

EN

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Answer given by Ms Johansson  
on behalf of the European Commission  
(8.4.2021)

Regularisation of irregular migrants is an issue covered by national law. Member States have so far expressed opposition to the development of harmonised EU solutions in this field. The Commission nevertheless acknowledges that in specific contexts regularisation may be an appropriate policy response, and spelled out<sup>1</sup> a number of assessment criteria that could be taken into account by Member States on a case-by case basis. In the specific context of the COVID-19 pandemic, the Commission recalled<sup>2</sup> that Member States ‘enjoy broad discretion to grant a residence permit or another authorisation offering a right to stay to irregular migrants for compassionate, humanitarian or other reasons.’

Effective implementation of migration procedures relies in part on the capacity to successfully prevent and respond to unauthorised movements and absconding of applicants for international protection and irregular migrants<sup>3</sup>. The existing EU *acquis* in the field of asylum and return requires that Member States may use detention only in certain well defined and exhaustive circumstances and as a measure of last resort, if other less coercive measures (i.e. alternatives to detention) cannot be applied effectively. Therefore, alternatives to detention are crucial tools for Member States in this regard and Member States must consider alternatives before applying detention. Moreover, the EU *acquis* provides that any detention should be for the shortest appropriate period of time and should as a rule be in specialised detention facilities, based always on individual assessment.

Through the European Migration Network, the Commission is working together with Member States, civil society and international organisations to develop knowledge and increase the availability and use of effective alternatives to detention.

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<sup>1</sup> Commission Recommendation (EU) 2017/2338 of 16 November 2017 establishing a common ‘Return Handbook’ to be used by Member States’ competent authorities when carrying out return-related tasks, C/2017/6505.

<sup>2</sup> COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement C(2020) 2516 final.

<sup>3</sup> See Article 8(2) of Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast) and Article 15(1) of Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals.