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CCBE position paper on the proposal for a new Return Regulation

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EXECUTIVE SUMMARY

The CCBE has been monitoring and acting on the developments in relation to the EU framework on returns for the past few years, paying particular attention to such aspects as access to legal assistance and representation and legal remedies. This paper analyses the Commission proposal for a new Return Regulation presented in March 2025. Significant attention is again devoted to the right to legal assistance and representative and the right to effective remedy, as well as to the most discussed concept of the return hubs. Observations on specific provisions of the proposal are accompanied by suggestions for amendments that would, in the CCBE's opinion, improve the text and ensure it is in compliance with EU and international framework applying in the context of returns and asylum.

I. Introduction

The proposal for a regulation establishing a common system for the return of third-country nationals staying illegally in the Union ("Return Regulation")[1] was published on 11 March 2025. This proposal complements the framework composed amongst others of Asylum Procedure Regulation and Return Border Procedure Regulation adopted as part of the New Pact on Migration and Asylum.

The CCBE has been monitoring and acting on the developments in relation to the EU framework on returns for the past few years, by for example adopting CCBE comments on the Commission proposal for a recast Return Directive in 2019.[2]

Building on its previous work and as the Commission proposed a new Regulation, the CCBE considers it important to share its views on the topic.

The proposal was presented hectically due to political pressure. For example, the Commission acknowledged that "no impact assessment was carried out, due to the urgency of proposing new rules in the area of return"[3]. The CCBE considers that such an approach regarding such an important issue should be reconsidered as celerity does not play in favour of good quality legislation.

The need to harmonise standards throughout the EU is declared as one of the objectives of the proposal, but looking at some of its specific provisions, this objective is not reflected. The

[1] COM(2025) 101 final, 2025/0059 (COD)

[2] EN_MIG_20190329_CCBE-Comments-on-the-Commission-proposal-for-a-directive-on-common-standards-and-procedures-in-Member-States-for-returning-illegally-staying-third-country-nationals.pdf

[3] Ibid.

margins left to the Member States risks to fail the general aim and encourage case law challenging the legislation and seeking clarifications as to its interpretation.

II. CCBE analysis and suggestions

II.1. Reference to specific instruments of international law

Having regard to fundamental rights, the CCBE would firstly suggest to amend Article 5 enumerating instruments with which the Regulation should comply. An explicit reference to the Geneva Convention and European Convention on Human Rights would be welcome. In addition, the very general reference to respect for fundamental rights and the principle of non-refoulement, without any reference to the Convention on the Rights of the Child (CRC) and the best interests of the child, raises concerns that this could allow a return to practices prohibited by the CRC and the ECHR, such as the detention of children, including those not accompanied by a legal representative. An explicit reference to the CRC and the best interests of the child should therefore be added.

Commission proposal	CCBE amendment
Article 5 **Fundamental rights** When applying this Regulation, Member States shall act in full compliance with relevant Union law, including the Charter, with relevant international law, with the obligations related to access to international protection, in particular the principle of non-refoulement, and with fundamental rights.	*Article 5* **Fundamental rights** When applying this Regulation, Member States shall act in full compliance with relevant Union law, including the Charter, with relevant international law, **including the Geneva Convention on the Status of Refugees, the European Convention on Human Rights, and the Convention on the rights of the child,** with the obligations related to access to international protection, in particular the principle of non-refoulement, with fundamental rights**, and with the best interest of child**.

II.2. Return decisions and entry bans

As a general remark, the CCBE urges caution when it comes to the possibility to send a person to a country where they have never set foot.

Article 4 par. 3 defines the "country of return" and allows to return migrants to more countries comparing to the directive in force.

In particular, under letter g) of this provision, a new type of "country of return" is added as "a third country with which there is an agreement or arrangement on the basis of which the third-country national is accepted, in accordance with Article 17 of this Regulation."

Regarding Article 7, due to the seriousness of the consequences a return might have, the third country nationals should always be provided with translations of the return decision in order to understand what their situation is (therefore respecting their right to information) and what are possible legal remedies. [4]

Regarding mutual recognition of return decisions foreseen by Article 9, under the new Regulation, if a person's asylum application is rejected in a Member State and this person received a return

[4] For the CCBE's considerations regarding the importance of the interpretation see CCBE's comments on the APR (draft Regulation presented on July 13, 2016 by the European Commission establishing a common asylum procedure for international protection and repealing Directive 2013/32/EU relating to minimal standards concerning the procedures for the granting and withdrawal of international protection).

decision, another Member State to which the person moves must recognise the return decision. The provision should clarify the consequences of a second application in another Member State. Another question that arises is how the enforcing Member States deals with a challenge of a return decision issued by another Member State?

This also because the recognition and enforcement of return decisions taken by another Member State requires mutual trust between the judicial systems of the Member States. Repeated violations of the fundamental procedural rights of persons in exile in a large number of European jurisdictions, combined with the automatic recognition and enforcement of return decisions, risk seriously undermining the international obligations of Member States, in particular the principle of non-refoulement.

The CCBE would also suggest to make clear in this provision that a return decision should not be recognised by another Member State where it has reasons to believe that the enforcement would violate the principle of non-refoulement.

Article 9 **Recognition and enforcement of return decisions issued by another Member State** **(...)** 4. For the purposes of applying paragraph 3, a Member State may decide not to recognise or enforce a return decision of the issuing Member State where the enforcement is manifestly contrary to public policy in the enforcing Member State, or where the third- country national is to be removed to a different third country than indicated in the return decision of the issuing Member State.	*Article 9* **Recognition and enforcement of return decisions issued by another Member State** **(...)** 4. For the purposes of applying paragraph 3, a Member State **shall** decide not to recognise or enforce a return decision of the issuing Member State where the enforcement is manifestly contrary to public policy in the enforcing Member State, **where there are reasons to believe that the enforcement would violate the principle of non-refoulement,** or where the third- country national is to be removed to a different third country than indicated in the return decision of the issuing Member State.

When it comes to Article 10, the CCBE notes that the grounds for an entry ban are extended comparing to the current directive in force. Moreover, the wording of paragraph 7 of Article 10 is unclear, as it suggests that the extension of the entry ban could exceed 10 years. In addition, it should be specified that each extension must be the subject of a written decision, notified to the person concerned, stating the reasons on which it is based and indicating the right to an appeal with suspensive effect.

Regarding Article 12 on removal, it is welcome that the provisions make clear the obligation to assess the risk of non-refoulement. The removal order should, in all circumstances, be subject to effective judicial review in order to ensure compliance with the principle of non-refoulement and to monitor the risk of a potential violation of Article 4 EU Charter of fundamental rights (CFR) and Article 3 of the ECHR in the event of removal.

