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Delegations will find attached document SWD(2025) 250 final.

EUROPEAN
COMMISSION

Brussels, 16.5.2025
SWD(2025) 250 final

Addendum to the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC - COM(2025) 101 final of 11 March 2025

COMMISSION STAFF WORKING DOCUMENT

Analytical Supporting Document

Accompanying

the Proposal for a Regulation of the European Parliament and of the Council

establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC

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1. Introduction

The safe and dignified return of third-country nationals with no right to stay in the EU is an essential element of the integrated, sustainable and comprehensive approach to asylum and migration that the EU is putting in place. A credible and effective policy on return is crucial for upholding the credibility of migration and asylum policies. Despite substantial efforts at political and operational level[1], the current EU return system does not deliver. Statistics show that only around 20% of the third-country nationals ordered to leave the Union actually do[2]. This creates significant operational challenges for the Member States and erodes citizens' trust in the EU's capacity to manage migration and to ensure the effective functioning of the Schengen area. The European Parliament's Spring 2024 Eurobarometer reported that less than a quarter of respondents were satisfied with the EU's actions to manage crises pertaining to the handling of migration[3].

In this context, President von der Leyen's 2024-2029 Political Guidelines[4] announced the intention to put forward a new common approach on returns, with a new legislative framework to speed up and simplify the process. This came as a response to the European Council's calls for a unified, comprehensive, and effective policy on return and readmission[5]. In October 2024, the European Council invited the Commission to submit a new legislative proposal on return, as a matter of urgency[6].

Action is needed to improve both the effectiveness of the EU's internal return system and the external cooperation with third countries on readmission, with the aim of creating a positive dynamic, where there is more capacity for fast and effective returns and where Member States can fully capitalise on the results of the EU's external actions.

With the momentum given by the adoption and the implementation of the Pact on Migration and Asylum[7], return remains the missing piece. The implementation of the Pact will lead to a more efficient and quicker processing of the applications for international protection. Aligning returns to that stepped-up pace will be key to avoiding that our systems are overwhelmed and to ensuring that third-country nationals are returned. Yet, the current return policy, based on the 2008 Return Directive, which is no longer fit for purpose, is not effective nor efficient enough

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[1] 2015 Action Plan on increasing effectiveness of the EU system of returning irregular migrants; 2021 Communication on enhancing cooperation on return and readmission as part of a comprehensive EU migration policy; 2021 EU Strategy on Voluntary Return and Reintegration; 2023 Policy document on an operational strategy for more effective returns.

[2] Eurostat, Enforcement of immigration legislation. Available at: https://ec.europa.eu/eurostat/databrowser/explore/all/popul?lang=en&subtheme=migr.migr_man.migr_eil&display=list&sort=category&extractionId=migr_eiord1, accessed 6 March 2025.

[3] Eurobarometer, Survey 3272: Public Opinion in the European Union. Available at: https://europa.eu/eurobarometer/surveys/detail/3272, accessed 20 February 2025.

[4] European Commission, Political Guidelines for the next European Commission 2024-2029. Available at: https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en.

[5] Conclusions of the European Council of 9 February 2023, EUCO 1/23; Conclusions of the European Council of 17 October 2024, EUCO 25/24.

[6] Conclusions of the European Council of 17 October 2024, EUCO 25/24.

[7] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on migration and Asylum (COM(2020) 609 final).

as it suffers from several challenges. The sources of those difficulties are varied and stem from the inefficient and diverging national procedures, the lack of cooperation of the third-country nationals and the insufficient cooperation from third countries in readmitting their own nationals.

For those reasons, the Commission proposed on 11 March 2025 a Regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union[8] (hereinafter: "the proposal"). The proposal presents a revamped legal framework that updates the return legislation of 2008, aligns it with relevant developments in the migration field, including the Pact on Migration and Asylum, makes it fit for today's needs and challenges, and helps preserve the Schengen area without internal border controls.

The proposal seeks to simplify and enhance the efficiency of the return process, while ensuring full adherence to fundamental rights and in full compliance with international and human rights law and international refugee law, thereby reinforcing the EU's commitment to an EU migration policy that is fair and firm. The European Council on 20 March 2025 invited the co-legislators to swiftly examine the recent Commission proposal on returns[9].

This Staff Working Document provides detailed information on the context, problem definition, objectives, alternatives considered, as well as the rationale regarding the identified way forward.

