

EN

E-000970/2025

Answer given by Mr Brunner
on behalf of the European Commission
(27.5.2025)

In line with Article 72 of the Treaty on the Functioning of the European Union¹, Member States can take measures that could deviate from EU secondary law. However, this must be in exceptional and well-defined cases, under stringent conditions controlled by the Court of Justice of the European Union². Such measures must be temporary, necessary and proportionate, limited to what is strictly necessary.

Article 6(3) of the Return Directive³ allows Member States to take back illegally staying third-country nationals in other Member States under bilateral agreements or arrangements existing on the date of entry into force of the Return Directive (also respecting when applicable the Dublin Regulation⁴). The Commission's proposal for a Return Regulation adopted on 11 March 2025⁵ includes allowing Member States to conclude new bilateral agreements or arrangements, or to establish bilateral cooperation between Member States to take back illegally staying third-country nationals crossing internal borders without authorisation.

¹ https://eur-lex.europa.eu/eli/treaty/tfeu_2016/art_72/oj/eng.

² See inter alia judgment of 2 April 2020, *European Commission v Republic of Poland, European Commission v Hungary and European Commission v Czech Republic*, Joined Cases C-715/17, C-718/17 and C-719/17 EU:C:2020:257; judgment of 17 December 2020, *Commission v Hungary*, Case C-808/18, EU:C:2020:1029; judgment of 30 June 2022, *M.A. v Valstybės sienos apsaugos tarnyba*, C-72/22, EU:C:2022:505.

³ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98–107.

⁴ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, p. 31–59.

⁵ COM(2025) 101 final.