shall only be taken in cases where the objective reasons were not known at the time when the removal decision was issued and is therefore not taken into account in the decision. NL (Drafting Suggestions): ~~When taking a decision in accordance with paragraph 1 or paragraph 2, Member States shall provide the third-country national concerned with a written confirmation setting out the period of postponement and their rights during that period.~~ NL (Comments): NL would like to see this paragraph deleted; in many circumstances it is not possible to determine the period of removal. Especially, when there is a risk of non-refoulement. Regarding the positive expansion of the return possibilities, we must not provide a signal that a third country national is

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	extempt from his obligation to leave and should not cooperate to another country of return.
	IT (Comments): We believe it is appropriate to clarify in the text that during the postponement of removal nothing prevents the third-country national from voluntarily complying with the obligation to leave the territory of the MS.
5. The decision to postpone removal in accordance with paragraph 1 or paragraph 2 shall be regularly reviewed, and at least every 6 months.	AT (Drafting Suggestions): The decision to postpone removal in accordance with paragraph 1 or paragraph 2 shall be regularly reviewed, and at least every 12 ~~6~~ months. **The postponement of removal has to be revoked by law, as soon as the grounds no longer exist.** AT (Comments): 6 months art too short for a change of the circumstances as it is also a high administrative burden. It must be clear, that the tolerated stay ends automatically (ex lege) as soon as the circumstances are no longer valid. BG (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	The ~~decision to~~ postpone**ment of the** removal in accordance with paragraph 1 or paragraph 2 ~~shall be regularly reviewed, and at least every 6 months~~ **shall be valid until the legal or technical reasons for the postponement exist.** BG (Comments): The proposed amendment aims at reducing the administrative burden and the possibility for judicial review. CH (Drafting Suggestions): The decision to postpone removal in accordance with paragraph 1 or paragraph 2 shall be regularly reviewed **in case of change of relevant circumstances** ~~and at least every 6 months~~. CH (Comments): The requirement of the postponement of removal at least every six months is problematic in cases of MS/SAC offering subsidiary protection in the form of return decisions combined with postponement of removal to tens of thousands of third-country nationals based on conflict situations in their country of origins which are unlikely to change within the proposed

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	maximum review interval of six months. Such a review only makes sense in case of change of relevant circumstances. A review based on rigid intervals would create an unnecceccary burden for MS/SAC authorities. Therefore, the wording "regularly reviewed, at least every six months" should be deleted and replaced with "reviewed in cases of change of relevant circumstances". CZ (Drafting Suggestions): ~~**The decision to postpone**~~**Postponement of** removal in accordance with paragraph 1 **point a)** or paragraph 2 **and 3** shall be ~~**regularly**~~ reviewed~~**, and**~~ at least every 6 months. CZ (Comments): Regular review may indicate the necessity to specify it in the national law. This is a regulation so as a principle we should avoid (when possible) such a text that requires national law to adapt to it. EE (Drafting Suggestions): ~~5. The decision to postpone removal in accordance with paragraph 1 or paragraph 2 shall be regularly reviewed, and at least every 6 months~~ EE

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): See comment above FI (Drafting Suggestions): The decision to postpone removal in accordance with paragraph 1 or paragraph 2 shall be **reviewed in case of change of relevant circumstances.** FI (Comments): This creates a new administrative burden. IT (Drafting Suggestions): 5. The decision to postpone removal in accordance with paragraph 1 or paragraph 2 shall be regularly reviewed, and at least every ~~6~~ **12** months. IT (Comments): We are in favour of extending the review period to 12 months. MT (Drafting Suggestions): The ~~decision to~~ postpone**ment of the** removal in accordance with paragraph 1 or paragraph 2 ~~shall be regularly reviewed, and at least every 6 months~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	shall be valid until the legal or technical reasons for the postponement exist. MT (Comments): The proposed amendment aims at reducing the administrative burden and the possibility for judicial review. NL (Drafting Suggestions): The decision to postpone removal in accordance with paragraph 1 or paragraph 2 shall be regularly reviewed~~, and~~ at ~~least every 6 months~~[appropriate intervals]. NL (Comments): NL primarily would like to propose to leave out an explicit period. When necessary, the term 'appropriate intervals' could be included. SE (Drafting Suggestions): The decision to postpone removal in accordance with paragraph 1 or paragraph 2 shall be regularly reviewed, and at least every ~~6~~ **12** months. SE (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Sweden does not think it is reasonable that decisions to postpone removals should be reviewed at least every six months. Reviews at least every twelve months should be enough. SK (Comments): We consider it unnecessary to specify a review period in Art. 14, para. 5. In practice, the review takes place depending on the specifics of certain cases and continuously. Enshrining the obligation to review directly in the text of the regulation, regardless of the specifics of the case, will lead to a disproportionate burden.
6. The following shall be taken into account concerning the situation of the third-country national during periods for which the removal has been postponed:	AT (Comments): This is a topic of basic care in relation with a tolerated stay CZ (Drafting Suggestions): *Option 1* Deletion of para 6. *Option 2* Deletion of points a) and e).

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Option 3 Deletion of point a). CZ (Comments): This is not regulated by the current Return Directive and CZ opts for this also here. This regulation is not about these people. For CZ this is the red line. We request point a) to be deleated. EE (Drafting Suggestions): 6. The following shall be taken into account concerning the situation of the third-country national during periods for which the removal has been **suspended or** postponed: EE (Comments): See comment above FR (Drafting Suggestions): ~~**6. When the third-country national is subject to measures set out in articles 23 or 31 during the postponement of removal, the following shall be taken into account:**~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	FR (Comments): Sur le §6 : la France estime que la rédaction actuelle risque de faire peser des obligations supplémentaires sur les États membres dans la façon dont ils prennent en charge les étrangers en situation irrégulière faisant l'objet d'une décision de retour dont l'exécution est reportée. Cela va au-delà des obligations actuelles prévues par l'actuelle directive sans justification opérationnelle ; elle propose donc la suppression de ce paragraphe, en contrepartie d'un ajout au paragraphe 7 précisant que toute mesure de contrainte dans le cadre du report doit être prise en considération des circonstances de l'espèce (par exemple, l'état de santé de l'étranger en situation irrégulière) IE (Comments): It is the intention that (6) demonstrates the supports that should be available to third country nationals where a return decision is being postponed, or are these considerations to be taken into account when deciding if a return decision is being postponed? Is it the intention of the Proposal to create new rights to the list under (6)?

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	IE would be concerned if it was the intention the proposal to create new rights, as currently under national law, a person subject to a deportation order has no entitlement to such rights. IE would welcome clarity on this point. IE also notes that the period of postponement has not been defined in the Proposal, and considers that some guidance in relation to same should be incorporated into the text. LT (Comments): The wording of paragraph 6 should be clarified to make it clear whether these circumstances are to be taken into account at the time of the decision to postpone removal or after the postponement of removal. NL (Drafting Suggestions): The following shall be taken into account as far as posssible concerning the situation of the third-country national during periods for which the removal has been postponed: RO (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Delete para. 6 RO (Comments): RO considers that the circumstances listed in para. 6 could be regarded as grounds for suspending the return.
a. basic needs;	AT (Drafting Suggestions): essential~~basic~~ needs; BG (Drafting Suggestions): ~~a. basic needs;~~ BG (Comments): We could accept more concise text reflecting the current provisions of the Return Directive. EL (Drafting Suggestions): **Deletion** EL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	The text should not go beyond what is already provided for in the Return Directive. ES (Drafting Suggestions): ~~a. basic needs;~~ ES (Comments): No added value, too generic and risking the creation of a separated set of reception conditions. As mentioned before, inspiration should be drawn from the provisions laid down in the current Directive. FR (Drafting Suggestions): ~~**a. basic needs ;**~~ LT (Comments): We consider that the scope of this provision is not entirely clear and requires further clarification. MT (Drafting Suggestions): ~~a. basic needs;~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	MT (Comments): We could accept a more concise text reflecting the current provisions of the Return Directive. Text should not go beyond what is provided for in the current Directive. NL (Drafting Suggestions): ~~basic needs;~~ NL (Comments): Depending on the situation, the provision of basic needs should be made provisional to cooperation to (another) country of return. We must not create a situation in which basic needs are provided when persons do not cooperate at all. Especially when they pose a security threat.
b. family unity with family members present in the Member State's territory;	CH (Comments): This provision is not necessarily coherent with Art. 14(7) read in conjunction with Art. 31(2)(c) (and Art. 23 if Art. 14(7) will contain a reference to Art. 23), which offers MS/SAC the possibility to impose an obligation on the third-county national as an alternative to detention to reside in a place

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	designated by competent authorities. If all the abovementioned provisions are adopted as proposed by the Commission, this would likely result in litigation in relation to obligations to reside in different locations from family members. At the same time, family unity as a criterion for postponement of removal in not problematic. Therefore, if the possibility of obligations to reside in different locations from family members should be possible for third-country nationals with postponed removal when they meet the conditions of alternatives to detention, this would have to be mentioned in Art. 31 (and Art. 23) in order to avoid any ambiguity. FR (Drafting Suggestions): ~~**b. family unity with family members present in the Member State's territory ;**~~
c. emergency health care and essential treatment of illness;	FR (Drafting Suggestions): ~~**c. emergency health care and essential treatment of illness ;**~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
d. access of minors to the basic education system subject to the length of their stay;	FR (Drafting Suggestions): ~~**d. access of minors to the basic education system subject to the length of their stay ;**~~
e. special needs of vulnerable persons.	AT (Drafting Suggestions): ~~special needs of vulnerable persons.~~ FR (Drafting Suggestions): ~~**e. special needs of vulnerable persons.**~~
7. If the removal is postponed, the measures set out in Article 31 may be applied when the conditions are fulfilled.	AT (Drafting Suggestions): If the removal is postponed, the measures set out in Article 21-23 and 31 may be applied when the conditions are fulfilled. CH (Comments): See comment on Art. 14(6)(b).