Clarification is also needed in Article 16 (a), which states that the provision shall apply to third-country nationals where they constitute a threat to public policy, public security or national security. This concept is far too vague and broad. In view of the decision to return them, which undoubtedly constitutes a serious infringement of the fundamental freedom of movement, the threat must at least be serious and present for public policy.

II.3. Return hubs – Article 17

a) General observations

The proposal introduces a basis for the Member States to establish so-called return hubs if they conclude an agreement with a third country in this regard. Many details regarding the way these centres would work are left unclear as they should be regulated subsequently in the agreement. Persons to be sent to the return hubs must have received a return decision.

There is no indication as to whether the admission to the hub would be permanent or temporary and conditional on efforts to return the persons concerned to their country of origin or habitual residence, or whether the return centres could be used as disembarkation points for persons rescued at sea. The text of the regulation leaves uncertainty as to the applicable legal framework and the application of the European acquis on respect for fundamental rights. It raises concerns that exiled persons will be subjected to inhuman and degrading treatment, deprivation of liberty for indefinite periods with insufficient procedural guarantees, and a risk of chain refoulement.

The legalisation of such a measure is considered by the CCBE as a new development to be regarded with caution, given the risk of possible systematic violations of the fundamental rights in respect of persons subject to return under Article 17. It could make it impossible for Member States to comply with their international law obligations.

Therefore, the CCBE believes that Article 17 in its current form contains too many uncertainties in terms of conformity of such a system with international, EU and constitutional laws, in terms of jurisdiction, and in terms of judicial efficiency and feasibility.

Should the co-legislators decide to maintain this provision in the text, the CCBE believes it should be redrafted and accompanied by better, stronger safeguards than those currently present in the text, taking into consideration the concerns expressed below.

The issue of responsibility for organising such centres remains to be considered - whether it should be regulated bilaterally between an EU Member State and a third country or between the EU and a third country. This also involves determining the legal framework applicable within these centres. This includes, for example, rules on who will be transferred to the return hub, on the modalities of the transfer, on the responsibility for the services provided in the hub and what to do with individuals whose removal from the hub does not materialise.

Moreover, an explicit reference to judicial rights (e.g., to Article 47 of the Charter of Fundamental Rights and to the ECHR) in this Article should be added. For the moment, there is nothing in the Article regarding judicial review before a transfer to a return hub (in the current system, a returnee has been (in principle) through procedure that at least ensures review by courts: of rejection of asylum application or other immigration application; of return decision to country of origin or provenance). A forced transit through a return hub of a third country would also require judicial review – which then begs the question how would judges review such a decision.

There are serious questions concerning legal jurisdiction, access to a lawyer, access to an effective remedy and a failure to ensure the adequate implementation of EU law and mechanisms for monitoring same. For instance:

- With regard to the general situation and to detention situation in countries that are not members of the ECHR: how can it be ensured that removal to these countries and detention in these cases does not violate Art. 3 ECHR and Art. 5 ECHR, and in particular,

that access to legal advice regarding returns, but also medical assistance as well as contact with the outside world is guaranteed? Even between countries that are parties to the ECHR, there is no mutual trust presumption (unlike between EU Member States). This means that an in-depth judicial review of the situation in the country would need to be available in order to ensure compliance with the principle of non-refoulement.

- With regard to access to justice: Who decides on external placement and how would legal protection in these detention situations look like? How should legal representation work in practice?
- With a non-EU state a presumption such as mutual trust does not apply so how do we ensure prevention of violation of Art. 4 CFR in the hub, of Art. 47 CFR (in case something goes wrong and a judicial remedy is needed – and which judge would be competent in such a case?); of other EU fundamental rights?
- It remains unclear how subsequent asylum applications would be handled.

The CCBE considers that the transfer of individuals to detention facilities in third countries outside the EU must be approached with caution, in light of the comprehensive framework of rights afforded to all migrants. Such relocation may violate safeguards enshrined in national, European, and international law, and significantly hinder the right to defence. In this respect, the transfer of a person to a third country with which they have no connection may constitute a violation of fundamental rights; finally, attention must be given to the conditions of detentions in these centres.

The CCBE only welcomes that unaccompanied minors and families with children are not to be "returned" to such a third country (Art. 17(4)).

b) Risk of exposure to human rights violations

When it comes to the requirements regarding human rights, the CCBE believes that they must be stronger and it must be verified that there is evidence of their effective protection. The same goes for the guarantees in terms of access to legal remedies addressing violations.

There is no explicit obligation in the proposal to carry out a mandatory assessment of human rights compliance by the third country. Therefore, the question arises based on what type of information the MS concluding the agreement will consider that the conditions related to the respect of human rights standards are fulfilled.

In particular, reference should be made to the concept of a 'safe country,' as interpreted by the Court of Justice and defined under European legislation.

Unlike the asylum centres planned by the United Kingdom in Rwanda or by Italy in Albania, where the asylum procedure itself shall be carried out, the draft of the Return Regulation envisages that only foreigners required to leave the country will be brought to the 'return hubs'. Art.17 of the draft Regulation contains provisions for the treatment of persons transferred to the third country.

According to Art. 17 (1) of the draft Regulation, a requirement for the transfer to the third country is that the latter respects "international human rights standards and principles of international law, in particular the principle of non-refoulement" (of persons seeking protection). Even if a Member State can theoretically send the person to the hub, there must be a decision to "return" this person there and for that a check if the non-refoulement principle would be respected – that

includes checking what happens to the person after the stay in the hub. This would also need to be reviewed by a court.

With regard to the examination of asylum applications lodged in the third country (in the hub) after the transfer, the Draft Regulation should make explicit reference to the CEAS. In practice, however, it might happen that a first application for international protection will be submitted in the hub. Likewise, it may happen that persons from the third country submit a follow-up application after an initial application has been rejected, e.g. due to a change in circumstances in the country of origin. In both cases, the transfer to the third country would mean that the person can no longer invoke compliance with the provisions of the CEAS. If the 'Return Hub System' were to be permitted at all in view of this, it would have to be ensured that the rights enshrined in the CEAS can be exercised accordingly. If the third country does not have an asylum procedure of the same standard, the UNHCR would at least have to be involved in the procedure ex officio or be the authority conducting the procedure.

Regarding compliance with 'human rights standards', it should be noted that many third countries have signed legal standards, e.g. the Convention Against Torture. Nevertheless, human rights are frequently violated in these countries as well. This raises the question of the factual basis for verifying whether 'human rights standards' are not only enshrined by law in the third country, but are also actually observed and whether protection against violations can be effectively enforced through the courts.

It could be very useful to attach in notes or maybe as an annex some reports carried out by independent institutions on the state of play of respect of human rights in some countries, included countries in Europe and that have signed the ECHR.

A more precise assessment of the concrete risks of human rights violations in the third country where the hub is located may be considered as a pre-condition to conclude the bilateral agreement.

