

2.3.5 **calls upon** the Commission to protect the work of civil society organisations representing national minorities in Croatia and to issue an annual report on respect for the rights of national minorities, focusing in particular on the use of bilingualism (where provided for) in local and regional administrations;

2.3.6 **proposes** that Croatia be allowed to participate as of 2007 in the Community action programme supporting bodies

working in the field of active European citizenship (civic participation);

2.3.7 **suggests** that the Commission request that a representative of EU Member States' civil society be allowed to participate as an observer in the Council for Civil Society Development set up by the Croatian government.

Brussels, 27 April 2006.

The President
of the Committee of the Regions
Michel DELEBARRE

Opinion of the Committee of the Regions on the

- **Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union**
- **Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Migration and Development: Some concrete orientations**
- **Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals**

(2006/C 206/06)

The Committee of the Regions,

HAVING REGARD TO the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Migration and Development: Some concrete orientations (COM(2005) 390 final) and the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union (COM(2005) 389 final);

HAVING REGARD TO the Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (COM(2005) 391 final);

HAVING REGARD TO the decision of the European Commission of 1 September 2005 to consult it on this subject, under the first paragraph of Article 265 of the Treaty establishing the European Community;

HAVING REGARD TO the decision of its President of 23 September 2005 to instruct the Commission for External Relations (RELEX) to draw up an opinion on this subject;

HAVING REGARD TO Article 63 of the Treaty establishing the European Community;

HAVING REGARD TO EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted;

HAVING REGARD TO Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;

HAVING REGARD TO Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents;

HAVING REGARD TO its opinion on the Green Paper on an EU approach to managing economic migration (CdR 82/2005 fin);

HAVING REGARD TO its opinion on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on immigration, integration and employment (CdR 223/2003 fin), OJ C 109 of 30.4.2004, p 0046-0049;

HAVING REGARD TO its draft opinion (CdR 51/2006 rev. 1) adopted on 2 March 2006 by the Commission for Constitutional Affairs, European Governance and the Area of Freedom, Security and Justice (rapporteur: **Andreas Schieder (AT/PES)**);

adopted the following opinion at its 64th plenary session, held on 26 and 27 April 2006 (meeting of 27 April):

I. COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS – A COMMON AGENDA FOR INTEGRATION - FRAMEWORK FOR THE INTEGRATION OF THIRD-COUNTRY NATIONALS IN THE EUROPEAN UNION COM(2005) 389 FINAL.

1. Views of the Committee of the Regions

The Committee of the Regions

1.1 **welcomes** the fact that the Commission is responding to the call from the European Council for proposals for a coherent European framework for the integration of third-country nationals;

1.2 **notes** that in its initial response the Commission concentrates primarily on proposals for specific measures for the consistent application of the Common Basic Principles for Integration and on the EU support mechanisms (new possibilities for action at EU and Member State levels, new ways of guaranteeing coherence between EU and Member State measures);

1.3 **acknowledges** that the Communication's tables of sample measures at both national and EU level are based on the Common Basic Principles for Integration (adopted by the

European Council in November 2004) and on the integration handbook, the preparatory measures for INTI and the preparations for establishing a European Integration Fund;

1.4 **notes with regret** that the Commission does not say which proposals are to be prioritised, but wishes this to be done by the Member States themselves;

1.5 **welcomes** the Commission's view of integration as a two-way process;

1.6 **considers it important** that measures be taken to strengthen the adaptability of the host country population (raising of intercultural awareness and knowledge, acceptance of migration) and that reinforcement be given to the role of private organisations in diversity management and to cooperation with the media (promoting a voluntary code of conduct);

1.7 **welcomes** the fact that respect for the basic values of the EU should underpin integration. Here the primary focus needs to be on the citizenship element of induction programmes;

1.8 **welcomes** the Commission's focus on education and **reiterates** the need to implement specific instruments and measures in the field of education so that migrants can integrate fully into the education system of the host country and consequently into society as a whole;

1.9 **stresses** that employment must be viewed as a key component of the integration process. The following are particularly important: innovative ideas for avoiding discrimination, recognition of education and professional experience (by setting up common procedures for this recognition in all Member States), involvement of the social partners in the measures, help to enhance the training capacities of small companies, professional organisations and trade unions, and positive measures to promote recruitment of migrants. The Committee emphasises that uniform, clear and non-discriminatory criteria should be established throughout the EU for assessing the education systems of individual countries and the professional experience of citizens from EU Member States;