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	EE (Drafting Suggestions): 7.If the removal is **suspended or** postponed, the measures set out in Article 31 may be applied when the conditions are fulfilled. EE (Comments): See comment above FI (Drafting Suggestions): If the removal is postponed, the measures set out in Article **23 shall apply and the measures set out in Articles 29 and 31 may be applied** when the conditions are fulfilled. FI (Comments): The applicability of the measures in Art. 23 and 29 should be included. FR (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	7. If the removal is postponed, **the measures set out in article 23 shall apply and** the measures set out in Article**s 29 and** 31 may be applied when the conditions are fulfilled, **taking into account the circumstances of the individual case**. FR (Comments): Sur le §7 : la France souhaite rendre explicite la possibilité de prendre des mesures de contrainte le temps du recours suspensif ou du report de l'éloignement. **Cet ajout est une priorité** pour augmenter les chances de succès de l'éloignement. IT (Drafting Suggestions): 7. If the removal is postponed, the measures set out in Article**s 23, 29 and** 31 may be applied when the conditions are fulfilled. IT (Comments): We propose that paragraph 7 refers not only to the possibility of applying alternative measures to detention (art.31), but also to detention itself (art.29) and the measures referred to in art.23. LT (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	If the removal is postponed, the measures set out in Article **23, 29 and** 31 may be applied when the conditions are fulfilled. LT (Comments): We suggest adding references to Articles 23 and 29 as well, as in the case of a postponement of removal the TCNs have still to be available and detention may also be necessary. NO (Drafting Suggestions): If the removal is postponed, the measures set out in Article **23, 29 and** 31 may be applied when the conditions are fulfilled. NO (Comments): In Art. 14.7 it is stated that only the measures set out in art. 31 may be applied. To prevent the risk of absconding we would like to insert that also the measures set out in art. 23, and most importantly, in art. 29 should be applicable. SE (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We would like a clarification on what is specifically required for the conditions to be considered fulfilled in accordance with the wording "when the conditions are fulfilled": may the measures be used as soon as removal has been postponed under this Article or is it also required that the there is a risk of absconding?
Article 15	
Monitoring of removal	SE (Comments): As will be further discussed below under Article 16, Sweden believes that also regarding removal operations carried out due to matters of national security, an explicit derogation from the scope of the Regulation for activities relating to national security should be introduced. Alternatively, paragraph 2 and 3 should be adjusted to clarify that it is up to each Member State to set the design for the monitoring mechanism and the work of the competent authorities.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
1. Member States shall provide for an independent mechanism to monitor the respect of fundamental rights during removal operations. Member States shall equip the independent monitoring mechanism with appropriate means.	ES (Drafting Suggestions): Member States shall provide for an independent mechanism to monitor the respect of fundamental rights during removal operations. Member States shall **foresee that** ~~equip~~ the independent monitoring mechanism **has acces to** ~~with~~ appropriate means. ES (Comments): The independence of the mechanism implies financial autonomy and thus any obligation to finance directly the mechanism could undermine its independence. RO (Comments): If the Member State provides the specific means (resources), can the mechanism still be considered independent?
2. The independent monitoring mechanism shall select the removal operations to monitor based on a risk assessment and conduct its activities on the basis of desk review and on-the-spot checks which may be unannounced. Member States shall inform the monitoring body in advance about upcoming removal operations and ensure access to relevant locations.	AT (Drafting Suggestions): The independent monitoring mechanism may ~~shall~~ select the removal operations to monitor based on a risk assessment and conduct its activities on

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	the basis of desk review and on-the-spot checks ~~which may be unannounced~~. Member States shall inform the monitoring body in advance about upcoming removal operations and ensure access to relevant locations. AT (Comments): We are critical about unnaunounced on the spot checks, which could be difficult to handle, especially in regard to scheduled flights and airports EL (Drafting Suggestions): 2. The independent monitoring mechanism shall select the removal operations to monitor based on a risk assessment and conduct its activities on the basis of desk review and on-the-spot checks which may be unannounced. Member States shall inform the monitoring ~~body~~ **mechanism** in advance about upcoming removal operations and ensure access to relevant locations **for persons acting on behalf of this mechanism and having received the appropriate security clearance issued by a competent authority in accordance with national law**. EL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	-We should keep the same terminology here in terms of the monitoring mechanism and for this reason the term 'body' should be replaced by 'mechanism'. - The addition is suggested for reasons related with safety and security (wording similar to the one used under the Screening Regulation). ES (Drafting Suggestions): The independent monitoring mechanism shall select the removal operations to monitor based on a risk assessment and conduct its activities on the basis of desk review and on-the-spot checks which may be unannounced. Member States shall inform the monitoring ~~body~~ **mechanism** in advance about upcoming removal operations and ensure access to relevant locations **only to persons acting on behalf of the independent monitoring mechanism and having received the appropriate security clearance issued by a competent authority in accordance with national law.** ES (Comments): Inspired by the monitoring mechanism under the Screening Regulation. The reference to the security clearance in accordance with national law is relevant due to the type of locations where these activities may be performed.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	IT (Comments): . LV (Comments): Latvia welcomes the principle set out in Article 15(2) regarding the monitoring of removal operations on the basis of a risk assessment. This allows the monitoring authority to rationally use its resources and to monitor primarily the actual removal in situations where there are concerns about resistance of the returnee (and, as the case may be, possible use of force) or the returnee belongs to one of the vulnerable groups. SE (Comments): Sweden welcomes that the proposal is open also to desk reviews. SK (Comments): The Slovak Republic already complies with the wording of the article, fully supports it, approves its non-systematic nature in para. 2 based on a risk assessment.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	IT (Drafting Suggestions): **Access to relevant locations or classified information shall be granted only to persons acting on behalf of the independent monitoring mechanism and having received the appropriate security clearance issued by a competent authority in accordance with national law.** **Notwithstanding Member States may still restrict access based on a case-by-case assessment aimed to protect the security of the removal operation and the safety of the subjects involved.** IT (Comments): We suggest to add a clause at the end of paragraph 2, in order to recognize the MS the possibility to limit access based on assessments to protect the safety of the operation and the safety of the subjects involved. Also in favor of the proposal to specify, with a wording similar to the one used under the Screening Regulation, that the members of the monitoring mechanism must have passed preliminary security checks.
3. Substantiated allegations of failure to respect fundamental rights during removal operations shall be communicated to the competent national authority by the monitoring mechanism. The competent authorities shall deal with such allegations effectively and without undue delay.	AT (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	4. new: In the case of joint removal operations, Member States may make use of one joint HRO. AT (Comments): There are many monitors at national and Frontex level. For more cost efficiency and bundling of EU ressources, it would be efficient to make use of one joint monitor for joint operations.

PUBLIC

Article 16	BE (Comments): BE welcomes this article and the fact that explicit attention is given to the return of TCN posing security risks. We think this is a useful article and added value of the COM proposal. CH (Comments): As a general remark, the presence of Art. 16 should not prevent the introduction of a general derogation in Art. 3(1) for: -third-country nationals who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of an extradition procedure. -third-country nationals who pose a threat to public policy, to public security or to national security. Art. 3(1)(c-d) as proposed by CH and Art. 16 should not be deemed as mutually exclusive alternatives and instead allow MS/SAC either to apply a full derogation for one category or both categories and apply the rules in Art. 16 for the other category or categories. DK (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Generally, Denmark prefers to have the possibility to make use of a derogation akin to Article 2(2)(b) in the Return Directive, and a derogation to not use the regulation on third-country nationals who poses a threat to national security. FR (Drafting Suggestions): An amendment proposal will be submitted shortly. FR (Comments): La France est globalement satisfaite de cette meilleure prise en compte des risques de troubles à l'ordre public dans le règlement retour. Elle estime néanmoins que l'article 16 ne va pas assez loin, sur différents points : - S'agissant de son champ d'application : les États membres doivent pouvoir l'étendre selon leurs priorités nationales : ils doivent donc pouvoir ajouter des critères objectifs de définition du risque sécuritaire au sens de cet article 16 : - Les renouvellements d'interdiction d'entrée doivent pouvoir avoir une durée illimitée, contrairement aux interdictions de retour de droit commun (article 10.7) qui doivent être renouvelées tous les cinq ans – ce qui n'empêchera pas l'étranger en situation irrégulière de demander l'abrogation de la mesure ; - La France propose que les délais de recours contre les décisions de retour prises à l'encontre d'étrangers en situation irrégulière relevant de l'article 16 soient non suspensifs, afin de permettre la conduite de l'éloignement en urgence des personnes particulièrement dangereuses pour l'ordre public ou la sécurité nationale. À défaut, les articles 14 et 28 combinés empêcheront