The bilateral agreement should also specify the competence and the applicable law in case a problem arises in the hub. Also in this case, it should be considered who ensures the judicial review of whatever problem arises in these hubs – and the legal representation of individuals in such cases. Is there an independent mechanism to monitor human rights compliance?

Moreover, Article 17 does not contain safeguards that exist already in the EU law (e.g. safe third country; Article 36 of Asylum Procedure Regulation). The requirement of non refoulement is mentioned but it is not enough. There is no requirement to determine whether the country of hub is safe for the person in fact, individually. While a country may be seen as safe generally, this is not necessarily the case for an individual.

Pursuant to the draft Regulation, the transfer of the person concerned to the third country on the basis of the binational agreement means that the return procedure is considered to be concluded, subject to a readmission obligation on the basis of the binational agreement. This is evident from the classification of Article 17 of the Draft Regulation under Section 4, which describes the various removal procedures.

c) Detention in the return hubs

Regarding the status of the persons moved to the return hubs, the draft Regulation stipulates in Article 17(2)(b) that the intergovernmental agreement should contain provisions on the conditions of residence of the persons in the third country. The explanatory memorandum to the draft Regulation provides for short-term and longer-term stays in the third country. Whether the stay in the third country until return to the country of origin is to be in detention centres, in open accommodation or free can therefore be the subject of the bilateral agreement.

Furthermore, the question arises, in cases where a person has already been detained prior to removal to the third country in accordance with Art. 29 et seq. of the proposal and is also to be detained in the third country until the transfer to the country of origin, as to the **legal basis and system of legal protection against detention**. **In substantive terms, a broader possibility of detention than that provided for in the draft Regulation would not be compatible with EU law**. There could be no maximum detention period of more than the maximum period set by the proposal, nor would it be permissible to dispense with the examination of milder means (Article 31 draft Regulation). The provisions of the proposal with regard to the conditions of detention (Article 34) must also be observed. In addition to the separation of detainees and the prohibition of detention in a prison-like environment, it must be ensured in particular that each person concerned maintains the necessary contact with the outside world at all times.

With regard to the right to individual redress, Article 33 of the proposal provides for the right to prompt – retrospective – judicial review of a decision by the authorities to detain a person, as well as for regular reviews of the conditions for detention, at least every three months and upon application.

For example, in Germany (and similarly for example in Spain), the law stipulates an additional requirement that a judicial decision must be obtained **prior to** any detention. This also applies to applications for the extension of detention. As part of the detention review, the person concerned must always be heard in person in the presence of an interpreter regarding his or her personal circumstances, including in the detention extension procedure. The court must investigate the facts of the case *ex officio* and also obtain and examine all files relating to the residence law proceedings, including the return procedures. In particular, the court is obliged to review the necessity and proportionality of the detention in addition to examining the conditions for detention (obligation to leave the country, reason for detention and accommodation arrangements). In the context of necessity, the court must independently review the detailed prognosis to be provided by the authority in the detention application as to whether a return to the country of origin can take place within the requested detention period. Likewise, the court must examine whether there are milder means than detention and whether the return is being pursued with the necessary speed in order to keep the detention as short as possible. Finally, the court must take into account circumstances relating to the person concerned, e.g. family relationships, in particular with children, or health issues, as part of a proportionality assessment.

The above-mentioned safeguards also apply under the CFR and the ECHR. If the intention is to return a person to a third country, it must be ensured that the same safeguards apply in full in that country.

If a person is transferred from detention in a Member State to a third country, the question ultimately arises of how to deal with any pending appeal proceedings in the matter of detention. The following example of interplay between the proposal and the German law further illustrates practical challenges to come. Since national German law also generally requires a personal

hearing in the appeal proceedings, a transfer to the third country before this hearing is unlikely to be reasonable for practical reasons alone. If a personal hearing is no longer possible, German case law assumes that any procedural errors with regard to detention and the judicial detention proceedings can no longer be remedied retrospectively (in the sense that it is not possible retrospectively to render the procedure as compliant to the procedural rules). In the case of repatriation to the country of origin, which ends the detention, under German constitutional law, the foreign nationals concerned have the fundamental right to have the ongoing legal remedy determine that the past detention was unlawful and violated the rights of the person concerned. **In cases of return to a third country, the question arises as to how the continued detention in that country, based on the judicial decision of the detention court of the Member State, should be dealt with if it is determined in the appeal proceedings that the detention is or was unlawful**.

It is important to underline that it is necessary to impose the guarantee of a maximum detention period also on the hub country. Reference is made to the application of Articles 31 and 34 of the draft Regulation, but there is no reflection on the principle of effectiveness of judicial protection (Article 47 of the CFR) and the extraterritorial application of procedural safeguards.

Both national laws and the proposal stipulate that the persons concerned may always demand a review of the detention. This possibility must also be provided for in the third country.

Article 5 (5) ECHR stipulates that unlawful detention shall give rise to a right to compensation. In Germany, for instance, compensation is paid in a simplified procedure (currently €75 per day) on the basis of the analogous application of the Criminal Justice Compensation Act. In this regard, it would have to be ensured that these rights can also be asserted in the third country.

d) Legal advice and representation

The most important argument for the CCBE in regard to return hubs in third countries is the potential limitation of the legal assistance or lack of legal advice, representation and consultation with lawyers, when the refugees are located in third countries where no accurate legal advice might be available.

The establishment of return hubs in third countries should carefully consider the importance of an effective application of fundamental principles of the right to information and representation. The CCBE is concerned that **such centres would, in practice, exclude the possibility of proper representation of the client's interests by a professional legal representative.**

Also in this case, it would be necessary to highlight the lack of references to Article 47 of the CFR and Article 13 of the ECHR.

e) Comments on existing third-country centres for migrants

Various solutions involving extraterritorial centres for migrants that have been put in place until now. They have been the reason for concerns when it comes to the compliance with international law.

This is the case with the offshore processing centres created by Australia on the islands of Nauru and Manus, which were criticised by major international civil society organisations for their human rights record[5].

The tensions that followed the UK-Rwanda deal of 2022 are another illustration of the difficulties that return hubs could present with UN warning of harmful consequences and UK authorities admitting it was a "waste of tax-payer money".[6]

The bilateral agreement signed in 2023 between Italy and Albania provides for the establishment, on Albanian territory, of facilities designated for the temporary reception of foreign nationals subject to the accelerated asylum procedure and of foreign nationals already subject to validated or extended detention measures, pursuant to return decisions. In light of the debates surrounding this model, pending the necessary checks regarding its actual implementation, and acknowledging that the agreement envisages the application of the same procedural safeguards provided under Italian law for the foreign nationals concerned, it is relevant to recall the importance of the effectiveness of the right of defence, particularly with regard to the confidentiality of communications between lawyer and client and the ability to adequately exercise legal representation.

