



Session 1

European legal framework relevant for return operations

National Training on Escorted Return Operations and Forced-Return Monitoring
Mechanisms (FREM III)

09-10 May 2019
Cyprus

European legal framework relevant for return operations

MAIN PIECES OF LEGISLATION:

- Council Decision 2004/573/EC
- Return Directive 2008/115/EC
- Return Handbook C(2017) 6505 27.9.2017

The Council Decision on the organisation of joint flights for removals of third-country nationals (2004/573/EC)



“The purpose of this Decision is to coordinate joint removals by air, from two or more Member States, of third-country nationals who are subjects of individual removal orders”

- Lays down rules for the organisation of return flights;
- Lists *specific and common tasks* of the authorities organising and participating in a JRO;
- *Annex to the Decision* - the Common Guidelines on security provisions, the health of returnees, the code of conduct for escorts and the use of coercive measures etc.;
- *Five phases: pre-return, pre-departure, in-flight procedure, transit & arrival phase*
- Phases slightly differ from the four phases as applicable in this training: pre-departure, in-flight, arrival and return phase.

Return Directive 2008/115/EC

Key features of the Return Directive

- ✓ Fair and transparent procedures for decisions on the return of IMs
- ✓ Obligation to avoid “legal limbo”
- ✓ Granting a period of voluntary departure
- ✓ Minimum set of basic rights for IMs
- ✓ Limitation in the use of coercive measures, ensuring that they are not excessive or disproportionate
- ✓ Providing for an entry ban valid throughout the EU

 Article 8 (6) MS to provide for an effective forced-return monitoring system!

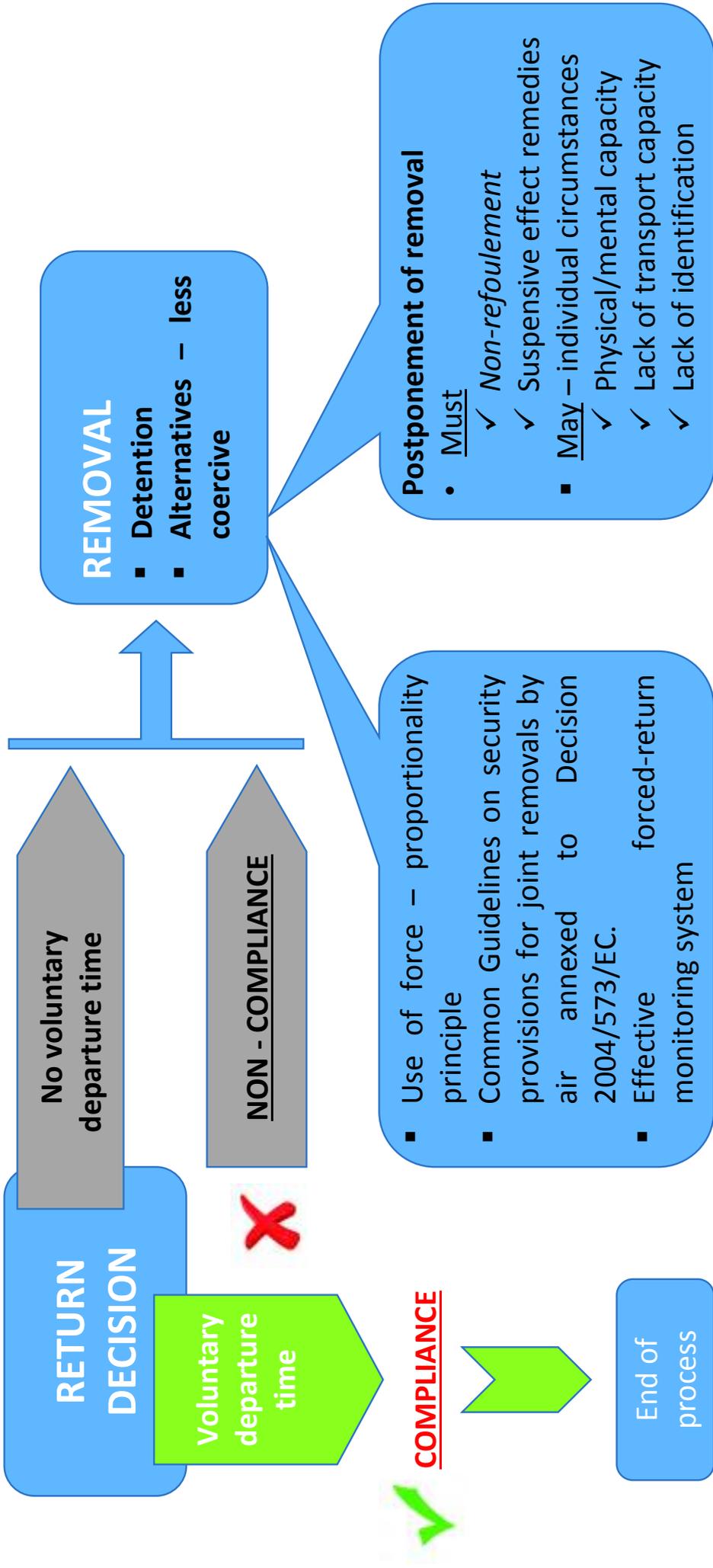
Return Directive 2008/115/EC

Key definitions & basic guarantees

- Illegal stay
- Return
- Return decision
- Removal
- Risk of absconding
- Voluntary departure
- Vulnerable persons
- The best interest of the child
- The right to family life
- The state of health of the third-country national concerned
- The principle of *non-refoulement*

Return Directive 2008/115/EC

Return process. Stages



Return Directive 2008/115/EC

Return process. Stages

RETURN
DECISION



ENTRY BAN

- Must
 - ✓ No voluntary departure time
 - ✓ Non-compliance with the RD within the period for voluntary departure
- May – MSs discretion
 - 👉 5 years maximum time limit
 - 👉 Exception - serious threat to public policy, public security, or national security

Return Directive 2008/115/EC

Procedural safeguards

- Right to be heard before issuing return-related decisions
- Return-related decisions to be issued in written form and be reasoned (in an understandable language)
- Right to an effective remedy
- Right to legal advice, representation, and linguistic assistance

Return Directive 2008/115/EC

Detention and detention conditions

- As short as possible
- Maximum length is six months - may be prolonged
- Pre-removal detention is justified only when:
 - there is a risk of absconding
 - the third-country national concerned avoids or hampers the preparation of return or the removal process
- Detention of unaccompanied minors and families with minors - only as a measure of last resort and for the shortest appropriate period of time
- Detention in specialised facilities is a rule
- Particular attention to vulnerable persons
- Provision of leisure activities and education for minors
- Obligation to provide emergency health care and essential treatment of illness

The Return Handbook

- 👉 Provide guidance relating to the performance of duties of MS' national authorities
 - 👉 Not legally binding
 - 👉 Provides practical commentary and guidance on the implementation of each article of the Return Directive
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- Chapter 7 – Removal
 - Chapter 8 – Forced-Return Monitoring
 - Chapter 9 – Postponement of Removal
 - Chapter 10 – Return of UAMs
 - Chapter 12 – Procedural Safeguards

ANY QUESTIONS?



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