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	l'exécution d'une décision d'éloignement dans la continuité immédiate de sa notification, y compris pour des étrangers en situation irrégulière dangereux**.** ⇨ **<u>Ces observations seront détaillées, voire amendées, avec une proposition rédactionnelle d'amendement transmise prochainement.</u>** NL (Comments): NL is reconsindering the phrasing and will send additional text suggestions. NO (Comments): We have previously expressed our wish to add a general derogation for criminals (as in todays Return Directive Art. 2(2)(b)) in Article 3(1). However, we would also like to add a general derogation in Article 3(1) for third country nationals who pose a threat to public policy, to public security or to national security. In addition to this general input, we have the following comments:
Return of third-country nationals posing security risks	AT (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	AT welcomes the Article, provided that also criminals fall within the scope. In our opinion, the possibility of unlimited entry bans for this group of people would be necessary. Alternatively we are in favor to also include criminals and people who pose a security risk in the derogations. EL (Comments): - As we have already mentioned, we support the further examination of the proposal made by other Member States for the introduction of a general derogation in Article 3 concerning the 'national security' cases. - In such a case, Article 16 should regulate only the 'internal security cases' and the wording used in the Pact legislation 'pose a threat to the internal security' could be introduced here as well (in the title and in paragraph 1(a)). IT (Comments): We welcome this provision, but consider concepts such as "threat," "well-founded reasons," and "concrete indications" to be too vague, especially when they are the prerequisite for the application of particularly incisive measures to be submitted to the judicial authority. We would suggest adding that the criteria for determining those concepts are set out in national law. SE

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): In our opinion and as mentioned previously, the possibility to derogate from the application of the Return Directive regarding those who are subject to return due to a criminal offence should be kept.
1. This Article shall apply to third-country nationals where:	EL (Comments): We deem as essential to clarify and further simplify the wording in paragraph 1, especially with regards to the notions of 'serious grounds for believing' under point (b) and 'clear indications' under point (c). LT (Comments): We agree in principle with this article and consider it very important. We would support the MSs on the possibility to impose an indefinite entry ban in exceptional cases, but we are not very categorical - we could also support other options that would reduce the administrative burden on MS authorities. SE (Comments): Sweden welcomes the introduction of special measures to facilitate the swift and effective enforcement of return decisions regarding persons considered

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	to pose a security risk. It is also welcome that the category of persons that can be covered by such special measures is significantly broadened. However, our opinion is that an explicit derogation from the scope of the regulation for all measures regarding national security is needed. This derogation should make clear that the Regulation does not prevent Member States from taking any measure they consider necessary to protect national security. The derogation should apply to the entire Regulation and be placed in Chapter 1. Alternatively, such explicit derogations would need to be included in the specific articles, such as Article 16 which then would need two separate derogations: - Paragraph 1 would need to be adjusted to make it clear that it is up to each Member State to decide who poses a threat to national security. - Paragraph 3 would need to be adjusted to allow for Member States to decide on entry bans without limitiation in time for reasons of national security. For Sweden, the current proposal would otherwise result in a deterioration in Swedens ability to issue entry bans and would also entail an additional administrative burden. SK (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	The Slovak Republic welcomes stricter procedures in the case of third-country nationals posing security risks, as well as an increase in the upper limit for determining the length of the entry ban and the possibility of extending this entry ban for foreigners who pose a security risk.
a. they pose a threat to public policy, to public security or to national security;	AT (Comments): More grounds in line with Art 8 (2) EHRC should be considered DK (Comments): It would be preferential with either a definition of who this group is, or to give the Member States a possibility to define the person group in their national law. LT (Comments): Given that MS have different understandings of threats and their assessment, we would suggest adding that the criteria for determining threats are set out in national law. LV (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Latvia would like to receive a clarification regarding, whether point a) is to be considered as a separate (autonomous) ground for the application of Article 16, or, whether point a) by itself is not a ground for application of Article 16 and must be identified together with either point b) or point c) of this Article. MT (Comments): Malta wishes to clarify the difference between 'national security' and 'internal security cases' – which is the wording used in the Pact. NL (Drafting Suggestions): they pose a threat to public policy, to public security or to national security, in particular when they are subject to an alert pursuant to Article 24 of Regulation 2018/1861 of the European Parliament and of the Council. NO (Comments): As far as we know there is no European definition of the constituting elements of TCN posing a threat to public policy, to public security or to

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	national security. Therefore, we advoacte for the broadest interpretation/scope possible here, and the possibility for the Member States to provide for any additional objective criteria in their national law.
b. there are serious grounds for believing that they have committed a serious criminal offence as referred to in Article 2(2) of Council Framework Decision 2002/584/JHA[3];	AT (Drafting Suggestions): there are ~~serious~~ grounds for believing that they have committed a serious criminal offence as referred to in Article 2(2) of Council Framework Decision 2002/584/JHA[4]; AT (Comments): AT also supports to include “petty crimes” IE (Drafting Suggestions):

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

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

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	b. there are serious grounds for believing that they have committed a serious criminal offence ~~as referred to in Article 2(2) of Council Framework Decision 2002/584/JHA[5];~~ Insert: b. there are serious grounds for believing that they have committed a serious criminal offence, **an offence which carries a custodial sentence of 5 years or more under national law, both inside and outside the territory of the Member State**. IE (Comments): IE considers that although this list provided under Article 2(2) of Decision 2002/584/JHA is extensive, there is a danger in establishing an exhaustive list, especially in the context of future proofing the Regulation. IE consider that it may be more appropriate to link the definition of a serious crime to the length of a custodial sentence of 5 years or more, e.g., a crime

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

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	which carries a sentence of 5 years or more under national law. This would ensure that MS have flexibility. IE proposes it should be clarified that crimes committed both inside and outside the MS in question ought to be considered when dealing with a person who is deemed a security risk.
	ES (Drafting Suggestions): **c. there are indications that the person is involved in any of the offences referred to in Directive (EU) 2017/541 of the European Parliament and of the Council.** ES (Comments): In line with the Eurodac Regulation (e.g. Article 17 thereof)
c. there are clear indications of his or her intention to commit an offence pursuant to point (b) of this paragraph in the territory of a Member State.	AT (Drafting Suggestions): there are ~~clear~~ indications of his or her intention to commit an offence pursuant to point (b) of this paragraph in the territory of a Member State. ES

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): d.there are clear indications of his or her intention to commit an offence pursuant to point (b) **or (c)** of this paragraph in the territory of a Member State IE (Comments): IE has some concerns about the reference to 'clear indications' of a person's 'intention'. IE would like clarity on what can be said to constitute a clear indication of an intention, and how an intention to commit an offence can be reliably observed or clearly indicated. IE considers that this would likely require a risk assessment of a person's likelihood to offend, which would place a significant administrative burden on the MS. NL (Drafting Suggestions): there are clear indications of ~~his or her~~their intention to commit an offence pursuant to point (b) of this paragraph in the territory of a Member State.
	NL (Drafting Suggestions): Member States may provide for additional objective criteria in their national law.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
2. Third-country nationals falling within the scope of this Article shall be subject to removal in accordance with Article 12.	AT (Drafting Suggestions): Third-country nationals falling within the scope of this Article shall be subject to return ~~removal~~ in accordance with Article 12. AT (Comments): It must be clear that Ar12 (6) is applicable for certain cases, which can only be returned voluntarily. In the previous IMEX meeting this was confirmed by the COM. CH (Drafting Suggestions): **Member States may refrain from granting a period for voluntary departure for t**~~T~~hird-country nationals falling within the scope of this Article ~~shall be subject to removal in accordance with Article 12.~~ CH (Comments): As a logical consequence from the CH comments on Art. 12 and 13 and in particular the general comments on Art. 13, a drafting of Art. 13 based on the the wording of Art. 7 of Directive 2008/115/EC does not require a definition of who is subject to removal but instead would allow a return decision for

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	persons falling within the scope of this article that does not contain a voluntary departure period. Therefore, this provision is not necessary. An other wording that leans on Art. 7(4) of Directive 2008/115/EC such as "Member States may refrain from granting a period for voluntary departure for persons falling within the scope of this article" would be more appropriate. Finally, if this proposal as well as the drafting proposal for Art. 12 would not be adopted, the proposal for this provision by the Commission would have to be deleted as it constitutes a repetition of Art. 12(1)(b). DK (Drafting Suggestions): Third-country nationals falling within the scope of this Article ~~shall~~ **may** be subject to removal in accordance with Article 12 DK (Comments): The TCN's should be allowed to leave voluntarily if they cooperate on their return. Therefore we suggest "may" in order to retain flexibility. FI