1.10 **stresses** that integration is a dynamic, two-way process of mutual accommodation. Welcoming initiatives and offers of help are important confidence-building measures in this respect;

1.11 **stresses the importance** of making both migrants and the resident population aware of the EU's basic values;

1.12 **stresses** that promoting access to the labour market and education opportunities, and recognising qualifications and professional experience, are important elements of the integration process;

1.13 **welcomes** the proposed support for strengthening the capacity of public and private service providers to interact with third-country nationals (translation service, intercultural skills, integration and diversity management, mentor programmes);

1.14 **agrees** that frequent encounters between migrants and residents, common forums, intercultural dialogue, information about migrants and their culture, and integration-friendly living conditions in cities should be reinforced;

1.15 **notes** that the EU Charter of Fundamental Rights guarantees respect for cultural diversity and the right to freedom of belief, save where it conflicts with other inviolable EU laws, the Universal Declaration of Human Rights or national law;

1.16 **stresses** the importance of migrants participating in the democratic process and in formulating integration policy measures, particularly at local level;

1.17 **welcomes** the comprehensive nature of the catalogue of sample measures and its inclusion of all important facets of

integration. This makes it a potentially valuable starting point for aligning integration policies in the Member States;

1.18 **stresses** that clear goals must be formulated. Indicators and evaluation mechanisms should be used to monitor these so that measures can be adjusted, progress in integration assessed and information flows more efficiently configured;

1.19 **attaches particular importance to** cooperation and information exchange (national contact points for integration – NCPI, the integration handbook, website on the integration issue).

2. The Committee of the Regions' recommendations

The Committee of the Regions

2.1 **stresses** that while national circumstances and traditions may dictate the choice, manner and means of application, the proposals are nevertheless considered core elements of the Member States' integration policies;

2.2 **points out** that the gender aspect and the situation of young migrants and children from migrant families should receive particular attention;

2.3 **recommends** that a basic knowledge of the language, history and institutions of the host community be considered a prerequisite for integration;

2.4 **calls for** efforts to be made in the education system to equip migrants for more successful and active participation in society. For example, there should be a diversity dimension to school curricula and particular support in education for young migrants. The importance of pre-school education should also be highlighted and projects set up to ease the transition from school to work, and tailored programmes should therefore be promoted in the Member States;

2.5 **stresses** that in addition to the need to 'address[ing] effectively migrant youth delinquency', as the Commission states, there is also a need to promote effective prevention and information policies upstream of the process;

2.6 **underlines** the fact that equal access for migrants to public and private goods and services, without discrimination, should be promoted as crucial prerequisites for integration;

2.7 **stresses** that acceptance of other ways of life and views has a limit that may not be crossed, i.e. respect for human rights and the fight against all types of discrimination, particularly on the grounds of gender, as protected by EU and international law. Women should receive special protection and be guaranteed equal opportunities and full access to employment, training, and the political life of European democratic society. Their free will should also be protected, avoiding forced marriages, combating domestic violence, guaranteeing their sexual and reproductive rights, prohibiting degrading practices such as female genital mutilation, etc. Human rights are non-negotiable, and flouting them cannot be justified on any traditional and/or cultural grounds. Specific measures should therefore be devised and implemented to inform, prevent, support and raise awareness, in order to combat all discriminatory and/or degrading practices and thus move towards achieving equal opportunities for both male and female migrants;

2.8 **highlights** the Communication's lack of binding measures and analytical focus. This gives the general impression that 'soft measures' (such as dialogue, forums and information provision) lie at the heart of the Communication; the importance of these measures should not be underestimated. Those that are structurally important for integration, such as the political involvement of migrants (Principle 9), appear only peripheral;

2.9 **calls for** clear differentiation and classification according to political, legal, structural and institutional responsibilities and players in the host society and according to the importance of the measures. To this end, the Common Basic Principles should also be further elaborated to make them a stronger instrument;

2.10 **recommends** steps for a coherent approach at EU level. The legal framework for admission and stay, including rights and obligations, should be consolidated;

2.11 **notes** that the Communication raises the gender issue as a matter of concern, and the language should reflect this;

2.12 **calls for** every future migration instrument forming part of the legal framework for admission and stay to provide for equal treatment and rights for female migrants;

2.13 **underscores** the importance, particularly on the participation front, of interest group involvement and the idea of establishing a European integration forum of EU umbrella organisations (consultation, recommendations, close contact with National Contact Points for Integration – NCPI). The European Parliament (EP), the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR) should be invited to take part. The European Integration Forum should be involved in the preparatory conference for

future integration handbooks. The annual report on migration and integration should be continued and developed further;