The CCBE takes note of the decision of the Italian Court of Cassation, First Criminal Section, in judgment no. 17510, May 8, 2025, which expressly declared that the centers currently located in Albania are, in all respects, equivalent to those within Italian territory. According to the Court, the detention of the foreign national in the said facility remains lawful even after the submission of the application for international protection as the center is fully equated, in all respects, with the identification and expulsion centers in Italy.[7]

Conclusion on the return hubs

Without sufficient harmonised reference to substantial and procedural fundamental rights, the system proposed entails a major risk of legal uncertainty that would be extremely detrimental to both the individuals concerned and the Member States. The mechanism could lead to violations of Article 3 ECHR and give rise to massive litigation before national and European courts.

It is important to recall that the States Parties to the Council of Europe, i.e. all Member States, are bound by the case law of the ECtHR, which has consistently held that a removal to a country where there is a risk of inhuman or degrading treatment constitutes a violation of Article 3.

Furthermore, it is also important to recall that the absence of a violation of Article 3 cannot be presumed and must be examined in the light of the personal circumstances of the individual concerned and taking into account their vulnerability and any special protection needs.

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[5] BBC, Nauru: Why Australia is funding an empty detention centre; Amnesty International, Australia: Appalling abuse, neglect of refugees on Nauru, 2016, link; Human Rights Watch, Australia: 8 Years of Abusive Offshore Asylum Processing, link;

[6] BBC, UK will not pay Rwanda more for scrapped migrant deal, (link); UK-Rwanda asylum law: UN leaders warn of harmful consequences | OHCHR (link)

[7] "Article 3, paragraph 2, of Law 14/2024, as amended by Decree-Law 37/2025, does not preclude the application of Article 6, paragraph 3, of Legislative Decree 142/2015 in cases where a third-country national (hosted at the Gjader CPR pursuant to a validated order under Article 14 of Legislative Decree 286/98) submits an application for international protection.
Consequently, the detention of the foreign national in the said facility remains lawful even after the submission of the application, as the center is fully equated, in all respects, with the facilities provided for under Article 14, paragraph 1, of Legislative Decree 286/98."

II.4. Right to legal assistance and representation and right to effective remedy

For the sake of efficiency of the judicial systems, legal assistance should be given to returnees not only at the appeal stage but also earlier, at the administrative stage. People should be given possibility to have a lawyer before appeal as this is a condition for real access to justice and properly conducted procedures that do not have to be repeatedly challenged due to shortcomings. Access to a lawyer and legal assistance by a qualified lawyers play a crucial role in the administration of justice. Therefore, the right to legal assistance and representation should be automatic.

In order to follow the "fair and firm approach", the EU has to reach a balance and this cannot be achieved without adding and respecting peoples' procedural and fundamental rights. Respect of Article 47 of the Charter and Article 13 ECHR and the requirements established by the CJEU and ECtHR should guide the EU co-legislators in this regard.

With regard to the persons who should provide legal assistance and representation, the CCBE thinks this should be done by qualified lawyers who are independent. Due to the nature and gravity of the potential consequences for the returnees, it is necessary that migrants are assisted by persons who know the national judicial system and procedures. In case other, not well defined persons, are allowed to provide such assistance, there is concern about abuse and additional burden on the administration and justice system due to the need to "repair" the case. It also opens the way for uncommon standards in various Member States, going against the objective of the proposal. The current text would open divergences between Member States and allow for circumvention.

Ensuring access to services provided by lawyers upfront, from the early stages, might be seen as a more expensive option at first sight. However, the continuous presence of a lawyer throughout the procedure decreases the likelihood of challenges and allows for further litigation being avoided. Therefore, ultimately, it costs the system less and alleviates the burden. It should also be kept in mind that the number of returnees is less significant than the number of asylum seekers so the rights foreseen by the proposal apply to a smaller group of persons.

The notion of abusive appeal in Article 25 par 5. b) lacks definition and clarity. In this regard, in a recent statement the CCBE categorically rejected any insinuation or argument that by lodging appeals or acting in front of courts, lawyers abuse the law.[8]

The use of the expression 'no tangible prospect of success' is problematic because it is too broad, too subjective and opens the way to a generalisation of orders to sort appeals on the merits. It allows for a preliminary sorting of appeals on the merits. It is preferable to use another expression, for example, from the French law, 'manifestly inadmissible appeal', which, in reality, should only exclude appeals that are inadmissible for procedural reasons and not a selective sorting of appeals where the appeal is considered to have no tangible prospect of success" or to be "abusive";". The same amendment should apply to paragraph 9 if it is maintained.

Due to the importance of legal assistance and representation and their relation to legal remedies, the CCBE would also suggest to move point 24 par.1 (d) just after point (a).

Article 24 **Right to information** 1. Third-country nationals subject to the return procedure shall be informed without undue delay about the following:	Article 24 **Right to information** 1. Third-country nationals subject to the return procedure shall be informed without undue delay about the following:

[8] CCBE statement condemning stigmatisation of and threats to immigration lawyers, 04.04.2025, link.

a. the purpose, duration and steps of the return procedure as well as information on the available legal remedies and the time-limits to seek those remedies; b. the rights and obligations of third-country nationals during the return procedure as set out in Article 21 and Article 23, the consequences of non-compliance pursuant to Article 22, the existence of an alert on return on the person in the Schengen Information System and the recognition and enforcement of a return decision issued by another Member State in accordance with Article 9; c. return and reintegration counselling and programmes pursuant to Article 46; d. their procedural rights and obligations throughout the return procedure in accordance with this Regulation and national law, in particular the right to legal assistance and representation pursuant Article 25. 2. The information provided shall be given without undue delay in simple and accessible language and in a language which the third-country national understands or is reasonably supposed to understand, including through written or oral translation and interpretation as necessary. That information shall be provided by means of standard information sheets, either in paper or in electronic form. In the case of minors, the information shall be provided in a child-friendly and age-appropriate manner with the involvement of the holder of parental responsibility or the representative referred to in Article 20(2). The third-country national shall be given the opportunity to confirm that he or she has received the information.	a. the purpose, duration and steps of the return procedure as well as information on the available legal remedies and the time-limits to seek those remedies; **b. their procedural rights and obligations throughout the return procedure in accordance with this Regulation and national law, in particular the right to legal assistance and representation pursuant Article 25;** **c**. the rights and obligations of third-country nationals during the return procedure as set out in Article 21 and Article 23, the consequences of non-compliance pursuant to Article 22, the existence of an alert on return on the person in the Schengen Information System and the recognition and enforcement of a return decision issued by another Member State in accordance with Article 9; **d.** return and reintegration counselling and programmes pursuant to Article 46; ~~d. their procedural rights and obligations throughout the return procedure in accordance with this Regulation and national law, in particular the right to legal assistance and representation pursuant Article 25.~~ 2. The information provided shall be given without undue delay in simple and accessible language and in a language which the third-country national understands ~~or is reasonably supposed to understand,~~ including through written or oral translation and interpretation as necessary. That information shall be provided **orally by trained personnel and** by means of standard information sheets, either in paper or in electronic form. In the case of minors, the information shall be provided in a child-friendly and age-appropriate manner with the involvement of the holder of parental responsibility or the representative referred to in Article 20(2). The third-country national shall be given the opportunity to confirm that he or she has received the information.