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): This is not necessary as Art. 12(1)(c) already states that the TCN falling under this provision are subject to removal. IE (Comments): IE welcome this provision. IE does not consider that VR is appropriate in such cases. IT (Drafting Suggestions): 2. Third-country nationals falling within the scope of this Article shall be subject to removal in accordance with Article 12 **or, where possible, to voluntary return.** IT (Comments): We believe that, since the authorities of third countries often do not accept the return of their own nationals with an escort, the Article should reflect the possibility of resorting to voluntary return, in the name of maximum flexibility in order to achieve the objective. NL (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Third-country nationals falling within the scope of this Article shall be subject to removal in accordance with Article 12. This does not preclude the possibility of voluntary return in accordance with Article 13. NO (Comments): It should be possible to return voluntary also for this group, as many third countrys only accepts voluntary returns for their citizenz. We acknowledge that "in accordance with Article 12" could entail that it is possible to shift between removal and voluntary return, cf. Art. 12(6), but would like this to be made clearer. An alterntive could be to change the word "shall" to "should". SE (Comments): Sweden would support deleting paragraph 2 as the situation may arise where it would be more efficient to allow for voluntary return despite it being a security case.
3. By way of derogation from the relevant provisions of this Regulation, third-country nationals falling within the scope of this Article may be:	

PUBLIC

Commission proposal	Drafting Suggestions and Comments
a. subject to an entry ban issued in accordance with Article 10 that exceeds the maximum duration referred to in Article 10(6) by an additional maximum period of 10 years;	AT (Drafting Suggestions): subject to an entry ban issued in accordance with Article 10 that – as a rule - exceeds the maximum duration referred to in Article 10(6) by an additional maximum period of 2010 years; and can be unlimited after an individal assessment. The Third country national can request a withdrawal or shortening AT (Comments): AT supports unlimited entry bans for certain severe cases. Which can be requested for revokation/shortening. AT is in favor for changing 10 to 20 years in Art 10, to have at least 40 years if unlimted EB are not posible after indivdual assessment. BE (Drafting Suggestions): a. subject to an entry ban issued in derogation of ~~accordance with~~ Article 10(6) ~~that exceeds the maximum duration referred to in Article 10(6) by~~ and is of ~~an additional~~ a maximum period of 210 years or of unlimited duration BE (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Although a stricter regime in terms of the duration of the entry ban is provided here, in comparison with what is applicable in general, we believe that this provision is not strict enough. For Belgium, it is essential that for the persons falling in the scope of article 16, there should be the possibility of imposing an entry ban of indefinite duration, in a way that does not create an administrative burden (not through the system of frequent extensions in this proposal). Moreover, we believe that an entry ban of indefinite duration should not be considered as a lifelong or eternal entry ban, given the guarantees offered by article 11 which are applicable to entry bans issued on the basis of both articles 10 and 16. CH (Drafting Suggestions): a. subject to an entry ban issued **in derogation of** ~~accordance with~~ Article 10**(6)** ~~that exceeds the maximum duration referred to in Article 10(6) by~~ **is of** ~~an additional~~ maximum period of **2**~~1~~0 years **or of unlimited duration**; CH (Comments): For third-country nationals posing security risks, this article contains considerable restrictions for MS/SAC, particularly the impossibility to issue

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	unlimited entry bans. CH considers that the possibility to issue unlimited entry bans must be included also in this provision. In this regard and as a follow-up to the Commission's indications that unlimited entry bans could not be proposed in this regulation in light of a pending case before the CJEU, it is important to clarify that the pending CJEU case C-466/24 *Freie Hansestadt Bremen* is based on the current definition of entry ban as provided in Art. 3(6) of Directive 2008/115/EC of a ban "for a specified period". CH is in support of deletion of "for a specified period" in Art. 4(8) of this regulation (see the CH comment on Art. 4(8)). If the amendment is adopted, the underlying definition of 'entry ban' for the case C-466/24 will no longer be applicable. Therefore, the legislator is not restricted in terms of scope of propsals of explicit provision of unlimited entry bans. Furthermore, "unlimited" does not mean "forever", "permanent" or "life-long". Instead, the third-country national under the scope of this provision may request withdrawal, suspension or shortening of the duration of an entry ban in accordance with Article 11.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Finally, the provision needs to better reflect the intention by the Commission that a maximum period of 20 years is meant. The drafting suggestion makes this intention clear. DK (Drafting Suggestions): "subject to an entry ban issued in accordance with Article 10 that exceeds the maximum duration referred to in Article 10(6) **by an unlimited duration**~~an additional maximum period of 10 years~~;" ALTERNATIVELY: "subject to an entry ban issued in accordance with Article 10 that exceeds the maximum duration referred to in Article 10(6) by an additional maximum period of 10 years**, up to 20 years**;" DK (Comments): Third-country nationals must be subject to unlimited entry bans in specific situations. **It is our assessment, that permanent entry bans are possible within European legislation.** The European Court of Human Rights has on multiple occassions allowed for unlimited entry bans in cases, where they are

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	deemed proportionate and warranted. We refer to the relevant case-law: Al-Masudi v. Danmark (application no. 35740/21), and Goma v. Danmark (Application no. 18646/22), where the Court holds no violation of Article 8 of the European Convention of Human Rights. The current jurisprudence from the European Court of Justice cannot be the argument for not including the possibility for unlimited entry bans, when the jurisprudence specifically argues from the point of view of the Return Directive. The idea behind proposing a new legislative framework is to make changes and reforms, which will then naturally nullify jurisprudence regarding Articles that are changes in their nature. Generally, it should also be noted that notifying the third-country national of an extension of their entry ban in accordance with Article 11(7) may prove to be an issue as the third-country national may change their contact details or address etc., making it impossible to notify the person of the extension of the entry ban. The person may then attempt to re-enter the Member States in good faith and therefore cannot be sanctioned for violating an entry ban. An initial unlimited entry ban will therefore fix this issue. EL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We welcome the prolongation of duration of entry bans in such cases, which may directly be issued up to a period of 20 years. FI (Comments): A period of 10 years is too short. Does the reference to Art. 10(6) mean that an entry ban can be 10 + 10 years? In this case the entry ban would be shorter than for other TCNs covered by the Regulation, which are also subject to Art. 10(7), which allow the entry ban to be extended over 5 years periods. It must be ensured that the entry ban under Art. 16 can also be extended in the same way as under Art. 10(7). The best solution would be an unlimited entry ban. HR (Comments): HR support this prolongation of entry bans, we are flexible regarding maximum period. NL (Drafting Suggestions): Subject to an entry ban issued in ~~in~~ derogation of article 10(6) ~~accordance with Article 10 that exceeds the maximum duration referred to in Article 10(6) by an additional~~with a maximum ~~period~~ duration of ~~10~~20 years; NL

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): NL agrees with the intention of the Commission, but would rephrase this paragraph in order to make it clear that the entry ban can have a maximum duration of 20 years. NO (Drafting Suggestions): subject to an entry ban issued in accordance with Article 10 that exceeds the maximum duration referred to in Article 10(6) by an additional maximum period of 10 years. **It may however exceed the maximun period if the third-country national represents a threat to public policy, public security or national security.** NO (Comments): As already stated in relation to art. 10, it is important for us to still have the possibility to issue a permanent entry ban, and especially to persons who are subject to return because they are found to pose a threat to public policy, public security or national security. Without this possibility, the new proposal is a liberalization compared to the directive, something we find unfortunate. We suggest that the rules regarding issuance of entry bans for this group of persons are to stay the same as today.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
b. detained in accordance with Article 29(3), point (c);	EL (Comments): We welcome this point. In such cases the measure of detention shall be considered proportionate. SE (Comments): Sweden is positive about the proposal to introduce a special ground for detention regarding return of third country nationals who pose a security threat and that the period of detention may be longer in such cases.
c. detained in prisons and be kept separated from ordinary prisoners;	CH (Drafting Suggestions): detained in prisons ~~and be kept separated from ordinary prisoners;~~ CH (Comments): Unlike certain specialised facilities which may be in the same compound or building as where ordinary prisons are located, many ordinary prisons precisely do not offer the infrastructure that would allow separation.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Art. 16(1) of Directive 2008/115/EC requires separation from ordinary prisoners in case of detention in prisons. However, the scope of Art. 16(1) of Directive 2008/115/EC is larger as it includes all illegally-staying third-country nationals. In contrast, the present Art. 16(3)(c) of this regulation has a much narrower scope as it only concerns persons posing security risks and therefore third-country nationals who are not only illegally staying. The costs of making special arrangements for separation such as reserving separate wing would in most cases outweigh the benefits and would make detention in ordinary prisons (which often have occupancy rates of close to 100 percent) very difficult if not impossible , especially in case of low numbers of third-country nationals under the scope of Art. 16 who would be detained in ordinary prisons and who would then be in isolation or near-isolation situations. EL (Drafting Suggestions): c. detained in prisons ~~and be kept separated from ordinary prisoners~~; EL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Depending on the type of prison and its building structures, we consider that separation is not always in the benefit of the third-country national, as it may lead to situations of isolation. MT (Drafting Suggestions): c. detained in prisons ~~and be kept separated from ordinary prisoners~~; MT (Comments): Depending on the type of prison and its building structures, we consider that separation is not always possible or to the benefit of the third-country national, as it may lead to situations of isolation. NL (Drafting Suggestions): detained in prisons ~~and be kept separated from ordinary prisoners~~; NL (Comments): A third country national would be isolated for 24 hours when he or she is detained in a normal prison but must kept separated from ordinary prisoners. This is not a desirable outcome. Yet, the possibility to detain this target group

