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Voluntary return and the limits of individual responsibility in the EU Returns Directive

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Citation

Mommers, C. M. F. (2022, February 10). *Voluntary return and the limits of individual responsibility in the EU Returns Directive*. Meijers-reeks. Retrieved from <https://hdl.handle.net/1887/3264310>

Version: Publisher's Version

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Note: To cite this publication please use the final published version (if applicable).

The concept ‘voluntary return’ is a crucial but often poorly understood part of the procedure for the return of irregularly staying third-country nationals from EU member states, as set out in Directive 2008/115 (the Returns Directive). Through this concept, member states allocate primary responsibility for the return process to individuals. This individual responsibility, however, is only vaguely defined in the Directive, creating the risk that it is used by member states in an almost entirely open-ended and limitless manner, with potentially far-reaching consequences for third-country nationals, including their fundamental rights. This dissertation seeks to clarify the limits of this individual responsibility arising out of the concept of voluntary return in the Directive. It does so by unpacking the two component parts of voluntary return: the obligation to return and the voluntary departure period. This analysis draws on a triangle model that brings into focus the three legal relationships that together determine the framework for voluntary return: the individual and the EU member state, the individual and the country of return, and the country of return and the EU member state. The analysis results in the identification of 25 guidelines setting out concrete limits on individual responsibility for voluntary return.

This is a volume in the series of the Meijers Research Institute and Graduate School of the Leiden Law School of Leiden University. It is part of the Law School’s research programme ‘The progression of EU law: accommodating change and upholding values.’



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