2.14 **points out** that many of the promised measures (welcoming initiatives, offers of help, raising host community awareness, offers of training, etc.) are to be delivered by local bodies. It is crucial, therefore, that these be given the necessary resources. The same is true at regional level (establishment of information instruments, induction and cultural programmes, etc.);

2.15 **calls for** municipalities and regions to be adequately funded so that they can implement integration measures;

2.16 **proposes** setting up a database (e.g. with information on the recognition of education and qualifications and on the needs of migrants);

2.17 **points out** that the regional and local levels perform a major and indispensable role in integration and can contribute comprehensive knowledge and know-how. They should therefore be heavily involved at a very early stage in developing strategies and in the whole process;

2.18 **calls for** measures and incentives enabling migrants themselves to make use of the ideas proposed (e.g. job-seeking and training incentives).

2.19 **stresses** the need to improve the methods for calculating the number of migrants in order to be able to adjust and develop the integration measures to be implemented.

II. COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS - MIGRATION AND DEVELOPMENT: SOME CONCRETE ORIENTATIONS (COM(2005) 390 FINAL)

1. Views of the Committee of the Regions

The Committee of the Regions

1.1 **notes** that the Communication contains steps for improving the effect of migration on development. The basis for this is the Communication of December 2002 and the focus is on south-north migration;

1.2 **notes** that, together with the effect of emigration on the development of the countries of origin, it is also important to study the effects of development cooperation on emigration, as it is a basic aspect of this. Only by helping the countries of origin of migration to provide sufficient opportunities for their citizens will it be possible to control migratory flows in the long term;

1.3 **notes** that the Communication sets great store by supporting temporary and virtual return as a way of transferring knowledge and experience to the benefit of home countries and their development (brain-circulation instead of brain-drain);

1.4 **welcomes** the particular importance attached to integrating migration policy into development policy, employing returning migrants in development, facilitating capital transfers and remittances, and co-financing projects founded on remittances;

1.5 **approves of** the Communication's intention generally to support the maintenance of contacts between countries of origin and migrants. (This element plays an even greater part in the citizenship policies of the individual Member States.);

1.6 **stresses** the importance of greater emphasis on migrants as bridge-builders to their countries of origin. This approach should serve as an argument for additional training in the language of the host country, along with additional literacy training and classes given in the mother tongue;

1.7 **notes** that the Green Paper on legal immigration, for example, makes it clear that the emphasis will be on promoting temporary jobs and immigration of highly qualified workers.

2. Recommendations of the Committee of the Regions

The Committee of the Regions

2.1 **notes** that money flows can only help to achieve development goals. They are of a purely private nature and hence cannot replace state development aid;

2.2 **stresses** that the charges and conditions of transfer are unsatisfactory. Measures are required to cut charges, increase safety and speed up transactions. While these are achievable in the short term, the impact on development should be viewed as a longer-term goal;

2.3 **proposes** that the following measures be provided for:

- promoting cheaper, quicker and safer remittance transfers;
- better data;
- transparency;
- legal framework;
- technical framework;
- access to financial services.

2.4 **welcomes** the envisaged support for developing countries in identifying and building up contacts with their diasporas. Databases should be created to provide governments in the countries of origin with information they need to draw on the highest-skilled people in their diasporas. Should the need arise, these people can be invited to return. However, it should be made clear that diaspora information can only be registered in databases on a voluntary basis;

2.5 **recognises** that short-term migration is intended to improve capacity in the country of origin. It should not, however, serve as the general model for seasonal workers;

2.6 **stresses** that the return migration and short-term or virtual return referred to are impossible under the law as it stands (Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents), since even migrants with an unrestricted right to settle forfeit this status when they are absent from the host country for a relatively long period of time. To be welcomed is the fact that the Communication announces that the Commission will explore how third-country nationals do not forfeit their right to residence although they might return to their country of origin for a while as part of a return programme;

2.7 **proposes** drawing up common legislation that would enable migrants with the unrestricted right to settle to travel to their country of origin for as long as they wish, without consequently forfeiting their status as third-country nationals who are long-term residents, or their right to settle;

2.8 **recognises** that the Communication reflects the growing discussion in Europe about the role of migrants in promoting development (remittances, knowledge transfer, etc.). Seen in these terms, temporary migration is beneficial – though first of all measures should be explored which are based on voluntary return or a system of incentives;

2.9 **calls**, therefore, for a rethink in this context of what transnationality should mean for integration policy;