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	in ordinary prisons would help the management of specialised accommodations. Therefore, this provision (including the amendment) is most welcome.
d. subject to detention for a period that exceeds the maximum duration referred to in Article 32(3) and that is determined by a judicial authority taking into account the circumstances of the individual case, and that is subject to a review by a judicial authority at least every three months.	AT (Drafting Suggestions): subject to detention for a period that exceeds the maximum duration referred to in Article 32(3) and that is determined by a competent ~~judicial~~ authority taking into account the circumstances of the individual case, and that is subject to a review by a judicial authority at least every three months. AT (Comments): Judicial remedy is foreseen anyway BE (Drafting Suggestions): subject to detention for a period that exceeds the maximum duration referred to in Article 32(3) and that is determined by a **administrative or** judicial authority taking into account the circumstances of the individual case, and that is subject to a review by a judicial authority at least every three months. BE

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): As pointed out by other member states during IMEX, it is important for Belgium that it should remain possible that an administrative authority takes the decision regarding the period of detention, in order to remain in line with member states' practices. If not, this provision would be of no use for Belgium. CH (Drafting Suggestions): subject to detention for a period that exceeds the maximum duration referred to in Article 32(3) and that is determined by **the administrative authorities or on the basis of a recommendation of the administrative autorities** by a judicial authority taking into account the circumstances of the individual case, and that is subject to a review by a judicial authority at least every three months. CH (Comments): This provision should be more explicit in not creating any ambiguity that an administrative authority may also order detention. EL (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	d. subject to detention for a**n additional** period that exceeds the maximum duration referred to in Article 32(3) and that is determined by a**n administrative or** judicial authority taking into account the circumstances of the individual case, and that is subject to a review by a judicial authority at least every three months. EL (Comments): - This point is not clear. Is it allowed to determine a detention period longer that 12 months from the very beginning and if so the review rules are different than the ones provided for in Article 33? - We consider that what is to be regulated here is the extended detention period that was determined in addition to the 'ordinary' extention provided for in Article 32(3). - In this direction, we propose introducing the term 'additional' and to provide for the possibility that the extention may be ordered by an administrative authority as well, taking into acoount the stricter rule with regards to the review by a judicial authority (every three months no matter the length of the extention). IT (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	d. subject to detention for a period that exceeds the maximum duration referred to in Article 32(3) and that is determined by a**n administrative or** judicial authority taking into account the circumstances of the individual case, and that is subject to a review by a judicial authority at least every three months LU (Comments): The determination of detention 'by a judicial authority' **poses a constitutional problem** for LU. Our courts only have a supervisory function and can only act on the basis of a legal remedy. We therefore suggest that **the judicial authorities only have the power to review/control the decision to extend detention**, as provided for in the second sentence of Article 15(3) of the current Return Directive. The national return authorities must themselves be able to decide to extend detention, but this decision must be reviewed by a court. MT (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	d. subject to detention for a**n additional** period that exceeds the maximum duration referred to in Article 32(3) and that is determined by a**n administrative or** judicial authority taking into account the circumstances of the individual case, and that is subject to a review by a judicial authority at least every three months. MT (Comments): This point is not clear. Is it allowed to determine a detention period longer that 12 months from the very beginning, and if so the review rules are different than the ones provided for in Article 33? We consider that what is to be regulated here is the extended detention period that was determined in addition to the 'ordinary' extention provided for in Article 32(3). In this direction, we propose introducing the term 'additional' and to provide for the possibility that the extention may be ordered by an administrative authority as well, taking into account the stricter rule with regards to the review by a judicial authority (every three months no matter the length of the extention).

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	NL (Drafting Suggestions): subject to detention for a period that exceeds the maximum duration referred to in Article 32(3) and that is determined by the administrative authorities or on the basis of a recommendation of the administrative autorities by a judicial authority taking into account the circumstances of the individual case, and that is subject to a review by a judicial authority at least every three months.
4. By way of derogation from the provisions of Article 28(2) and (3), the enforcement of a return decision issued to a third-country national falling within the scope of this Article shall not be suspended unless there is a risk to breach the principle of non-refoulement.	AT (Drafting Suggestions): By way of derogation from the provisions of Article 28 (1) (2) and (3), the enforcement of a return decision issued to a third-country national falling within the scope of this Article shall not be suspended unless there is a risk to breach the principle of non-refoulement. AT (Comments): Art 28 (1) should be considered as an exemption here. It is not clear, if the automatic suspensive effect is excluded, since this article only refers to the

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	right to request respectievle, to the already existing exclusion for subsequent appeals. As this Article stands now, in practice this would create no real difference between a security threat case and a regular person, since the security case will always make use of their right to appeal for non- refoulement reasons. As a solution MS could consider to have no suspensive effect and, simultaniously with the removal order, have the authority file an appeal before the court, which would then decide as soon as possible. This would also guarantee the right to an effective remedy. CH (Drafting Suggestions): 4. By way of derogation from the provisions of Article 28 **(1),** (2) and (3), the enforcement of a return decision issued to a third-country national falling within the scope of this Article shall not be suspended unless there is a risk to breach the principle of non-refoulement. CH (Comments): CH is against the provision of automatic suspensive effect of all return decisions in accordance with Art. 28(1). In case Art. 28(1) is amended accordingly, Art. 16(4) will also (hopefully) be deleted.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	In addition and even if Art. 28 (1) would not be modified, Art. 16(4) is not coherent by not including a derogation of the general provision un automatic supensive effect Art. 28(1) and instead limiting itelf to more specific derogations of Art. 28(2) and (3) that concern specific modalities in application of the same principles. In case Art. 28(1) will be adopted, the derogation needs to refer in particular to Art. 28 (1). EL (Comments): We place a scrutiny reservation and we are of the opinion that the prossibility of not providing in Article 28 (1) for the mandatory suspension of the enforcement of a return decision until the time limit within which a remedy can be exercised should be further examined under Article 28. ES (Drafting Suggestions): 4.By way of derogation from the provisions of Article 28 **(1),** (2) and (3), the enforcement of a return decision issued to a third-country national falling within the scope of this Article shall not be suspended unless there is a risk to breach the principle of non-refoulement. ES

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): In the current wording of article 28, paragraph 1 should be included. However, Spain's preferred option is to delete the automatic suspensive effect contained in the said paragraph. If deleted, the inclusion of paragraph 1 in this provision may not be necessary. FI (Drafting Suggestions): By way of derogation from the provisions of Article **28**, the enforcement of a return decision issued to a third-country national falling within the scope of this Article shall not be suspended unless there is a risk to breach the principle of non-refoulement. FI (Comments): The suspensive effect should not apply to return decisions taken under Art. 16. LT (Drafting Suggestions): By way of derogation from the provisions of Article 28**(1),** (2) and (3), the enforcement of a return decision issued to a third-country national falling

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	within the scope of this Article shall not be suspended unless there is a risk to breach the principle of non-refoulement. LT (Comments): We believe that for this category of TCNs, the only case in which a return decision should be suspended is when there is a risk to breach the principle of non-refoulement. Moreover, the derogation from 28(2) seems illogical if there is no derogation from 28(1) and the enforcement of the decision must still be suspended during the appeal period. If this proposal would not be approved, the derogation from 28(1) should at least apply to those TCNs who pose a threat to public security or to national security (or, as proposed, 3(1) should be expanded with a general derogation for TCNs who pose a threat to national security). NL (Drafting Suggestions): By way of derogation from the provisions of Article 28(1), (2) and (3), the enforcement of a return decision issued to a third-country national falling within the scope of this Article shall not be suspended unless there is a risk to breach the principle of non-refoulement. NL

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): NL is not in favour of the suspensive effect as proposed in article 28. Especially when the third country national poses a security risk the return decision must not have suspensive effect. NO (Drafting Suggestions): 4. By way of derogation from the provisions of Article 28 **(1),** (2) and (3), the enforcement of a return decision issued to a third-country national falling within the scope of this Article shall not be suspended unless there is a risk to breach the principle of non-refoulement. NO (Comments): We suggest adding a reference also to Art. 28.1 here, making speedy returns possible in these cases.