Article 25 **Legal assistance and representation** 1. In the case of an appeal or a review before a judicial authority in accordance with Article 27, Member States shall, at the request of the third-country national, ensure that free legal assistance and representation is made available as necessary to ensure the right to an effective remedy and fair trial. 2. Unaccompanied minors shall automatically be provided with free legal assistance and representation. 3. The legal assistance and representation shall consist of the preparation of the appeal or request for review, including, at least, the preparation of the procedural documents required under national law and, in the event of a hearing, participation in that hearing before a judicial authority to ensure the effective exercise of the right of defence. Such assistance shall not affect any assistance provided for under Regulation (EU) 2024/1348. 4. Free legal assistance and representation shall be provided by legal advisers or other suitably qualified persons, as admitted or permitted under national law, whose interests do not conflict or could not potentially conflict with those of the third-country national. 5. The provision of free legal assistance and representation in the appeal procedure may be excluded by the Member States where: a. the third-country national is considered to have sufficient resources to afford legal assistance and representation at his or her own cost; b. it is considered that the appeal has no tangible prospect of success or is abusive; c. the appeal or review is at a second level of appeal or higher, as provided for under national law, including re-hearings or reviews of appeal;	*Article 25* **Legal assistance and representation** 1. ~~In the case of an appeal or a review before a judicial authority in accordance with Article 27,~~ Member States shall, ~~at the request of the third-country national,~~ ensure that free legal assistance and representation is made available ~~as necessary~~ to ensure the right to an effective remedy and fair trial. 2. Unaccompanied minors shall automatically be provided with free legal assistance and representation. 3. **In the case of an appeal or a review before a judicial authority, t**he legal assistance and representation shall consist of the preparation of the appeal or request for review, including, at least, the preparation of the procedural documents required under national law and, in the event of a hearing, participation in that hearing before a judicial authority to ensure the effective exercise of the right of defence. Such assistance shall not affect any assistance provided for under Regulation (EU) 2024/1348. 4. Free legal assistance and representation shall be provided by **independent lawyers**. ~~legal advisers or other suitably qualified persons, as admitted or permitted under national law, whose interests do not conflict or could not potentially conflict with those of the third-country national~~. 5. The provision of free legal assistance and representation in the appeal procedure may be excluded by the Member States where: a. the third-country national is considered to have sufficient resources to afford legal assistance and representation at his or her own cost; ~~b. it is considered that the appeal has no tangible prospect of success or is abusive~~;

d. the third-country national is already assisted or represented by a legal adviser. 6. The third-country national requesting free legal assistance and representation shall disclose his or her financial situation. 7. With the exception of any assistance provided to unaccompanied minors, and in line with the respect of the essence of the right to an effective remedy, Member States may: a. impose monetary or time limits on the provision of free legal assistance and representation, provided that such limits are not arbitrary and do not unduly restrict access to free legal assistance and representation nor undermine the exercise of the right of defence; b. request total or partial reimbursement of any costs incurred where the third-country national's financial situation has improved during the return procedure or where the decision to provide free legal assistance and representation was taken on the basis of false information supplied by the third-country national; c. provide that, as regards fees and other costs and reimbursements, the treatment of third-country nationals shall be equal to, but not more favourable than, the treatment generally given to their nationals in matters pertaining to legal assistance. 8. Member States shall lay down specific procedural rules governing the manner in which requests for free legal assistance and representation are filed and processed, or apply existing rules for domestic claims of a similar nature, provided that those rules do not render access to free legal assistance and representation excessively difficult or impossible. 9. Where a decision not to grant free legal assistance and representation is taken by an authority which is not a judicial authority on the grounds that the appeal is considered to have no tangible prospect of success or to be abusive, the applicant shall have the right to an effective remedy before a judicial authority against that decision. For that purpose, the applicant shall be entitled to request free legal assistance and representation. 10. Member States may provide for free legal assistance and representation in the administrative procedure in accordance with national law.	c. the appeal or review is at a second level of appeal or higher, as provided for under national law, including re-hearings or reviews of appeal; d. the third-country national is already assisted or represented by a legal adviser. 6. The third-country national requesting free legal assistance and representation shall disclose his or her financial situation. 7. With the exception of any assistance provided to unaccompanied minors, and in line with the respect of the essence of the right to an effective remedy, Member States may: a. impose monetary or time limits on the provision of free legal assistance and representation, provided that such limits are not arbitrary and do not unduly restrict access to free legal assistance and representation nor undermine the exercise of the right of defence; b. request total or partial reimbursement of any costs incurred where the third-country national's financial situation has improved during the return procedure or where the decision to provide free legal assistance and representation was taken on the basis of false information supplied by the third-country national; c. provide that, as regards **access,** fees and other costs and reimbursements, the treatment of third-country nationals shall be equal to, but not more favourable than, the treatment generally given to their nationals in matters pertaining to legal assistance. 8. Member States shall lay down specific procedural rules governing the manner in which ~~requests for~~ free legal assistance and representation ~~are filed and processed~~ **operate,** or apply existing rules ~~for domestic claims of a similar nature~~, provided that those rules do not render access to free legal assistance and representation excessively difficult or impossible. 9. Where ~~a decision not to grant~~ free legal assistance and representation **is denied** ~~is taken by an authority which is not a judicial authority on the grounds that the appeal is considered to have no tangible prospect of success or to be abusive~~, the applicant shall have the right to an effective remedy before a judicial authority against that decision. For that purpose, the applicant shall be entitled to request free legal assistance and representation. 10. Member States ~~may~~ **should** provide for free legal assistance and representation in the administrative procedure in accordance with national law.

Article 26 foresees a right to an effective remedy only against some of the decisions which might be taken on the basis of the Regulation. It must be clear that all decisions potentially affecting the rights of individuals under EU law are subject to the right to an effective remedy (as required by Art. 47 CFR). This includes sanctions for non-compliance decided on the basis of Art. 9 para. 3 and para. 4 (enforcement of a European return decision), Art. 11 (withdrawal, suspension or shortening of the duration of an entry ban), Art. 14 (postponement of removal), Art. 16 (removal procedure in case of security risk), Art. 17 (removal to a return hub), Art. 22 limitations to freedom of movement under Art. 23.

Therefore, these decisions should be added to the list of decisions that may be subject to a right of appeal, as they may have dramatic consequences, such as those relating to the right to work or the right to social benefits.

