



EU Return Policy: Migrants' Detention

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The Treaty of Lisbon (2009)

Art. 78 TFEU: The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties

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

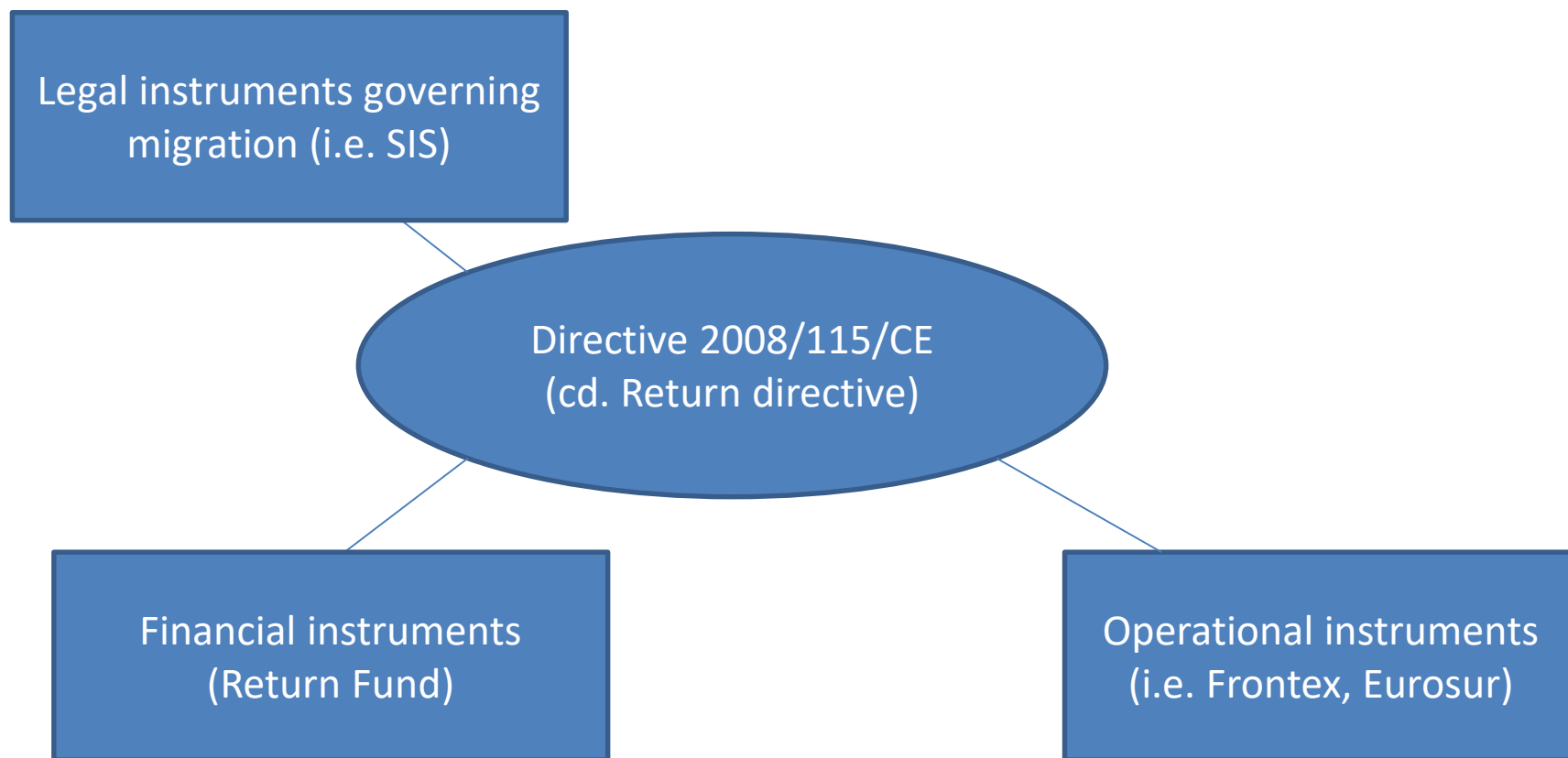
Entry of Third Countries Nationals (TCNs) in the European Union

«Schengen Borders Code» (Regulation (UE) 2016/399)

Conditions of entry

Refusal of entry

Fight Against illegal migration



FRONTEX

- The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) was established by Council Regulation (EC) 2007/2004.
- This Regulation was repealed by Regulation (EU) 2019/1896 establishing **European Border and Coast Guard Agency (Frontex)**, on the 13 November 2019.

Mission:

-promote, coordinate and develop European border management in line with the EU fundamental rights Charter and the concept of Integrated Border Management.

Main tasks:

- Border control
- Search and Rescue operations
- Analysis of the risks
- Return of third country nationals

DIRECTIVE 2008/115/EC (Return Directive)

- Common standards and procedures for returning illegal staying third-country nationals
- Respect of fundamental rights and dignity
- Obligation for Member States to issue a return decision against any third-country national staying illegally on their territory

DIRECTIVE 2008/115/EC (Return Directive)

Gradual steps:

- period for voluntary departure of between seven and thirty days
- Possible imposition of obligations (aimed at avoiding the risk of absconding), such as regular reporting to authorities, deposit of a financial guarantee
- Coercitive measures

DIRECTIVE 2008/115/EC (Return Directive)

Detention of a third country national:

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

DIRECTIVE 2008/115/EC (Return Directive)

Judgment of the EU Court of Justice of 28 April 2011, in case C-61/11 PPU, *El Dridi*

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

Article 5, para. 1, lett. f) ECHR

Allowing the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

Article 5, para. 1, lett. f) ECHR

Sub-paragraph (f) of Article 5 § 1, permits the State to control the liberty of aliens in an immigration context, not requiring the detention to be reasonably considered necessary, for example to prevent the individual from committing an offence or fleeing.

However, deprivation of liberty needs to be address with:

- Due diligence
- Lawfulness
- Ensuring that no one is arbitrarily deprived of his/her liberty

Alternatives to immigration detention

- ✓ Registration with authorities
- ✓ Temporary residence permits
- ✓ Open centres or semi-open centres
- ✓ Regular reporting

Detention in the context of the coronavirus disease (COVID-19) pandemic

Statement by Council of Europe Commissioner for Human Rights (26 March 2020)

The release of immigration detainees as measure that member states can take during the Covid-19 pandemic to protect the rights of persons deprived of their liberty more generally, as well as those of asylum seekers and migrants.