PUBLIC

Article 17	BE (Comments): BE welcomes the legal opening in COM's proposal in the context of innovative return solutions and return hubs. We consider it positive that COM creates a framework in which important safeguards are embedded. Indeed, it is essential that such arrangements respect human rights, fundamental rights and international law. We still have many practical questions concerning the proposed framework and the return hubs as such. What will be the role of the EU? How will funding be provided? What kind of monitoring is envisaged? How will they be embedded in EU external migration policy? Who will be responsible for what, for example, if the third-country national is removed to the return hub, but in turn cannot be removed to the country of origin, is the country which issued the return decision still responsible (given that the removal was implemented)? DK (Comments): FR (Comments): En miroir avec les modifications demandées sur l'article 4.3(g) concernant la définition du retour et la possibilité de recours à des plateformes de retour dans le cas d'accords ou d'arrangements passés avec les pays-tiers, la France demande que

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	cette option soit circonscrite à des accords 1) contraignants (donc à l'exclusion des arrangements) et 2) conclus bilatéralement au niveau des Etats membres et des pays-tiers. NO (Comments): Norway supports the inclusion of Article 17 on return to a third country with which we have either an agreement or arrangement in the regulation. Nationally, we will be looking into the legal and practical implications of this together with our European partners. We would like to emphasize the need to uphold fundamental rights in the negotiations of such agreements / arrangements and to ensure close cooperation with relevant institutions such as UNHCR and IOM.
Return to a third country with which there is an agreement or arrangement	AT (Comments): In general, AT welcomes this Article providing a flexible legal framework, even though a lot is left to the MS, which we see a bit more critical. BG (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We welcome the establishment of a legal framework for return hubs that complies with international law and respects fundamental human rights. This innovative solution is an important tool in the European response to illegal migration. Furthermore, we believe that the basic components should not exceed what is necessary. Our understanding is that over regulation should be avoided so that Member States and the Union can maintain flexibility and a better position in negotiations with third countries. CH (Comments): If a provision on return hubs is included, il is essential that procedural safeguards, the principle of non-refoulement and fundamental rights of third-country nationals are guaranteed under all circumstances. ES (Comments): Spain upholds its strong legal and economical reservations regarding this provison. FR (Drafting Suggestions): *Return to a third country with which there is an agreement ~~or arrangement~~* LU

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): General comment: The article in question is particularly sensitive. In order to avoid lengthy legal proceedings and to ensure the legal legitimay of these arrangements, it is imperative that solid legal guarantees and safeguards are put in place to frame this provision.
	LT (Comments): We welcome the possibility of returning TCNs to centres in third countries - LT has always supported this innovative idea. We would consider that the Regulation should be as light on detail as possible in order to leave enough flexibility and not prevent future agreements with third countries from being concluded and implemented in practice. It should also be clearly regulated that such centres can be set up at EU level, and we would also like to see a role for Frontex in returning TCNs to such return hubs.
1. Return within the meaning of Article 4, first paragraph, point (3)(g) of illegally staying third-country nationals requires an agreement or arrangement to be concluded with a third country. Such an agreement or arrangement may only be concluded with a third country where international human rights standards and principles in accordance with international law, including the principle of non-refoulement, are respected.	AT (Drafting Suggestions): Return within the meaning of Article 4, first paragraph, point (3)(g) of illegally staying third-country nationals requires an agreement or arrangement to be concluded on EU-level or bilaterally with a third country. Such an agreement or arrangement may only be concluded with a third

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	country where basic human rights standards and principles in accordance with international law, including the principle of non-refoulement, are respected. AT (Comments): EU-level solutions should also be considered and as clarified by COM last week EU-level agreements/arrangements as well as multilateral agreements are not precluded from the scope of this article. – This would lead to added value, greater leverage, prevent TC "shopping" of best agreements/deals; – Through that also possibility for FX involvement (mandate change needed but in evaluation, which is an opportunity), which again could guarantee for certain standards through EU law application - and make the EP negotiations easier. – Especially against the backdrop that in the event of an agreement between a Member State and a third country, only that one Member State would be able to issue return decisions there (in the case of any third country, these would only be possible if an agreement/convention exists, in accordance with art. 4 (3) (g)).

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	@requirements of human rights standard: this is unclear and possibly too excessive → meaning the overall situation in that third country and not only the situation with regards to returnees? CZ (Comments): Can a regulation lay down a limiting condition for the international agreement (second sentence)? Are EU agreements also applicable? EE (Drafting Suggestions): **1.** Return within the meaning of Article 4, first paragraph, point (3)(g) of illegally staying third-country nationals requires an agreement or arrangement to be concluded with a third country. Such an agreement or arrangement may only be concluded **by the European Union or Member States** with a third country where international human rights standards and principles in accordance with international law, including the principle of non-refoulement, are respected EE (Comments): Commission has previously mentioned that the Article 17 also allows the conclusion of these agreements at the EU level. The wording of the Article

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	17(1) could to be made more explicit stating that these agreements can be concluded by EU as well. ES (Drafting Suggestions): Return within the meaning of Article 4, first paragraph, point (3)(g) of illegally staying third-country nationals requires an agreement ~~or arrangement~~ to be concluded with a third country. Such an agreement ~~or arrangement~~ may only be concluded with a third country **which has ratified the relevant international human rights conventions and** where international human rights standards and principles in accordance with international law, including the principle of non-refoulement, are **effectively** respected. ES (Comments): In the absence of a legal definition of arrangement and the doubts on whether legal obligations may stem from such arrangements, the provision should only refer to agreements for legal certainty. In addition, inspired by the provisions under the Pact, such agreements may only be concluded with third countries which have ratified the relevant conventions and that apply them effectively.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	FI (Comments): This goes too far with human rights, e.g. freedom of the press doesn't have to be guaranteed. It should be sufficient to lay down only essential minimum standards. It should be also clarified that the human rights standards are related to TCNs human rights. FR (Drafting Suggestions): *1. Return within the meaning of Article 4, first paragraph, point (3)(g) of illegally staying third-country nationals requires an agreement ~~or arrangement~~ to be concluded **between Member States** and a third country. Such an agreement ~~or arrangement~~ may only be concluded with a third country where international human rights standards and principles in accordance with international law, including the principle of non-refoulement, are respected.* IE (Comments): IE is pleased to see that the protection of fundamental human rights is accounted for in this article. IT (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Return within the meaning of Article 4, first paragraph, point (3)(g) of illegally staying third-country nationals requires an agreement or arrangement to be concluded with a third country. Such an agreement or arrangement may only be concluded **by the European Union or Member States** with a third country where international human rights standards and principles in accordance with international law, including the principle of non-refoulement, are respected. IT (Comments): Commission has mentioned that Article 17 also allows the conclusion of these agreements or arrangements at the EU level. Therefore the wording could to be made more explicit stating that these agreements/arrangements can be concluded by EU as well. NL (Drafting Suggestions): Return within the meaning of Article 4, first paragraph, point (3)(g) of illegally staying third-country nationals requires an agreement or arrangement to be concluded with a third country. Such an agreement or arrangement may only be concluded with a third country where ~~international~~ the third country national's human rights ~~standards~~ are respected ~~and~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~principles~~ in accordance with international law, including the principle of non-refoulement~~, are respected~~. NL (Comments): NL is postive about article 17, especially the flexibility between 'agreement' or 'arrangement'. The international human rights' standards need to be however directed at the personal circumstances of the third country national. And not the entire country. SE (Drafting Suggestions): Return within the meaning of Article 4, first paragraph, point (3)(g) of illegally staying third-country nationals requires an agreement or arrangement to be concluded with a third country. Such an agreement or arrangement may only be concluded with a third country where **the** international human rights **of the third country national subject to return, including** standards and principles in accordance with international law~~,~~ ~~including~~ **such as** the principle of non-refoulement, are respected. SE (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Sweden welcomes the introduction of a legal basis that enables the establishment of so called return hubs in third countries. In our view, the legal basis should allow Member States to design and implement such a solution in an efficient manner, while ensuring sufficient protection of the fundamental rights of the third country nationals in the procedure. With this starting point, Sweden thinks that primarily, it is the fundamental rights of the third-country national subject to return within the meaning of Article 4, first paragraph, point (3)(g) that should be guaranteed by the provision in Article 17(1). However, the way it is currently formulated it can be read as a requirement to respect fundamental rights also in other geographical areas than where the return hub is located and with regard to other persons than returnees. If it was interpreted that way, the provision would require a safety assessment for the country as a whole. Such an interpretation would, from a strictly legal perspective, be above international human rights minimum requirements for return in general. SK (Comments): The Slovak Republic supports innovative solutions in the field of migration, including the possibility of establishing return centers in third countries. We support the possibility of concluding agreements between the EU and third

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	countries in addition to bilateral agreements. A common European approach will increase the efficiency and uniformity of return procedures.
2. An agreement or arrangement pursuant to paragraph 1 shall set out the following:	FR (Drafting Suggestions): *2. ~~An~~ **The bilateral** agreement ~~or arrangement~~ pursuant to paragraph 1 shall set out the following:*
	ES (Drafting Suggestions): **a. <u>The legislation and jurisdiction applicable to the third country national in each phase of the return and removal, including during the transfer and after the handing over to the authorities of that third country.</u>** ES (Comments): For the sake of legal certainty, the applicable legislation and jurisdiction should be part of the content of such agreements.
a. the procedures applicable to the transfer of illegally staying third-country nationals from the territory of the Member States to the third country referred to in paragraph 1;	