2.10 **commends** the Communication's adoption of a novel perspective which casts the country of origin as a stakeholder in migration management. However, this positive aspect of temporary migration and temporary return would require an unconditional right of return for long-term or longer-term migrants (in direct contradiction with Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, under which migrants automatically forfeit their acquired right to stay if absent from the territory of the Community);

2.11 **welcomes** the Communication's emphasis on encouraging temporary migration provided it is voluntary and based on a system of incentives. Temporary migration can be a useful instrument in developing 3rd world countries;

2.12 **believes** that temporary migration can only work effectively if migrants are allowed re-entry into the host country after a temporary return to their country of origin. Therefore, **calls on** the Member States which currently prevent multiple entries to reconsider the ban;

2.13 **recognises** that seasonal employment is a short-term benefit for those concerned, since they have the chance to earn money and gain professional experience for a brief period. However, they return to their countries of origin without hope of improving their economic and social situation. We think that a longer-term perspective is preferable;

2.14 **welcomes** the support for return programmes, but these can only work under an effective development policy that includes strengthening of coordinated action under decentralised cooperation;

2.15 **calls**, therefore, for sufficient investment in infrastructure and education measures and monitoring resource use on the ground;

2.16 **recommends** that seasonal immigrant workers, who are potentially more at risk of exploitation, be protected against such risk through appropriate measures;

2.17 **sees** that, although there are focused and forward-looking approaches in the Communication's proposals, work is needed to find a solution to the discrepancies referred to above;

2.18 **stresses** that restrictive approaches must not be allowed to gain the upper hand in the EU;

2.19 **stresses** the need to avert a scenario in which extensive measures for forced return are legitimised on the grounds of promoting development without a system of broad legal immigration opportunities for all levels of qualification (see the Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, COM(2005) 391 final);

2.20 **stresses** that it is crucial to assist the development of migrants' countries of origin, promoting cooperation with them in all areas through agreements and specific programmes;

2.21 **stresses** that the regional and local levels perform a major and indispensable role in integration and can con-

tribute comprehensive knowledge and know-how. They should therefore be heavily involved at a very early stage in developing strategies and in the whole process.

III. PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON COMMON STANDARDS AND PROCEDURES IN MEMBER STATES FOR RETURNING ILLEGALLY STAYING THIRD-COUNTRY NATIONALS COM(2005) 391 FINAL

1. Views of the Committee of the Regions

The Committee of the Regions

1.1 **stresses** that an effective repatriation policy is a necessary component of a well-conceived and credible migration policy;

1.2 **points out** that the Directive is intended to guarantee a fair and transparent procedure;

1.3 **notes** that the principle of voluntary return (incentives) is to be implemented through a harmonised two-step procedure (return decision – issue and enforcement of a removal order);

1.4 **welcomes** the creation of EU-wide re-entry bans, as this also provides the basis for a common data system (SIS II).

2. The Committee of the Regions' recommendations

The Committee of the Regions

2.1 **recommends** that the principles of the rule of law and the right to fair trial should not be sacrificed to xenophobia and a focus on purely economic considerations;

2.2 **stresses** that when introducing minimum procedural safeguards particular attention should be paid to the proportionality of coercive measures. As migrants often face harsh punishment on return to their home countries, the necessary measures should be adopted in order to safeguard human rights, giving absolute priority to protecting them when there is a risk of their being returned;

2.3 **regrets** that no thought has been given to special standards of protection for women, girls and minors, and for people with disabilities;

2.4 **calls** for EU protection to be extended to victims and witnesses of human trafficking and other migration-related crimes;

2.5 **points out** that human rights as enshrined in Community law (above all the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Charter of Fundamental Rights of the European Union) should serve as the basis for future standards. The express and binding reference to specific articles of the Convention and of the Charter is intended to ensure that this is respected in the implementation of the Directive by Member States. Loose phrasing ('take due account', 'in accordance with') could be interpreted as allowing undue latitude;

2.6 **urges** that simply staying illegally in the territory of a Member State should not be considered compelling proof of a risk of absconding. To do so would amount to an unacceptable pre-judgement infringing Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (right to a fair hearing);

2.7 **underlines** the importance of protecting victims and witnesses of human trafficking. Victims and witnesses of human trafficking should not be treated merely as tools for securing convictions. Instead, prior to any return, consideration should be given to the situation in the home country to avoid encouraging coercion and menace on the part of criminals;