Article 26 **The right to an effective remedy** 1. The third-country national concerned shall be afforded an effective remedy to challenge the decisions referred to in	*Article 26* **The right to an effective remedy** 1. The third-country national concerned shall be afforded an effective remedy to challenge the decisions referred to in

Article 7, Article 10 and Article 12(2) before a competent judicial authority. 2. The effective remedy shall provide for a full and *ex nunc* examination of both points of facts and points of law. 3. Member States shall ensure that compliance with the requirements arising from the principle of non-refoulement is verified by the competent judicial authority, at the request of the third-country national or *ex officio*.	Article 7, **Article 9,** Article 10, **Article 11,** Article 12(2), **Article 14, Article 16, Article 17, Article 22 and Article 23** before a competent judicial authority. 2. The effective remedy shall provide for a full and *ex nunc* examination of both points of facts and points of law. 3. Member States shall ensure that compliance with the requirements arising from the principle of non-refoulement is verified by the competent judicial authority, at the request of the third-country national or *ex officio*.

Regarding Article 27, the limit of 14 days to file an appeal is too short and not realistic also given the limited access to legal assistance people may have. Therefore, it is suggested to include a limit of four weeks in the first paragraph: "The period for lodging an appeal before a judicial authority of first instance shall not exceed **four weeks".**

With regard to paragraph 5 of Article 27 concerning the translation of documents by the applicant, the penalty is disproportionate to the burden placed on the applicant with regard to translation. It should be provided that the translation may be done by the interpreter at the hearing.

Regarding Article 28, if the appeal does not have an automatic suspensive effect, the non refoulement principle might be violated, especially taking into account that there will be quick procedures according to the Pact. It will be more difficult to have access to remedies and then people will be found more easily to have the final return order.

In principle, remedies should have suspensive effect, unless special reasons (security, public order etc.) justify an exclusion of the suspensive effect. If the administrative body decides, that a remedy shall have no suspensive effect, the applicant shall have the right to challenge this decision in his remedy and the judicial authority shall have the power to grant suspensive effect. It should be reminded that the ECtHR in its case law pointed that any limitations on carrying out an individual examination of objections to return must be without prejudice to the prohibition of refoulement.[9]

""143. In view of the importance that the Court attaches to Article 3 of the Convention and the irreversible nature of the damage that may result if a risk of torture or ill-treatment materialises, it has already held that the effectiveness of a remedy available to an applicant who alleges that his or her removal to a third State would expose him or her to treatment prohibited under Article 3 of the Convention ***(...) also requires that the person concerned should have access to a remedy with automatic suspensive effect".***

Similarly, in relation to Article 4 of Protocol No. 4 to the Convention, the Court stated ***"that a remedy against an alleged violation of this provision does not meet the requirements of effectiveness if it does not have suspensive effect****. The notion of an effective remedy under the Convention requires that the remedy be capable of preventing the execution of measures that are contrary to the Convention and whose effects are potentially irreversible".*[10]

[9] M.K. and Others v. Poland, 23.07.2020, available here.

[10] M.K. and others v. Poland: *"143. In view of the importance that the Court attaches to Article 3 of the Convention and the irreversible nature of the damage that may result if a risk of torture or ill-treatment materialises, it has already held that the effectiveness of a remedy available to an applicant who alleges that his or her removal to a third State would expose him or her to treatment prohibited under Article 3 of the Convention imperatively requires close scrutiny by a national authority (see Shamayev and Others v. Georgia and Russia, no. 36378/02, § 448, ECHR 2005-III), independent and rigorous scrutiny of any claim that there exist substantial grounds for fearing a real risk of treatment breaching Article 3 (see Jabari v. Turkey, no. 40035/98, § 50, ECHR 2000-VIII), and a particularly prompt response (see Batı and Others v. Turkey, nos. 33097/96 and 57834/00, § 136, ECHR 2004-IV (extracts));* ***it also requires that the person concerned should have access to a remedy with automatic suspensive effect*** *(see Čonka v. Belgium, no. 51564/99,*

The CoE Human Rights Commissioner also expressed the view that Article 13 ECHR requires that persons have an effective remedy against any violation of their rights under the Convention. When a person has an arguable claim in relation to risks related to Articles 2 (right to life) and 3 ECHR, such remedies must have automatic suspensive effect.[11]

With regard to Article 28, in order to ensure that the suspensive effect is truly effective, it should be provided in paragraph 1 that "The implementation of decisions taken pursuant to Article 7 (...) shall be suspended until the judicial authority has given a final ruling". Otherwise, the person may be removed even though the decision may be found to be unlawful and annulled.

Article 28 **Suspensive effect** 1. The enforcement of the decisions issued pursuant to Article 7, Article 10 and Article 12(2) shall be suspended until the time limit within which they can exercise their right to an effective remedy before a judicial authority of first instance referred to in Article 27 has expired. 2. Third-country nationals shall be granted the right to submit an application to suspend the enforcement of a return decision before the time limit within which they can exercise their right to an effective remedy before a judicial authority of first instance referred to in Article 27 has expired. A judicial authority shall have the power to decide, following an examination of both facts and points of law, whether or not the enforcement of the return decision should be suspended pending the outcome of the remedy. The enforcement of the return decision shall be suspended where there is a risk to breach the principle of non-refoulement. 3. Where a further appeal against a first or subsequent appeal decision is lodged,the enforcement of a return decision shall not be suspended unless the third-country national requests suspension and a competent judicial authority decides to grant it, taking due account of the specific circumstances of the individual case. 4. A decision on the application for suspension of the enforcement of a return decision shall be taken within 48 hours. In cases involving complex issues of fact or law, that time-limit may be exceeded.	*Article 28* **Suspensive effect** 1. The enforcement of the decisions issued pursuant to~~ Article 7, Article 10 and Article 12(2)~~ **Article 7, Article 9, Article 10, Article 11, Article 12(2), Article 14, Article 16, Article 17, Article 22 and Article 23** shall be suspended until **the judicial authority has given a final ruling** ~~the time limit within which they can exercise their right to an effective remedy before a judicial authority of first instance referred to in Article 27 has expired.~~ 2. Third-country nationals shall be granted the **suspension of** ~~right to submit an application to suspend~~ the enforcement of a return decision before the time limit within which they can exercise their right to an effective remedy before a judicial authority of first instance referred to in Article 27 has expired. ~~A judicial authority shall have the power to decide, following an examination of both facts and points of law, whether or not the enforcement of the return decision should be suspended pending the outcome of the remedy.~~ The enforcement of the return decision shall be suspended where there is a risk to breach the principle of non-refoulement. 3. Where a further appeal against a first or subsequent appeal decision is lodged, the enforcement of a return decision shall ~~not~~ be suspended ~~unless the third-country national requests suspension and a competent judicial authority decides to grant it, taking due account of the specific circumstances of the individual case~~. ~~4. A decision on the application for suspension of the enforcement of a return decision shall be taken within 48 hours. In cases involving complex issues of fact or law, that time-limit may be exceeded.~~

II.5. Detention

Some considerations and standards regarding detention have already been discussed above in relation to detention in return hubs. In addition, the CCBE notes that in the proposal, detention grounds are extended comparing to the current framework – three new grounds are added. The maximum period of detention is also extended. In the current directive, detention is a measure of last resort, possible if other measures cannot be applied[12]. The CCBE regrets that this provision

§§ 81-83, ECHR 2002-I; Gebremedhin [Gaberamadhien], cited above, § 66; M.S.S. v. Belgium and Greece [GC], no. 30696/09, § 293, ECHR 2011; and A.E.A. v. Greece, cited above, § 69).