PUBLIC

Commission proposal	Drafting Suggestions and Comments
b. the conditions for the stay of the third-country national in the third country referred to in paragraph 1, including the respective obligations and responsibilities of the Member State and of that third country;	BG (Drafting Suggestions): the conditions for the stay of the third-country national in the third country referred to in paragraph 1, including the respective obligations and responsibilities of the Member State **or the Union** and of that third country; BG (Comments): We expect the Union, not just the Member States, to be involved in the process of establishing such agreements or arrangements. We have already made the same proposal under Article 4(3)(g). EL (Drafting Suggestions): b. the conditions for the stay of the third-country national in the third country referred to in paragraph 1, including the respective obligations and responsibilities of the Member State**s or the Union** and of that third country; EL (Comments): - As we have already supported, we are in favor of clarifying within the text that an agreement or arrangement for a return hub could be agreed not only by a Member State or a group of Member States, but also by the EU.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	Therefore, in para 2 (b) we regret to see that a reference is made only to Member State and not to Member States or the Union. ES (Drafting Suggestions): the conditions for the **legal** stay of the third-country national in the third country referred to in paragraph 1, including the respective obligations and responsibilities of the Member State and of that third country, **in particular, the obligation to return the third country national to his o her country of origin.** ES (Comments): Situations of legal limbo should be avoided under such agreements. In addition, the obligation to return the TCN to his or her country of origin should be regulated therein. HR (Drafting Suggestions): b. the conditions for the stay of the third-country national in the third country referred to in paragraph 1, including the respective obligations and responsibilities of the Member State**s or the Union** and of that third country; HR

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): We would like to support EU approach for a return hub and not only Member State. IT (Drafting Suggestions): b the conditions for the stay **-<u>including possible detention</u>-**of the third-country national in the third country referred to in paragraph 1, including the respective obligations and responsibilities of the Member State **<u>or States or the Union</u>** and of that third country LV (Drafting Suggestions): b. the conditions for the stay of the third-country national in the third country referred to in paragraph 1, including the respective obligations and responsibilities of the Member State**<u>s or the Union</u>** and of that third country; LV (Comments): Latvia supports the need to include a possibility to conclude an agreement or arrangement with a third country regarding establishment of return hub not only for an individual Member State or a group of Member States, but also to do so at Union level.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	MT (Drafting Suggestions): the conditions for the stay of the third-country national in the third country referred to in paragraph 1, including the respective obligations and responsibilities of the Member State **or the Union** and of that third country; MT (Comments): We are in favor of clarifying within the text that an agreement or arrangement for a return hub could be agreed not only by a Member State or a group of Member States, but also by the EU. NL (Comments): It should be made clear when the responsibility of the Member States ceases to exist in the recitals of the regulations.
c. where applicable, the modalities of onward return to the country of origin or to another country where the third-country national voluntarily decides to return, and the consequences in the case where this is not possible;	CZ (Drafting Suggestions): where applicable, the modalities of onward return ~~**to the country of origin or to another country where the third-country national voluntarily**~~

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	~~decides to return,~~ and the consequences in the case where this is not possible;
d. the obligations of the third country referred to in the second sentence of paragraph 1;	
e. an independent body or mechanism to monitor the effective application of the agreement or arrangement;	AT (Drafting Suggestions): Should be deleted AT (Comments): There also should be no excessive monitoring requirements for return hub arrangements. No similar safeguard is required for returns pursuant to readmission agreements under Art. 4, first para., point 3(c).] ES (Drafting Suggestions): an independent body or mechanism to monitor the effective application of the agreement ~~or arrangement~~ MT

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Drafting Suggestions): ~~an independent body or mechanism to monitor the effective application of the agreement or arrangement;~~ MT (Comments): This will also be covered by existing monitoring mechanisms, such as the Scheval evaluation and the monitoring mechanism set out under the Frontex Regulation. In this regard, we are of the view that this is not required as it would lead to overlaps and additional burden.
	ES (Drafting Suggestions): g. the economic and financial rights and obligations of the parties deriving from the agreement.
f. the consequences to be drawn in case of violations of the agreement or arrangement or significant change adversely impacting the situation of the third country.	ES (Drafting Suggestions): h.the consequences to be drawn in case of violations of the agreement ~~or arrangement~~ or significant change adversely impacting the situation of the third country

PUBLIC

Commission proposal	Drafting Suggestions and Comments
3. Prior to concluding an agreement or arrangement pursuant to paragraph 1, Member States shall inform the Commission and the other Member States.	AT (Drafting Suggestions): should be deleted. AT (Comments): We are also critical about the information provided to the COM and other MS before an agreement is signed. There are no similar requirement for bilateral agreements prior signing; BG (Drafting Suggestions): Prior to concluding an agreement or arrangement pursuant to paragraph 1, Member States shall inform the Commission and the other Member States. **When the return under paragraph 1 is carried out to a third country, which has a common border with a Member State, the prior agreement of that Member State is required before starting negotiations on any such agreement.** BG (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We believe that the bilateral relations of individual Member States with neigbouring third countries should be taken into account when MSs or the EU start negotioations with the relevant third contry. The Member State concerned should be consulted in advance and give its consent to the establishment of a return hub in its neighbouring third country. EL (Drafting Suggestions): 3. Prior to concluding an agreement or arrangement pursuant to paragraph 1, Member States shall inform the Commission and the other Member States. **When the third country concerned has a common border with a Member State, the prior agreement of that Member State is required before starting negotiations on any such agreement or arrangement.** EL (Comments): We deem that creating return hubs in the proximity of the external borders could have consequences in terms of redirection of illegal migration flows. Therefore, this scenario should be avoided. In any case, it is appropriate to provide for the consent of the neighboring MS to be given prior to the start of relevant negotiations. Thus, in paragraph 3 we suggest including the agreed wording under the partial general approach of the Recast Return Directive.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	ES (Drafting Suggestions): Prior to concluding an agreement or arrangement pursuant to paragraph 1, Member States shall inform the Commission and the other Member States. **The Member States most concerned by the flows stemming from the third country shall give their consent prior to starting and concluding negotiations of any such agreement.** ES (Comments): In order to safeguard the bilateral cooperation and inspired by the general approach adopted by the Council in 2019, Member States most concerned with irregular migration from that third country should give their consent prior to initiating or concluding such agreements. FR (Drafting Suggestions): *3. Prior to concluding an agreement ~~or arrangement~~ pursuant to paragraph 1, the Member States **involved** shall inform the Commission and the other Member States.* HR (Drafting Suggestions):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	3. Prior to concluding an agreement or arrangement pursuant to paragraph 1, Member States shall inform the Commission and the other Member States. When the third country concerned is in the (immediate) vicinity of a Member State, the prior agreement of that Member State is required before starting negotiations. HR (Comments): We would like to emphasize the importance of ensuring full transparency in the negotiation of the arrangements or agreements with third countries. We welcome that the proposal is introducing a legal basis for new and innovative solutions. However, we stress the need to carefully assess the potential implications of these arrangements and agreements, to avoid the creation of new migratory routes or additional pressure on existing ones. Accordingly, the full and timely involvement of Member States whose borders may be directly affected by such arrangements is of utmost importance. We do not support creating return hubs in the proximity of the external borders. It could create new migration pools and possibly new routes.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
4. Unaccompanied minors and families with minors shall not be returned to a third country referred to in paragraph 1.	AT (Drafting Suggestions): Unaccompanied minors ~~and families with minors~~ shall not be returned to a third country referred to in paragraph 1. AT (Comments): The exemption of families with minors is not necessary since safeguards will be provided, so they should be included (family unity is ensured; with certain human rights standards and child-friendly accommodation no need to exclude). Also there is some discrepancy with Art. 59 (5) APR which only mentions unaccompanied minors. CZ (Drafting Suggestions): ~~**Unaccompanied minors and families with minors shall not be returned to a third country referred to in paragraph 1.**~~ EL (Drafting Suggestions): **Deletion** EL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	In any case the best interests of the child should be a primary consideration, and this shall be duly taken into account in the context of the agreement or arrangement. There is no need to provide here for a general exception. HR (Drafting Suggestions): Delete HR (Comments): We remain sceptical with regard to the proposed exception concerning minors and families. Specifically, we are concerned that introducing such an exception at this stage of the legislative process could lead to extension to other vulnerable groups during the trilogue negotiations. If an exception is provided now, questions will inevitably arise about the treatment of other vulnerable persons, such as persons with disabilities, the elderly, pregnant women, single parents with minor children, persons suffering from serious illnesses, or individuals with mental health disorders. In our view, it is crucial to avoid opening the door to broad range of exemptions that could undermine the overall effectiveness of the instrument. LU (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	In addition to minors and families with minors, LU proposes to also exclude vulnerable persons. MT (Drafting Suggestions): **Deletion** MT (Comments): The best interests of the child should be a primary consideration, and this shall be duly taken into account in the context of the agreement or arrangement. Malta is therefore against this general exception in view of the possible abuse it might lead to. NL (Drafting Suggestions): Unaccompanied minors ~~and families with minors~~ shall not be returned to a third country referred to in paragraph 1. NL (Comments): NL proposes to include families with minors. Not with the intention to effectively send families with minors to third countries with whom an agreement or arrangement has been concluded. Yet, this option should

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	remain available to motivate third country nationals to cooperate with their return to their country of origin.
	LV (Drafting Suggestions): **5. Only third-country nationals who have been the subject of a final return decision shall be returned to the third country referred to in paragraph 1.** **6. Third-country nationals subject to return to a third country referred to in paragraph 1 may be returned without their consent.** LV (Comments): Latvia considers that Article 17 should be supplemented with two important elements, in order to make the mechanism provided for in Article 17 truly effective: (1) a provision should be added that only TCNs who have been the subject of a final return decision (i.e. the return decision is not subject to appeal or where the appeal has already been exhausted) are returned to a third country referred to in paragraph 1; (2) to achieve tangible results with regard to the actual removal from EU territory of persons without a right of residence, a provision should be added