2.8 **wishes** the passage regarding a 'threat to public policy or public security', justifying imposition of a re-entry ban, to refer only to exceptionally serious trespasses against the vital interests of Member States. Conduct that has only a minor impact on public welfare, such as unjustified illegal stay, should not incur this sanction;

2.9 **recommends** that people without sufficient resources be granted legal aid without any needs assessment. The need

for this financial support cannot be seriously predicted while a procedure is ongoing. Hence, the fact of lack of means should be the decisive factor in granting legal aid;

2.10 **calls for** coercive measures (temporary custody) to be proportional, as migrants often face harsh punishment on return to their home countries. Some people tend to behave desperately, but human rights must not, therefore, be neglected;

2.11 **notes** that Member States should be obliged to guarantee appropriate medical care during temporary custody;

2.12 **calls for** full implementation of the Convention on the Rights of the Child of 20 November 1989. Particular emphasis should be accorded to the following rights: freedom of thought, conscience and religion; protection of private life; protection from the use of violence, mistreatment and neglect; the right to health care; the right to education, schooling and training; and protection of minorities;

2.13 **stresses** that to ensure that the Directive functions properly, the serving of orders of other Member States in the territory of the individual Member States must be recognised and allowed. This should be achieved by concluding bilateral or multilateral agreements, which should also provide for the necessary cooperation between authorities;

2.14 **favours** the establishment of a central IT system for storing personal data. The authorities of the individual Member States should have access to this system and be required to submit the necessary data.

Recommendation 1

Article 5

Text proposed by the Commission COM(2005) 391 final - 2005/0167 (COD)	Amendment
<p style="text-align: center;"><i>Article 5</i></p> <p>Family relationships and best interest of the child</p> <p>When implementing this Directive, Member States shall take due account of the nature and solidity of the third country national's family relationships, the duration of his stay in the Member State and of the existence of family, cultural and social ties with his country of origin. They shall also take account of the best interests of the child in accordance with the 1989 United Nations Convention on the Rights of the Child.</p>	<p style="text-align: center;"><i>Article 5</i></p> <p>Family relationships and best interest of the child</p> <p>When implementing this Directive, Member States shall take account of of the nature and solidity of the third country national's family relationships <u>under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms</u>, the duration of his stay in the Member State and of the existence of family, cultural and social ties with his country of origin. They shall also respect <u>take account of</u> the best interests of the child in accordance with the 1989 United Nations Convention on the Rights of the Child.</p>

Reason

It is a particular concern of the Committee of the Regions that human rights as enshrined in Community law (above all the European Convention for the Protection of Human Rights and Fundamental Freedoms) is intended to serve as the basis for future standards. The express and binding reference to specific articles of the Convention ensures that this is respected in the implementation of the Directive by Member States. Loose phrasing ('take due account', 'in accordance with') could be interpreted as allowing undue latitude.

Recommendation 2

Article 6.2

Text proposed by the Commission COM(2005) 391 final - 2005/0167 (COD)	Amendment
<p style="text-align: center;"><i>Article 6</i></p> <p style="text-align: center;">Return decision</p> <p>The return decision shall provide for an appropriate period for voluntary departure of up to four weeks, unless there are reasons to believe that the person concerned might abscond during such a period. Certain obligations aimed at avoiding the risk of absconding, such as regular reporting to the authorities, deposit of a financial guarantee, submission of documents or the obligation to stay at a certain place may be imposed for the duration of that period.</p>	<p style="text-align: center;"><i>Article 6</i></p> <p style="text-align: center;">Return decision</p> <p>The return decision shall provide for an appropriate period for voluntary departure of up to four weeks, unless there are reasons to believe that the person concerned might abscond during such a period. Certain obligations aimed at avoiding the risk of absconding, such as regular reporting to the authorities, deposit of a financial guarantee, submission of documents or the obligation to stay at a certain place may be imposed for the duration of that period.</p> <p>2a) <u>Risk of absconding shall not be assumed merely on the grounds that a third-country national is staying unlawfully in the territory of a Member State.</u></p>

Reason

The proposed addition makes it clear that that simply staying illegally on the territory of a Member State should not of itself be considered compelling proof of a risk of absconding. To do so would amount to an unacceptable pre-judgement infringing Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (right to a fair hearing).

