

Directive 2008/115/EC of the European Parliament and of the Council  
of 16 December 2008 on common standards and procedures in  
Member States for returning illegally staying third-country nationals

CHAPTER I

**GENERAL PROVISIONS**

*Article 1*

**Subject matter**

This Directive sets out common standards and procedures to be applied in Member States for returning illegally staying third-country nationals, in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations.

*Article 2*

**Scope**

- 1 This Directive applies to third-country nationals staying illegally on the territory of a Member State.
- 2 Member States may decide not to apply this Directive to third-country nationals who:
  - a are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State;
  - b 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 extradition procedures.
- 3 This Directive shall not apply to persons enjoying the Community right of free movement as defined in Article 2(5) of the Schengen Borders Code.

*Article 3*

**Definitions**

For the purpose of this Directive the following definitions shall apply:

1. 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of the Schengen Borders Code;
2. 'illegal stay' means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in

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Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State;

3. 'return' means the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced — to:
  - his or her country of origin, or
  - a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or
  - another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted;
4. 'return decision' means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return;
5. 'removal' means the enforcement of the obligation to return, namely the physical transportation out of the Member State;
6. 'entry ban' means an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period, accompanying a return decision;
7. 'risk of absconding' means the existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is the subject of return procedures may abscond;
8. 'voluntary departure' means compliance with the obligation to return within the time-limit fixed for that purpose in the return decision;
9. 'vulnerable persons' means minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

#### *Article 4*

#### **More favourable provisions**

- 1 This Directive shall be without prejudice to more favourable provisions of:
  - a bilateral or multilateral agreements between the Community or the Community and its Member States and one or more third countries;
  - b bilateral or multilateral agreements between one or more Member States and one or more third countries.
- 2 This Directive shall be without prejudice to any provision which may be more favourable for the third-country national, laid down in the Community acquis relating to immigration and asylum.
- 3 This Directive shall be without prejudice to the right of the Member States to adopt or maintain provisions that are more favourable to persons to whom it applies provided that such provisions are compatible with this Directive.
- 4 With regard to third-country nationals excluded from the scope of this Directive in accordance with Article 2(2)(a), Member States shall:

- a ensure that their treatment and level of protection are no less favourable than as set out in Article 8(4) and (5) (limitations on use of coercive measures), Article 9(2)(a) (postponement of removal), Article 14(1) (b) and (d) (emergency health care and taking into account needs of vulnerable persons), and Articles 16 and 17 (detention conditions) and
- b respect the principle of non-refoulement.

#### *Article 5*

#### **Non-refoulement, best interests of the child, family life and state of health**

When implementing this Directive, Member States shall take due account of:

- (a) the best interests of the child;
  - (b) family life;
  - (c) the state of health of the third-country national concerned,
- and respect the principle of non-refoulement.