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	providing that persons may be returned to a third country referred in paragraph 1 without their consent.
SECTION 5 **RETURN OF MINORS**	AT (Comments): The draft is missing a clear obligation for return, which should also be reflected in the text and should also reflect a proceure before and after a return decision. In addition we have to consider that the APR also applies. Article 18-20 are very broad.
Article 18	
Best interests of the child	
The best interests of the child shall be a primary consideration when applying the provisions in accordance with this Regulation.	AT (Drafting Suggestions): The best interests of the child shall be considered ~~a primary consideration~~ when applying the provisions in accordance with this Regulation. AT

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	(Comments): The word "primary" must be removed in any case, as it would give minor status precedence over all other obligations, no matter how significant they may be. IE (Comments): IE is pleased to see a provision where the rights of the child are a primary consideration, but would like to raise one challenge that we tend to face - that travel documents generally not issued without consent of two parents understandably, but problematic in domestic abuse situations where one parent is not cooperating. IE would ask that CION consider this point.
Article 19	
Age assessment of minors	

PUBLIC

Commission proposal	Drafting Suggestions and Comments
Where, as a result of statements by the third-country national, available documentary evidence or other relevant indications, there are doubts as to whether or not he or she is a minor, the competent authority may undertake a multi-disciplinary assessment, including a psychosocial assessment, which shall be carried out by qualified professionals, to determine the third-country national's age. Article 25 of Regulation (EU) 2024/1348 shall apply by analogy to such assessment.	AT (Comments): It should be ensured that there is no obligation for an age assessment, especially if an age assessment was carried out previously in another MS. BG (Drafting Suggestions): Where, as a result of statements by the third-country national, available documentary evidence or other relevant indications, there are doubts as to whether or not he or she is a minor, the competent authority may undertake a multi-disciplinary assessment, including a psychosocial assessment, which shall be carried out by qualified professionals, to determine the third-country national's age. Article 25 of Regulation (EU) 2024/1348 shall apply by analogy to such assessment. **The competent authority may rely on existing age assesment in previous stages of the return procedure or in other relevant procedures.** BG (Comments): We support the possibility of using an age assessment from a previous stages of the return procedure or other relevant procedures. If such an assessment exists there is no need for new age assesment.

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We propose redrafting simmillar to the one under Article 12(3). CH (Drafting Suggestions): Where~~, as a result of statements by the third-country national, available documentary evidence or other relevant indications,~~ there are doubts as to whether or not he or she is a minor, ~~the competent authority may undertake a multi-disciplinary assessment, including a psychosocial assessment, which shall be carried out by qualified professionals,~~ **the Member States** determine the third-country national's age **in application of national law.**~~. Article 25 of Regulation (EU) 2024/1348 shall apply by analogy to such assessment.~~ CH (Comments): One problem with this article that within one paragraph it copies the very detailed procedure of Article 25 of the Asylum Procedure Regulation (2024/1348), which not part of the Dublin acquis and not legally binding on SAC. Another problem is that the proposed multi-disciplinary procedure that includes a psychosocial assessment is listed as an option with "may" and not as a requirement with "shall". However, this entails the risk of court

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	judgments which deem the practices of Member States that do not have such assessments as illegal. CH considers that an expansion of this detailed asylum-based multi-stakeholder procedure would overburden MS/SAC, which today already have procedures requiring third-country nationals to be treated as minors in case of relevant claims until it is proven that the person is an adult. Consequently, the third-country national subject to a return decision who claims to be a minor already benefits from the protection reserved for minors. Therefore, there is no need for a new procedure and it would make sense to leave regulation of the age assessment with the Member States at national level. Having such a provision will ensure the courts will not impose additional criteria to those set out in national law. DK (Drafting Suggestions): Where, as a result of statements by the third-country national, available documentary evidence or other relevant indications, there are doubts as to whether or not he or she is a minor, the competent authority may undertake a multi-disciplinary assessment, ~~including a psychosocial assessment,~~ which shall be carried out by qualified professionals, to determine the third-country

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	national's age. Article 25 of Regulation (EU) 2024/1348 shall apply by analogy to such assessment. EL (Drafting Suggestions): Where, as a result of statements by the third-country national, available documentary evidence or other relevant indications, there are doubts as to whether or not he or she is a minor, the competent authority may undertake a multi-disciplinary assessment, including a psychosocial assessment, which shall be carried out by qualified professionals, to determine the third-country national's age. Article 25 of Regulation (EU) 2024/1348 shall apply by analogy to such assessment. **In case the competent authority is aware that an age assessment has already been undertaken in previous stages of the return procedure or in other previous relevant procedures, it shall duly take this into account and may decide not to undertake a new assessment, including re-assessing any new statement by the third-country national.** EL (Comments): We deem appropriate here to provide for the case that where an age assessment has been conducted under a previous procedure (i.e. an asylum

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	procedure), this should be taken into account and to provide that it is not necessary to repeat it, including in the cases where new relevant statements by the third-country national were made. ES (Drafting Suggestions): Where, as a result of statements by the third-country national, available documentary evidence or other relevant indications, there are doubts as to whether or not he or she is a minor, the competent authority may undertake a multi-disciplinary assessment, including a psychosocial assessment, which shall be carried out by qualified professionals, to determine the third-country national's age. Article 25 of Regulation (EU) 2024/1348 shall apply by analogy to such assessment. **Age assessments conducted in previous administrative or judicial proceedings in any Member State shall be considered sufficient for this purpose.** ES (Comments): In line with the development of a common European return system, previous age assessments conducted in previous administrative or judicial proceedings

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	in the same or other Member State should be considered sufficient for this purpose. IS (Comments): We do not consider a multi-disciplinary assessment to be the most appropriate approach in such cases. In our view, a forensic assessment represents a more objective and reliable method for determining age. It relies on medically and scientifically validated procedures, which help reduce the risk of subjective interpretation. When doubts arise, whether due to an individual's statements, inconsistencies in documentation, or other relevant indicators, we believe a forensic evaluation conducted by qualified professionals provides clearer and more consistent results than a multi-disciplinary or psychosocial approach. IT (Drafting Suggestions): Where, as a result of statements by the third-country national, available documentary evidence or other relevant indications, there are doubts as to whether or not he or she is a minor, the competent authority may undertake a multi-disciplinary assessment, including a psychosocial assessment, which shall be carried out by qualified professionals, to determine the third-country national's age. Article 25 of Regulation (EU) 2024/1348 shall apply by analogy to such assessment. **In case the competent authority is aware that an age assessment has already been undertaken in previous stages of the return procedure or in**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	other previous relevant procedures, it shall duly take this into account and may decide not to undertake a new assessment, including re-assessing any new statement by the third-country national. IT (Comments): We deem that where an age assessment has already been carried out during another procedure, such as asylum, it is not necessary for it to be repeated during the return procedure. LT (Drafting Suggestions): Where, as a result of statements by the third-country national, available documentary evidence or other relevant indications, there are doubts as to whether or not he or she is a minor, the competent authority may undertake ~~a multi-disciplinary assessment, including a psychosocial assessment, which shall be carried out by qualified professionals, to determine the third-country national's age. Article 25 of Regulation (EU) 2024/1348 shall apply by analogy to such assessment~~ **an age assessment in accordance with national law**. LT (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	We consider that in the case of return, a multi-disciplinary assessment, including a psychosocial one, is an excessively lengthy procedure, therefore we would prefer not to have an analogy with the age assessment foreseen in Regulation 2024/1348 (Member States should be allowed to use the medical examination provided for by national law). MT (Drafting Suggestions): Where, as a result of statements by the third-country national, available documentary evidence or other relevant indications, there are doubts as to whether or not he or she is a minor, the competent authority may undertake a multi-disciplinary assessment, including a psychosocial assessment, which shall be carried out by qualified professionals, to determine the third-country national's age. Article 25 of Regulation (EU) 2024/1348 shall apply by analogy to such assessment. **In case the competent authority is aware that an age assessment has already been undertaken in previous stages of the return procedure, namely the asylum procedure, or in other previous relevant procedures, it shall duly take this into account and may decide not to undertake a new assessment, including re-assessing any new statement by the third-country national.**

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	MT (Comments): If an age assessment has been conducted under a previous procedure, namely the asylum procedure, this should be taken into account. Furthermore, in such cases, it should not be necessary to repeat the age assessment, including if new relevant statements by the third-country national were made. NL (Drafting Suggestions): ~~Where, as a result of statements by the third-country national, available documentary evidence or other relevant indications, there are doubts as to whether or not he or she is a minor, the competent authority may undertake a multi-disciplinary assessment, including a psychosocial assessment, which shall be carried out by qualified professionals, to determine the third-country national's age. Article 25 of Regulation (EU) 2024/1348 shall apply by analogy to such assessment.~~ NL (Comments):

PUBLIC

Commission proposal	Drafting Suggestions and Comments
	NL would like to see this article deleted to take away any doubt about when the Member State can use this option. The proposed assessment can be provided in national law, when Member States wish this. Especially concerning the low number of cases in which this relevant. SK (Comments): The Slovak Republic considers the use of the word “may” to be key in the formulation of this provision.