



Return Directive

Jurisprudential Orientations and Regulatory Trends

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The Treaty of Lisbon (2009)

Art. 79 TFEU: The Union shall develop a *common immigration policy* aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

Para. 2 (c): illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation



DIRECTIVE 2008/115/EC (Return Directive)

- ✓ Common standards and procedures for returning illegal staying third-country nationals
- ✓ Procedural rules on issuing and enforcing of decisions
- ✓ Obligation for Member States to issue a return decision against any third-country national staying illegally on their territory

Third-country nationals ordered to leave an EU Member State, Q1 2021 - Q3 2022

(persons)

	Q1 2021	Q2 2021	Q3 2021	Q4 2021	Q1 2022	Q2 2022	Q3 2022
EU (*)	83 650	84 035	84 130	90 295	89 620	96 785	110 485
Belgium	4 890	5 225	4 630	5 100	5 400	5 165	4 750
Bulgaria	310	285	400	315	260	255	510
Czechia	1 570	1 755	1 570	1 990	1 780	1 565	:
Denmark	630	540	615	635	555	575	630
Germany	9 830	6 710	6 905	8 070	8 625	8 275	:
Estonia	250	255	280	360	280	260	315
Ireland	50	35	45	30	15	25	145
Greece	5 525	7 745	7 870	7 700	6 040	8 750	10 300
Spain	1 360	3 280	1 390	1 775	3 165	3 285	1 750
France	31 695	31 290	30 165	32 300	32 980	33 450	32 375
Croatia	2 945	3 635	5 285	3 485	2 675	4 830	13 250
Italy (²)	3 585	2 730	2 275	2 505	6 875	6 255	8 055
Cyprus	4 235	3 595	4 000	3 915	3 210	3 490	5 355
Latvia	105	150	235	400	295	460	680
Lithuania	430	580	800	2 900	880	840	:
Luxembourg	260	185	130	145	155	185	:
Hungary	1 295	1 085	1 165	965	610	415	850
Malta	265	160	125	140	135	170	205
Netherlands (²)	4 510	5 110	3 790	3 965	4 110	3 850	3 045
Austria	2 560	2 390	2 750	3 740	3 435	5 385	8 550
Poland	1 835	1 695	3 090	3 410	1 830	1 705	1 930
Portugal	470	355	490	355	670	555	465
Romania	470	710	750	685	810	1 010	1 645
Slovenia	495	325	185	170	230	200	215
Slovakia	90	180	315	420	330	485	375
Finland	760	820	670	990	885	700	790
Sweden	3 230	3 215	4 200	3 825	3 385	4 645	3 435
Liechtenstein	15	35	10	5	10	5	5
Norway	1 520	1 275	2 560	1 775	730	670	890
Switzerland	1 365	1 290	1 300	1 430	1 520	1 285	1 465