Recommendation 3

Article 6.5

Text proposed by the Commission COM(2005) 391 final - 2005/0167 (COD)	Amendment
<p style="text-align: center;"><i>Article 6</i></p> <p style="text-align: center;">Return decision</p> <p>Member States may, at any moment decide to grant an autonomous residence permit or another authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory. In this event no return decision shall be issued or where a return decision has already been issued, it shall be withdrawn.</p>	<p style="text-align: center;"><i>Article 6</i></p> <p style="text-align: center;">Return decision</p> <p>Member States may, at any moment decide to grant an autonomous residence permit or another authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory. In this event no return decision shall be issued or where a return decision has already been issued, it shall be withdrawn.</p> <p>5a) <u>The Member States shall protect victims and witnesses of human trafficking. In such cases, no return decision shall be issued – and any decision already issued shall be revoked - until it is ascertained that the victims and witnesses of human trafficking can be returned to a third country which is safe for them. In order to enable Member States properly to implement measures to defend the rights of migrants, the European Union should decide on various mechanisms for the provision of financial assistance.</u></p>

Reason

The Committee of the Regions wishes to highlight the importance of protecting these persecuted groups of people. Victims and witnesses of human trafficking should not be treated merely as tools for securing convictions. Instead, prior to any return, consideration should be given to the situation in the home country to avoid encouraging coercion and menace on the part of criminals.

The EU should be jointly responsible in all policies against illegal migration which, at present, is not a problem of individual countries but a challenge for the EU as a whole. The Financial Perspectives of the EU for 2007-2013 provide for financial assistance mechanisms under the programme for the Area of Freedom, Security and Justice. Certain aspects of this programme are devoted to migration and integration policies and could be used, in part, for these purposes.

Recommendation 4

Article 8.2

Text proposed by the European Commission COM(2005) 391 final – 2005/0167 (COD)	Amendment
<p style="text-align: center;"><i>Article 8</i></p> <p style="text-align: center;">Postponement</p> <p>1. Member States may postpone the enforcement of a return decision for an appropriate period, taking into account the specific circumstances of the individual case.</p> <p>2. Member States shall postpone the execution of a removal order in the following circumstances, for as long as those circumstances prevail:</p> <p>a) inability of the third-country national to travel or to be transported to the country of return due to his or her physical state or mental capacity;</p> <p>b) technical reasons, such as lack of transport capacity or other difficulties making it impossible to enforce the removal in a humane manner and with full respect for the third-country national's fundamental rights and dignity;</p> <p>c) lack of assurance that unaccompanied minors can be handed over at the point of departure or upon arrival to a family member, an equivalent representative, a guardian of the minor or a competent official of the country of return, following an assessment of the conditions to which the minor will be returned.</p> <p>3. If enforcement of a return decision or execution of a removal order is postponed as provided for in paragraphs 1 and 2, certain obligations may be imposed on the third country national concerned, with a view to avoiding the risk of absconding, such as regular reporting to the authorities, deposit of a financial guarantee, submission of documents or the obligation to stay at a certain place.</p>	<p style="text-align: center;"><i>Article 8</i></p> <p style="text-align: center;">Postponement</p> <p>1. Member States may postpone the enforcement of a return decision for an appropriate period, taking into account the specific circumstances of the individual case.</p> <p>2. Member States shall postpone the execution of a removal order in the following circumstances, for as long as those circumstances prevail:</p> <p>a) inability of the third-country national to travel or to be transported to the country of return due to his or her physical state or mental capacity;</p> <p>b) technical reasons, such as lack of transport capacity or other difficulties making it impossible to enforce the removal in a humane manner and with full respect for the third-country national's fundamental rights and dignity;</p> <p>c) lack of assurance that unaccompanied minors can be handed over at the point of departure or upon arrival to a family member, an equivalent representative, a guardian of the minor or a competent official of the country of return, following an assessment of the conditions to which the minor will be returned.</p> <p><u>2 a) In any event the Member States must postpone enforcement of a decision to return an unaccompanied minor until it can be ensured that he can be handed over at the point of departure or upon arrival to a family member, an equivalent representative, a guardian of the minor or a competent official of the country of return, following an assessment of the best interest of the minor and of the conditions to which he will be returned.</u></p> <p>3. If enforcement of a return decision or execution of a removal order is postponed as provided for in paragraphs 1 and 2, certain obligations may be imposed on the third country national concerned, with a view to avoiding the risk of absconding, such as regular reporting to the authorities, deposit of a financial guarantee, submission of documents or the obligation to stay at a certain place.</p>

Reason

It would be a grave mistake, and at odds with all international conventions on the protection of human rights, in particular the New York Convention on the Rights of the Child, to allow Member States to return minors without first ensuring the above checks had been made; these checks are crucial in assessing the best interest of the minor, which must be the basic criterion informing all decisions relating to minors.

