



Joint Refugee Council and Amnesty International UK submission to the House of Lords Select Committee on the European Union Inquiry into the Draft Directive on common procedures for the return of illegally staying third country nationals

Summary

December 2005

Please note: This document has been edited in order to comply with the Refugee Council house style.

The Refugee Council and Amnesty International UK welcome the opportunity to comment on the draft returns directive. Our submission focuses on the following issues:

- We regret that states are negotiating an EU law on return before they have addressed the serious deficiencies in their national asylum procedures and in the minimum EU standards contained in the asylum procedures directive. Asylum seekers cannot currently be assured that their protection needs will be recognised wherever they apply for asylum in the EU. We have profound concerns about the asylum processes and procedures in place in the UK and other EU countries and we thus cannot be confident that EU member states only return individuals who do not have protection needs.
- **Article 2 – Scope.** The directive’s scope is extremely broad. We believe it is imperative that the directive allows sufficient flexibility to enable member states to respond to the very different circumstances, experiences and needs of those falling within its ambit. We do not believe there is any justification for the directive allowing Member States to decide to selectively apply provisions to transit zones (Article 2.2).
- **Article 3 – Definitions.** We are concerned that the directive covers enforced return to a third country other than an individual’s country of origin or transit. We strongly oppose the transfer to third countries of those whose asylum claims have been rejected, or whose status has been withdrawn, unless the individual has given informed and express consent to voluntarily return to the third country concerned. Forced removal to a third country involves a serious risk of chain removal and may violate the principle of *non-refoulement*.
- **Article 4 – More favourable provisions.** Whilst we welcome the proposal that Member States will be able to adopt or maintain more favourable provisions than the minimum standards outlined in the directive, we are concerned that the directive as currently drafted does not permit states to maintain more favourable provisions which are incompatible with the directive.
- **Article 5 – Family relationships and best interests of child.** We welcome the proposed obligation on member states to take due account of family relationships, duration of stay in the member states and the existence of family, cultural and social ties with country of origin. However, we are concerned that the meaning of ‘due account’ is not clear and believe that it requires clarification if the directive is to result in safe, durable dignified returns and harmonisation of state practices.
- **Article 6 – Return decision.** Whilst we welcome the principle that individuals have an opportunity to leave the territory of their own accord as an alternative to forced removal, we do not deem it appropriate to use the term ‘voluntary’ to describe all departures by individuals that are undertaken as an alternative to forced removal. We are further concerned about the scope left to member states to deny individuals the opportunity to return prior to their removal being enforced, as well as the imposition of a four week maximum time limit for individuals to prepare for voluntary departure. We are concerned that the discretion allowed for in article 6.5 will not be used in practise unless it is framed as an obligation.
- **Article 8 – Postponement.** We welcome the provisions allowing member states to postpone the enforcement of a return decision. However, we urge states to extend the range of grounds for postponing a return decision. For example, we believe that it is essential to place an obligation on states to ensure that returns do not destabilise fragile countries. We are further concerned that the directive sets no time limit on the period of postponement and does not provide for state support for those who are unable to return to their country of origin. We are worried that the directive will do little to prevent recurrence of the current situation, whereby

thousands of individuals who cannot be returned to their country of origin are left in limbo, with no status and no means of support.

- **Article 9 – Re-entry ban.** We are opposed to the draft directive's requirement that states impose a re-entry ban of up to five years in removal orders and believe there is no need for such a drastic measure. Re-entry bans are entirely inappropriate in light of the fact that future changes in a country of origin and thus an individual's need for international protection cannot be predicted. If this article is retained we believe that asylum seekers' lives will be put at risk since they are likely to be denied entry to the EU without any consideration of their asylum claim.
- **Article 10 – Removal.** We welcome the requirement that coercive measures shall be proportional and not exceed reasonable force, but believe that states need more guidance than is currently provided. We recommend that the directive specify that coercive measures must only ever be used as a last resort, and that physical force must never be used where vulnerable persons are concerned, including children and the elderly.
- **Article 13 – Safeguards pending return.** According to the draft directive, those who cannot be removed, or for whom the return decision has been postponed, should be provided with written confirmation of their situation. They will be provided with conditions of stay in line with only a very limited number of provisions of the reception directive. Whilst we recognise that this will be an improvement in many member states, we do not believe that it goes far enough. Our view is that people who cannot be returned should be provided with temporary renewable status and the right to work and access state benefits. Where there is no prospect of return, it is inappropriate for states to detain individuals, and the returns directive should contain a provision to this end. As currently drafted, there are insufficient safeguards to ensure that people who cannot be returned are not left indefinitely destitute and in limbo.
- **Articles 14-15 – Temporary custody.** We agree that any decision to detain should be taken by a competent judicial authority and welcome the obligation for monthly review by judicial authorities. However, whilst the directive makes reference to the primacy of alternatives to detention, it obliges member states to detain individuals: this is highly problematic. As a minimum, reference must be made to an obligation not to detain unaccompanied asylum seeking children, families with children, pregnant women and particularly vulnerable groups, including those with serious mental health problems and survivors of torture. We are additionally opposed to the use of prisons for immigration detention. Seeking asylum is not a crime.

We consider the draft directive maximum time limit of six months to be an unacceptably long time for individuals to be kept in detention where no crime has been committed and where detention is to effect removal. We believe there is a particular need for a standstill clause to ensure that states don't view the minimum standard on detention as grounds for increasing their national time limits.

The Refugee Council and Amnesty International UK do not believe that, as currently drafted, the returns directive will sufficiently safeguard the rights of those being returned, or of those who cannot or should not be removed. We believe that in order to ensure that returns from the EU are only ever carried out in a safe, dignified and durable manner, a substantial review of the directive is required.