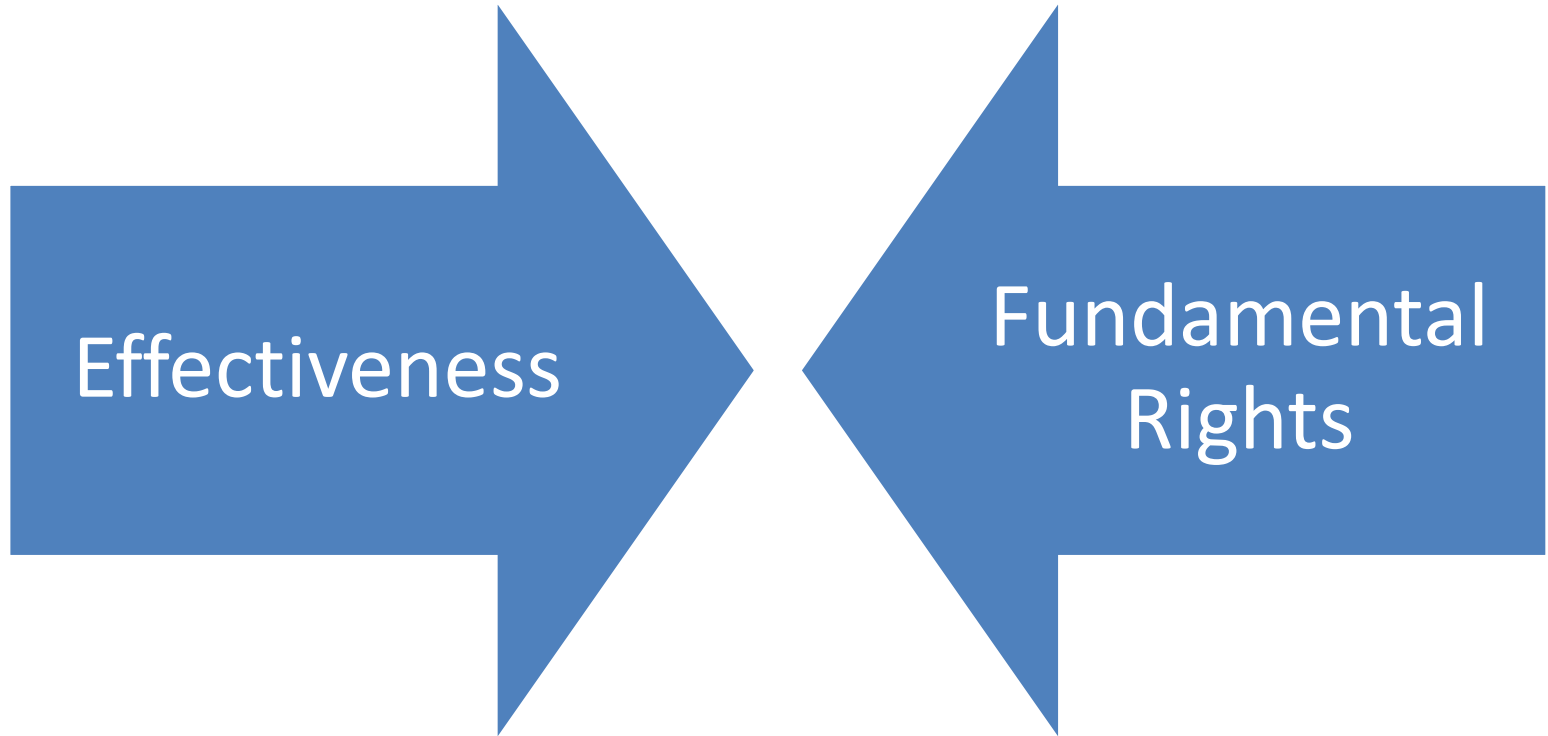
(*) Q3 2022 data are estimated using last available period for Czechia, Germany, Lithuania and Luxembourg.

(²) Q1 2022, break in series.

(²) Netherlands, Q3 2022 provisional data.