Recommendation 5

Article 9.3

Text proposed by the Commission COM(2005) 391 final - 2005/0167 (COD)	Amendment
<p style="text-align: center;"><i>Article 9.3</i></p> <p style="text-align: center;">Re-entry ban</p> <p>The re-entry ban may be withdrawn, in particular in cases in which the third-country national concerned:</p> <p>(a) is the subject of a return decision or a removal order for the first time;</p> <p>(b) has reported back to a consular post of a Member State;</p> <p>(c) has reimbursed all costs of his previous return procedure.</p>	<p style="text-align: center;"><i>Article 9.3</i></p> <p style="text-align: center;">Re-entry ban</p> <p>The re-entry ban may be withdrawn <u>at any time., in particular in cases in which the third-country national concerned:</u></p> <p>(a) is the subject of a return decision or a removal order for the first time;</p> <p>(b) has reported back to a consular post of a Member State;</p> <p>(c) has reimbursed all costs of his previous return procedure.</p>

Reason

The proposed amendment makes the provision clearer. Specifically, explicitly linking (indent c) the withdrawal of a re-entry ban to reimbursement of costs of a previous return procedure could lead to unwarranted discrimination in favour of the wealthy or even of rich gangs of traffickers. We think the case still has to be made for the requirement of reporting back to a consular post.

Recommendation 6

Article 12.3

Text proposed by the Commission COM(2005) 391 final - 2005/0167 (COD)	Amendment
<p style="text-align: center;"><i>Article 12</i></p> <p style="text-align: center;">Judicial remedies</p> <p>3. Member States shall ensure that the third-country national concerned has the possibility to obtain legal advice, representation and, where necessary, linguistic assistance. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.</p>	<p style="text-align: center;"><i>Article 12</i></p> <p style="text-align: center;">Judicial remedies</p> <p>3. Member States shall ensure that the third-country national concerned has the possibility to obtain legal advice, representation and, where necessary, linguistic assistance. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice</p>

Reason

The Committee of the Regions recommends that people without sufficient resources be granted legal aid without any needs assessment. The need for this financial support cannot be seriously predicted while a procedure is ongoing. Hence, the fact of lack of means should be the decisive factor in granting legal aid.

Recommendation 7

Article 14.1

Text proposed by the Commission COM(2005) 391 final - 2005/0167 (COD)	Amendment
<p style="text-align: center;"><i>Article 14</i></p> <p style="text-align: center;">Temporary custody</p> <p>1. Where there are serious grounds to believe that there is a risk of absconding and where it would not be sufficient to apply less coercive measures, such as regular reporting to the authorities, the deposit of a financial guarantee, the handing over of documents, an obligation to stay at a designated place or other measures to prevent that risk, Member States shall keep under temporary custody a third-country national, who is or will be subject of a removal order or a return decision,</p>	<p style="text-align: center;"><i>Article 14</i></p> <p style="text-align: center;">Temporary custody</p> <p>1. Where there are serious grounds to believe that there is a risk of absconding and where it would not be sufficient to apply less coercive measures, such as regular reporting to the authorities, the deposit of a financial guarantee, the handing over of documents, an obligation to stay at a designated place or other measures to prevent that risk, Member States shall keep under temporary custody a third-country national, who is or will be subject of a removal order or a return decision., <u>Article 6(2a) shall apply in this case.</u></p>

Reason

The proposed amendment makes it clear that simply staying illegally on the territory of a Member State should not be considered compelling proof of a risk of absconding. To do so would amount to an unacceptable pre-judgement infringing Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (right to a fair hearing).

Recommendation 8

Article 15.1

Text proposed by the Commission COM(2005) 391 final - 2005/0167 (COD)	Amendment
<p style="text-align: center;"><i>Article 15</i></p> <p style="text-align: center;">Conditions of temporary custody</p> <p>1. Member States shall ensure that third-country nationals under temporary custody are treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law. Upon request they shall be allowed without delay to establish contact with legal representatives, family members and competent consular authorities as well as with relevant international and non-governmental organisations.</p>	<p style="text-align: center;"><i>Article 15</i></p> <p style="text-align: center;">Conditions of temporary custody</p> <p>1. Member States shall ensure that third-country nationals under temporary custody are treated in a humane and dignified manner with respect for <u>in accordance with Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms</u> their fundamental rights and in compliance with international and national law. <u>Particular attention shall be paid to the proportionality of coercive measures.</u> Upon request they shall be allowed without delay to establish contact with legal representatives, family members and competent consular authorities as well as with relevant international and non-governmental organisations.</p>

Reason

The purpose of the proposed amendment is to make clearer the obligation under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms not to subject anyone to torture or an inhuman or degrading punishment or treatment.