1.1. Legal context

The current legal framework for the return of third-country nationals with no legal right to stay in the EU is governed by Directive 2008/115/EC[10], known as the **Return Directive**. It lays down common standards and procedures to be applied in Member States for returning illegally staying third-country nationals. Discussions in the European Parliament, dedicated expert working groups[11] and with academia and stakeholders have often highlighted the limitations of the current Return Directive, as new challenges on the ground have arisen in an increasingly complex migration context. Mutual recognition of return decisions is governed by the **2001 Directive on the mutual recognition of decisions on the expulsion of third-country nationals[12],** complemented by Council decision 2004/191/EC that aimed at organising financial compensations between Member States when recognising each other's return

[8] European Commission, Proposal for a Regulation of the European Parliament and of the Council on establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC, COM(2025) 101 final.
[9] Conclusions of the European Council of 20 March 2025, EUCO 1/25.
[10] 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).
[11] Council Working Party on Integration, Migration and Expulsion (IMEX); Contact Group - Return Directive (E02232).
[12] Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-country nationals (OJ L 149, 02.06.2001, p. 34).

decisions[13]. However, currently few Member States use the possibility offered by the Directive because of practical or legal obstacles.

The 2018 **proposal to revise the Return Directive**[14] sought to update the legal framework and improve its efficiency. While the Council reached a partial general approach in 2019[15], the European Parliament did not reach a position, and negotiations remained at a standstill during the last Commission's mandate[16].

Since the adoption of the Return Directive in 2008, the EU migration policy has progressed significantly and return rules link closely to several legal acts managing migration and borders in the Union. In 2019, the new **Frontex Regulation**[17] was adopted, with the core objective of implementing the European integrated border management at national and Union level, which is a necessary corollary to the free movement of persons within the Schengen area. With returns being part of the European integrated border management, the Frontex Regulation was designed to enhance the Agency's ability to support return-related tasks.

In September 2020, the Commission presented the **Pact on Migration and Asylum**[18] (hereinafter: "the Pact") that aims at modernising a large part of the EU migration procedures and setting out a more comprehensive approach to migration management. One of the key objectives of the Pact is the establishment of a common EU system for returns that ensures effective returns in full respect of fundamental rights and that aligns with the ambition for a more effective overall migration management system. On 14 May 2024, the legal acts composing the Pact were adopted. Those instruments include a **closer link between rejected asylum** applications **and return decisions**[19], as well as a return border procedure set out in the **Return Border Procedure Regulation**[20].

At the same time, the legal and operational architecture sustaining the well-functioning of the Union and the Schengen area has evolved significantly. As effective returns are a necessary measure in an area without internal border controls, additional common tools have been put in

[13] Council Decision 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals (OJ L 60, 27.2.2004, p. 55).

[14] European Commission, Proposal for a Directive of the European Parliament and of the Council on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals (Recast), COM(2018) 634 final.

[15] Council of the European Union, Partial General Approach on the Proposal for a Directive of the European Parliament and of the Council on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals (Recast), 2019.

[16] European Parliament, Proposal for a Recast of the Return Directive, Legislative Train Schedule. Available at: https://www.europarl.europa.eu/legislative-train/theme-a-new-era-for-european-defence-and-security/file-proposal-for-a-recast-of-the-return-directive.

[17] Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.

[18] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum (COM(2020) 609 final).

[19] Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU.

[20] Regulation (EU) 2024/1349 of the European Parliament and of the Council of 14 May 2024 establishing a return border procedure, and amending Regulation (EU) 2021/1148.

place through the reinforced role of EU Agencies, as well as through an update of core functionalities for large-scale IT systems, such as the **Schengen Information System** and its return alerts. As part of the **Schengen evaluation and monitoring mechanism**, a thematic Schengen evaluation on return was carried out in 2024, to identify operational solutions that enhance the effective and swift return of third-country nationals with no right to stay.

Substantial **efforts have been made to improve cooperation on readmission with third countries**. The EU has concluded readmission agreements with 18 third countries[21], which set out clear obligations and procedures for the third-country authorities and Member States to readmit own nationals illegally staying on their respective territories. In addition to the readmission agreements, the EU has concluded non-binding readmission arrangements with six third countries[22], which set a framework for structured cooperation on readmission. The **Samoa Agreement**, the new Partnership Agreement with the Organisation of African, Caribbean and Pacific States[23] (ACP), has introduced clear obligations on readmission with 77 third countries in these regions. Through **Article 25a of the Visa Code**[24], the EU has introduced a mechanism to foster cooperation with third countries by linking visa policy with cooperation on readmission, thus providing a first answer to the repeated calls of the European Council to use all relevant policies and tools to increase returns. Visa measures have been proposed for six third countries, and adopted for two, leading in most cases to progress in cooperation on readmission. The EU's intensive engagement following the proposals for, or the adoption of, visa measures has led, for example, to the start of regular dialogues on readmission, to significant improvements of the quantitative indicators of cooperation (e.g. the number of travel documents issued), and to policy changes, including the acceptance of forced returns and charter flights, where this was previously not the case. Following the proposal and the adoption of measures, Member States have overall increased operational engagement with the priority third countries, including by submitting more readmission requests.