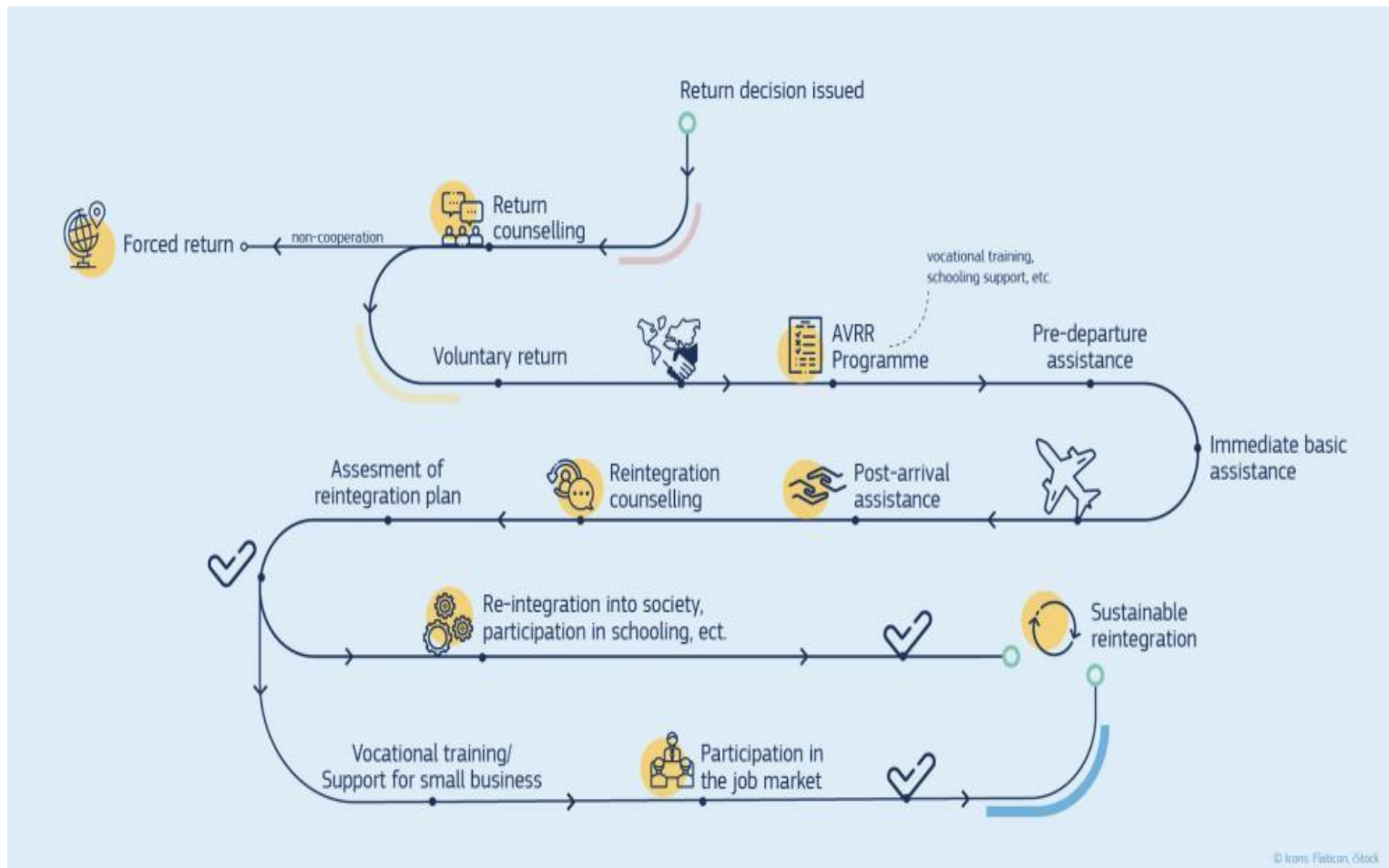
Source: Eurostat (online data code: migr_eiord1)

DIRECTIVE 2008/115/EC (Return Directive)