The Committee of the Regions lays particular stress on the requirement of proportionality, since migrants often face harsh punishment on return to their home countries. Some people tend to behave desperately, but this must not lead to the neglect of human rights.

Recommendation 9

Article 15.2

Text proposed by the Commission COM(2005) 391 final - 2005/0167 (COD)	Amendment
<p style="text-align: center;"><i>Article 15</i></p> <p style="text-align: center;">Conditions of temporary custody</p> <p>2. Temporary custody shall be carried out in specialised temporary custody facilities. Where a Member State cannot provide accommodation in a specialised temporary custody facility and has to resort to prison accommodation, it shall ensure that third-country nationals under temporary custody are permanently physically separated from ordinary prisoners.</p> <p>Particular attention shall be paid to the situation of vulnerable persons. Member States shall ensure that minors are not kept in temporary custody in common prison accommodation. Unaccompanied minors shall be separated from adults unless it is considered in the child's best interest not to do so.</p>	<p style="text-align: center;"><i>Article 15</i></p> <p style="text-align: center;">Conditions of temporary custody</p> <p>2. Temporary custody shall be carried out in specialised temporary custody facilities. Where a Member State cannot provide accommodation in a specialised temporary custody facility and has to resort to prison accommodation, it shall ensure that third-country nationals under temporary custody are permanently physically separated from ordinary prisoners. <u>Appropriate medical care shall be guaranteed in the case of physical and psychological problems. Particular attention shall be paid to the care of traumatised people.</u></p> <p><u>Particular attention shall be paid to the specific needs of women. They shall always be held in separate areas from men during temporary custody.</u></p> <p>3. Particular attention shall be paid to the situation of vulnerable persons. <u>Member States shall ensure respect for the Convention of the Rights of the Child of 20 November 1989. In particular,</u> Member States shall ensure that minors are not kept in temporary custody in common prison accommodation. Unaccompanied minors shall be separated from adults unless it is considered in the child's best interest not to do so.</p>

Reason

The intention is to make clear the obligation of the Member States to guarantee appropriate medical care during temporary custody.

The rights of women and girls should be expressly stipulated.

The Convention of the Rights of the Child of 20 November 1989 should be implemented in full. Particular emphasis should be accorded to the following rights: freedom of thought, conscience and religion; protection of private life; protection from the use of violence, mistreatment and neglect; the right to health care; the right to education, schooling and training; and protection of minorities.

Recommendation 10

Article 11.1

Text proposed by the Commission COM(2005) 391 final - 2005/0167 (COD)	Amendment
<p style="text-align: center;"><i>Article 11</i></p> <p style="text-align: center;">Form</p> <p>1. Return decisions and removal orders shall be issued in writing.</p> <p>Member States shall ensure that the reasons in fact and in law are stated in the decision and/or order and that the third-country national concerned is informed about the available legal remedies in writing.</p>	<p style="text-align: center;"><i>Article 11</i></p> <p style="text-align: center;">Form</p> <p>1. Return decisions and removal orders shall be issued in writing.</p> <p>Member States shall ensure that the reasons in fact and in law are stated in the decision and/or order and that the third-country national concerned is informed about the available legal remedies in writing.</p> <p>1a. <u>Member States shall recognise and allow the serving of official documents and decisions of other Member States as part of the above procedure.</u></p>

Reason

To ensure that the Directive functions properly, the serving of orders of other Member States on the territory of the individual Member States must be recognised and allowed. This should be achieved by concluding bilateral or multilateral agreements, which should also provide for the necessary cooperation between authorities.

Recommendation 11

New Article 16a

Brussels
COM(2005) 391 final

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on common standards and procedures in Member States for returning illegally staying third-country nationals

At present, the above document consists of Chapters I to VI.

The Committee of the Regions favours adding a Chapter Va as follows:

Chapter Va CENTRAL IT SYSTEM

Article 16a

Central IT system for storing personal data

1. Using a central IT system provided by the EU, the Member States shall store and update procedurally relevant personal data on illegally staying third-country nationals who have been, or are to be, repatriated by individual Member States.
2. The authorities of the Member States shall have access to this system and shall be required to submit the data mentioned in Article 1.

Brussels, 27 April 2006.

The President
of the Committee of the Regions
Michel DELEBARRE