144. The Court has reached a similar conclusion in relation to complaints made under Article 4 of Protocol No. 4 to the Convention, ***stating that a remedy against an alleged violation of this provision does not meet the requirements of effectiveness if it does not have suspensive effect****. The notion of an effective remedy under the Convention requires that the remedy be capable of preventing the execution of measures that are contrary to the Convention and whose effects are potentially irreversible (see Čonka, § 79, and Hirsi Jamaa and Others, § 199, both cited above)."*

[11] Letter to the Marshal of the Senate of the Republic of Poland, 04.03.2025

[12] Article 15 (1) of the Return Directive provides for detention "Unless other sufficient but less coercive measures can be applied effectively in a specific case..."

has been removed in the proposal. In the absence of this provision, the proposal risks to extend and generalise the use of detention. Therefore, it is advised to re-include this condition in the text.

The CCBE stresses that according to some research, "*as pointed out by the EPRS, detention is neither necessarily effective (since there is no evidence to suggest that more detention leads to higher return rates) nor efficient (due to the considerable costs involved).*"[13]

Administrative detention is not only a measure to implement return but also a deprivation of personal freedom and its continuation or not should in any case be examined and decided by the competent judge within a reasonable time (15 days) from the moment it is imposed by the Member State.

With regard to the removal of minors, the ECtHR monitors the conformity of the detention of minors with the Convention on the basis of the following three criteria: the age of the minor, the suitability of the place of detention to their specific needs, the length of detention, given that detention is a measure.

Also, in view of the length of detention as provided for in the regulation (12 months, renewable up to 24 months), the possibility of detaining minors (Article 35) is undoubtedly contrary to the provisions of Article 3 of the ECHR and the case law (case Popov v. France (Requêtes nos 39472/07 et 39474/07), Affaire R.M. and others c. France (Requête no 33201/11).

With regard to Article 20(3), the draft should provide for the obligation that unaccompanied minors be systematically heard through an ad hoc administrator.

Article 29 **Grounds for detention** 1. Member States may detain a third-country national pursuant to this Regulation on the basis of an individual assessment of each case and only in so far as detention is proportionate. 2. Member States may only keep in detention a third-country national for the purpose of preparing the return or carrying out the removal. 3. A third-country national may only be detained based on one or more of the following grounds for detention: a. risk of absconding determined in accordance with Article 30; b. the third-country national avoids or hampers the preparation of the return or the removal process; c. the third-country national poses security risks in accordance with Article 16; d. to determine or verify his or her identity or nationality; e. non-compliance with the measures ordered pursuant to Article 31. 4. Those detention grounds shall be laid down in national law. 5. Detention shall be ordered by administrative or judicial authorities. Detention shall be ordered by a written decision giving the reasons in fact and in law on which it is based as well as information about available legal remedies. The decision shall be notified to the third-country national in a language that the third-country national understands or may reasonably be presumed to understand. 6. When detaining a third-country national pursuant to paragraph 2, Member States shall take into account any visible signs, statements or behaviour related to, or made or shown by, the third-country national indicating that he or she is a vulnerable person.	*Article 29* **Grounds for detention** 1. Member States may detain a third-country national pursuant to this Regulation on the basis of an individual assessment of each case**,** only in so far as detention is proportionate**, and when their sufficient but less coercive measures cannot be applied effectively in a specific case.** 2. Member States may only keep in detention a third-country national for the purpose of preparing the return or carrying out the removal. 3. A third-country national may only be detained based on one or more of the following grounds for detention: a. risk of absconding determined in accordance with Article 30; b. the third-country national avoids or hampers the preparation of the return or the removal process; c. the third-country national poses security risks in accordance with Article 16; d. to determine or verify his or her identity or nationality; e. non-compliance with the measures ordered pursuant to Article 31. 4. Those detention grounds shall be laid down in national law. 5. Detention shall be ordered by administrative or judicial authorities. Detention shall be ordered by a written decision giving the reasons in fact and in law on which it is based as well as information about available legal remedies. The decision shall be notified to the third-country national in a language that the third-country national understands or may reasonably be presumed to understand. 6. When detaining a third-country national pursuant to paragraph 2, Member States shall take into account any visible signs, statements or behaviour related to, or made or shown by, the third-country national indicating that he or she is a vulnerable person.

[13] https://eulawanalysis.blogspot.com/2025/04/the-new-eu-common-system-for-returns.html

When it comes to alternatives to detention, it should be made clear that these apply to people who should normally be detained, i.e. instead of detention.

Detention period in the proposal is extended comparing to the current Return Directive. The CCBE also notes that the following principle present in the current directive is removed in the proposal: detention should be as short as possible and only maintained as long as removal arrangements are in progress and executed with due diligence. It is suggested to reinsert in the text this principle that has been recognised by the ECtHR.[14]

The possibility to extend the detention period further 12 months is disproportionate and might be a violation of Art 5 ECHR. The detention period shall not exceed 12 months.

Article 32 **Detention period** 1. Detention shall be maintained for as short a period as possible and for as long as the conditions laid down in Article 29 are fulfilled and it is necessary to ensure successful return 2. When it appears that the conditions laid down in Article 29 are no longer fulfilled, detention shall cease to be justified and the third-country national shall be released. Such release shall not preclude the application of measures to prevent the risk of absconding in accordance with Article 31. 3. The detention shall not exceed 12 months in a given Member State. Detention may be extended for a period not exceeding a further 12 months in a given Member State where the return procedure is likely to last longer owing to a lack of cooperation by the third-country national concerned, or delays in obtaining the necessary documentation from third countries. 4. The expiry of the maximum detention period in accordance with paragraph 3 does not preclude the application of measures in accordance with Article 31.	*Article 32* **Detention period** 1. Detention shall be maintained for as short a period as possible and for as long as the conditions laid down in Article 29 are fulfilled**,** it is necessary to ensure successful return, **it is executed with due diligence and as long as removal arrangements are in progress**. 2. When it appears that the conditions laid down in Article 29 are no longer fulfilled, detention shall cease to be justified and the third-country national shall be released. Such release shall not preclude the application of measures to prevent the risk of absconding in accordance with Article 31. 3. The detention shall not exceed 12 months ~~in a given Member State. Detention may be extended for a period not exceeding a further 12 months in a given Member State where the return procedure is likely to last longer owing to a lack of cooperation by the third-country national concerned, or delays in obtaining the necessary documentation from third countries.~~ 4. The expiry of the maximum detention period in accordance with paragraph 3 does not preclude the application of measures in accordance with Article 31.