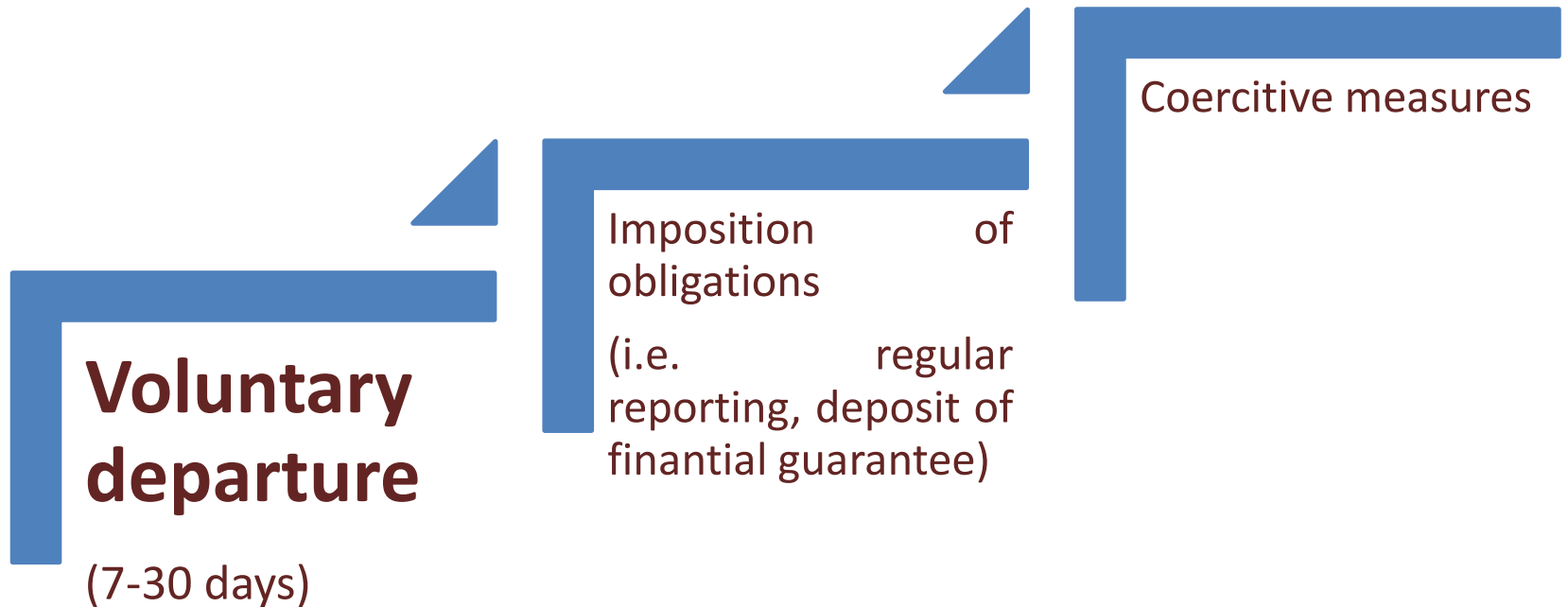


Respect for fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations (**Article 1**)

Voluntary Return and Reintegration



Gradual steps



DIRECTIVE 2008/115/EC (Return Directive)

CJEU Judgment of 28 April 2011 in case C-61/11 PPU, *El Dridi*

- in principle criminal legislation and the rules of criminal procedure are matters for which the Member States are responsible for
- this branch of the law may nevertheless be affected by European Union law

Limits to return

The Directive 2008/115/EC (art. 5) precludes a return decision from being taken or a removal order from being made in respect of a third-country national who is staying illegally on the territory of a Member State and suffering from a serious illness, where there are substantial grounds for believing that the person concerned would be exposed, in the third-country to which he or she would be removed, to a real risk of a significant, permanent and rapid increase in his or her pain, if he or she were returned, on account of the only effective analgesic treatment being prohibited in that country. A Member State may not lay down a strict period within which such an increase must be liable to materialise in order to preclude that return decision or that removal order.

It precludes the consequences of the removal order in the strict sense on the state of health of a third-country national from being taken into account by the competent national authority solely in order to examine whether he or she is able to travel.

- **CJEU (Grand Chamber), November 22, 2022, in case C-69/21**

Detention of third-country nationals

- ❑ In order to prepare the return and/or carry out the removal process. In particular when:
 - ✓ There is a risk of absconding or
 - ✓ The third-country national concerned avoids or hampers the preparation of return or the removal process.



Detention of third-country nationals

- “an essential element for enhancing the effectiveness of the Union’s return system”
- the maximum duration of detention set out in the Directive (18 months) “is needed to complete the return procedure successfully... short periods of detention are precluding effective removals”.

[Commission Recommendation on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council, C\(2017\) 1600](#)



Detention of third-country nationals

Article 18 of Directive 2008/115, read in conjunction with Article 47 of the Charter of Fundamental Rights, must be interpreted as meaning that a national court which is called upon, in the exercise of its jurisdiction, to order the detention or an extension of the detention, in a prison facility, of a third-country national for the purpose of removal must be able to verify compliance with the conditions laid down in Article 18 of that directive under which it is possible for a Member State to provide that that national is to be detained in a prison facility.

Article 16(1) of Directive 2008/115, read in conjunction with the principle of the primacy of EU law, must be interpreted as meaning that a **national court must disapply legislation of a Member State which makes it possible, on a temporary basis, for illegally staying third-country nationals to be detained, for the purpose of their removal, in prison accommodation, separated from ordinary prisoners, where the conditions laid down in Article 18(1) and the second sentence of Article 16(1) of that directive for such national legislation to comply with EU law are not or are no longer satisfied.**



CJEU, March 10, 2022
in case C-519/20

Normative trends

Recasting the Return Directive

Proposal for a Regulation addressing situations of instrumentalisation in the field of migration and asylum

towards a disruption of the system of guarantees required by Directive 2008/115/EC ?