Regarding Article 34, the CCBE proposes the amendment below as it is considered as necessary to **ensure that access to legal assistance, review of detention orders and the right to effective remedy are not a dead letter but are effective in practice**. Moreover, there can be no detention of returnees in a prison. This is a prohibition that we must reiterate (see the ECHR judgment in Amuur v. France of 25 June 1996, which held that detaining foreigners in a prison violates the provisions of Article 5 of the ECHR).

Therefore, with regards to paragraph 1, the possibility to keep third country nationals in prison facilities, even if separated from detainees, can be problematic. The separation in practice must be effective. [15]

With regard to paragraph 5, visits by legal representatives, families and diplomatic authorities may not be subject to any authorisation whatsoever.

[14] ECTHR, Chahal versus UK, par. 113. "The Court recalls, however, that any deprivation of liberty under Article 5 para. 1 (f) (art. 5-1-f) will be justified only for as long as deportation proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 para. 1 (f) (art. 5-1-f) (see the Quinn v. France judgment of 22 March 1995, Series A no. 311, p. 19, para. 48, and also the Kolompar v. Belgium judgment of 24 September 1992, Series A no. 235-C, p. 55, para. 36)." https://hudoc.echr.coe.int/eng?i=001-58004

[15] CoE, Guide, 1680ad4c43
The Council of Europe has elaborated a Guide for practictioners on Administrative detention of migrants and asylum seekers which is a useful source recalling detention standards applying in CoE member countries.

The right to an effective remedy presupposes the right to legal counsel, which may not be subject to any authorisation whatsoever. Lawyers must have free access to the detention centre during times allocated for visits and when urgent circumstances require the presence of the lawyer.

Article 34 **Detention conditions** 1. Detention shall take place, as a rule, in specialised facilities, including those in dedicated branches of other facilities. Where a Member State cannot provide for detention in such facilities and is obliged to resort to prison accommodation, the third-country nationals shall be kept separated from ordinary prisoners. 2. Detained third-country nationals shall have access to open-air space. 3. Third-country nationals in detention shall be allowed, on request, to establish in due time contact with legal representatives, family members and competent consular authorities. 4. Particular attention shall be paid to, and special accommodation provided for, the special needs of detained vulnerable persons. Emergency health care and essential treatment of illness shall be provided to detained third-country nationals. 5. Legal representatives, family members, competent consular authorities and relevant and competent national, international and non-governmental organisations and bodies shall have the possibility to visit any detention facility and communicate with the third-country nationals and visit them in conditions that respect privacy. Such visits may be subject to authorisation. 6. Third-country nationals kept in detention shall be provided in writing with information which explains the rules applied in the facility and sets out their rights and obligations in plain intelligible language and in a language they understand. Such information shall include information on their entitlement under national law to contact the persons or bodies referred to in paragraphs 3 and 5.	*Article 34* **Detention conditions** 1. Detention shall take place, as a rule, in specialised facilities, including those in dedicated branches of other facilities. Where a Member State cannot provide for detention in such facilities and is obliged to resort to prison accommodation, the third-country nationals shall be kept separated from ordinary prisoners. 2. Detained third-country nationals shall have access to open-air space. 3. Third-country nationals in detention shall be allowed, on request, to establish in due time contact with legal representatives, family members and competent consular authorities. **3b. Authority managing the facility should make sure that detainees are provided with information about their right to request contact with legal representatives. Such information should be displayed in various parts of the facility in languages that detainees understand.** 4. Particular attention shall be paid to, and special accommodation provided for, the special needs of detained vulnerable persons. Emergency health care and essential treatment of illness shall be provided to detained third-country nationals. 5. Legal representatives, family members, competent consular authorities and relevant and competent national, international and non-governmental organisations and bodies shall have the possibility to visit any detention facility and communicate with the third-country nationals and visit them in conditions that respect privacy. ~~Such visits may be subject to authorisation.~~ **Detention centres should allocate time and space for the provision of legal assistance. Lawyers and persons allowed to provide legal advice and representation by national law should be able to establish permanencies at the facility.** 6. Third-country nationals kept in detention shall be provided in writing with information which explains the rules applied in the facility and sets out their rights and obligations in plain intelligible language and in a language they understand. Such information shall include information on their entitlement under national law to contact the persons or bodies referred to in paragraphs 3 and 5.

II.6. Other provisions

With regards to Article 46 par.1, it introduces the obligation for Member States to establish return and reintegration counselling structures to provide third-country nationals with information and guidance about return and reintegration. The CCBE thinks that **this counselling shall be without prejudice to the right of returnees to legal assistance and representation**.

Furthermore, the CCBE notes that there is also a complete absence of judicial remedies in Chapter VII on the "Sharing and transfer of personal data". A very long list of personal data is foreseen to be shared with third countries. This includes very sensitive data such as data relating to criminal convictions (Article 40) and to health (Article 41).

These data transfers are subject to many conditions (attesting to the sensitivity of such operations), including in Article 40 and Article 41.[16]

If the "competent authority" and/or Frontex is tasked with conducting such an assessment, then there needs to be a judicial remedy available, precisely to ensure that the transfer of data will not breach the principle of non-refoulement and/or Article 50 of the Charter.

The proposal provides that "such transfers comply with Chapter V of Regulation (EU) 2016/679 and Chapter V of Regulation (EU) 2018/1725, respectively". But these are instruments designed for ensuring the respect of the right to the protection of personal data in a context where persons have *consented* to the processing. They contain indications on the standards that must be in place in the countries of destination, but nothing on judicial remedies. The situation described in Chapter VII of the Return Regulation is very different (the consent of the person is simply not a question) and the guarantees are inadequate.

Therefore, either the European Return Order already indicates the information that will be sent by the competent authority/Frontex to the third country, in which case this can be challenged at the same time as the Return Order; or if the information relating to the data sharing is communicated to the person at a later stage, then there must be a possibility for judicial review also on that front.

[16] 40 (1) (d) prior to the transfer, the competent authority and, where applicable, Frontex, has satisfied itself that the transfer of data does not risk breaching the principle of non- refoulement.
40 (1) (e) prior to the transfer, the competent authority and, where applicable, Frontex, has satisfied itself that the transfer of data does not risk breaching Article 50 of the Charter.
40 (1) (d) prior to the transfer, the competent authority and, where applicable, Frontex has satisfied itself that the transfer of data does not risk breaching the principle of non- refoulement.