This **coherent approach by the EU and its Member States**, both on the external side with the third countries concerned and internally, contributes to the effectiveness of the mechanism. Incentives and leverages are also being created in other policy areas. The **Flexible Mechanism under the Neighbourhood, Development and International Cooperation Instrument (NDICI)** provides for a flexible incentive-driven approach for better cooperation on migration management, including return and readmission. The **revised Generalised Scheme of Preferences Regulation**[25] (GSP), proposed in 2021, sought to introduce the lack of cooperation on readmission as one of the grounds to withdraw trade preferences from the beneficiary countries. However, the co-legislators did not reach an agreement.

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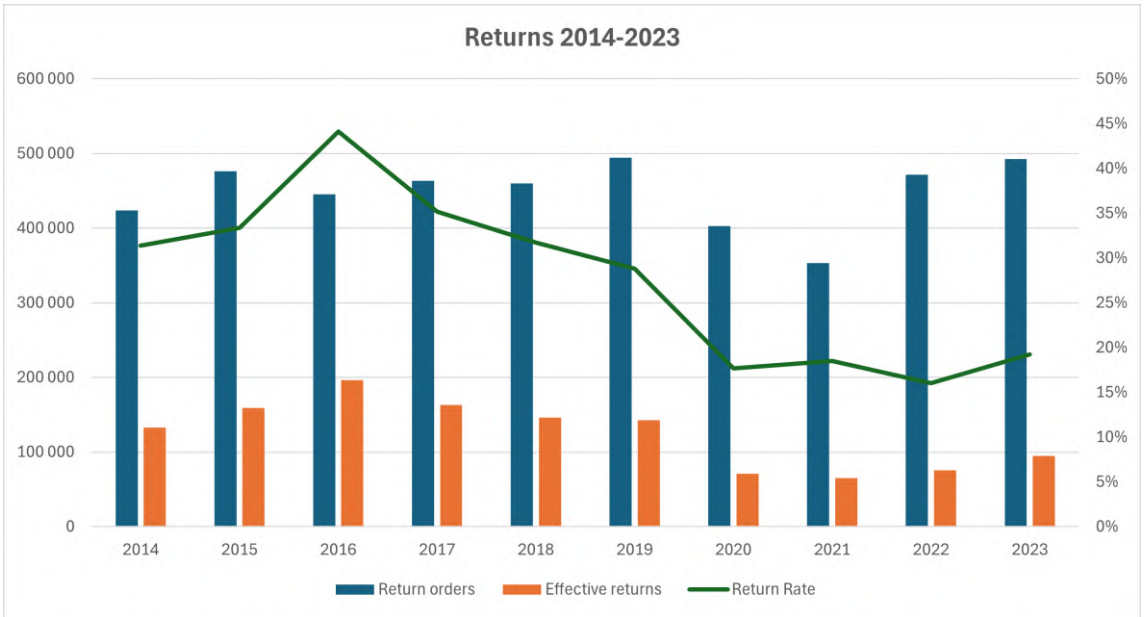
[21] Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Cape Verde, Georgia, Hong Kong, Macao, Moldova, Montenegro, North Macedonia, Pakistan, Russia, Serbia, Sri Lanka, Turkey and Ukraine.
[22] Afghanistan, Bangladesh, Guinea, Côte d'Ivoire, Ethiopia and The Gambia.
[23] Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part, ST/8372/2023/REV/1.
[24] Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).
[25] Proposal for a Regulation of the European Parliament and of the Council on applying a generalised scheme of tariff preferences and repealing Regulation (EU) No 978/2012 of the European Parliament and of the Council, COM(2021) 579 final.

1.2. Operational context

Over half a billion crossings of the external borders of the EU were recorded in 2023, reaching 92% of pre-pandemic levels in 2019[26]. Although the vast majority of third-country nationals arrive to the EU in an authorised manner[27], the number of irregular arrivals remains high, with on average more than 300 000 illegal border crossings per year detected by Frontex between 2022 and 2024. **Irregular migration** continues having an important impact on the return system.

Effective implementation of returns is a challenge. In the years before the Covid-19 pandemic, the average return rate[28] stood at almost 33%, pointing to an already insufficient effectiveness of the system. After the Covid-19 pandemic, the average return rate dropped to less than 18%. While EU efforts have been successful in slightly increasing effective returns since the pandemic, numbers have remained low, with the return rate standing at 19% in 2023 (Figure 1)[29].

Figure 1: *Third-country nationals to whom a return decision was issued in the EU and third-country nationals returned from the EU after having been issued a return decision, including the return rate 2014–2023 (EU-27)*

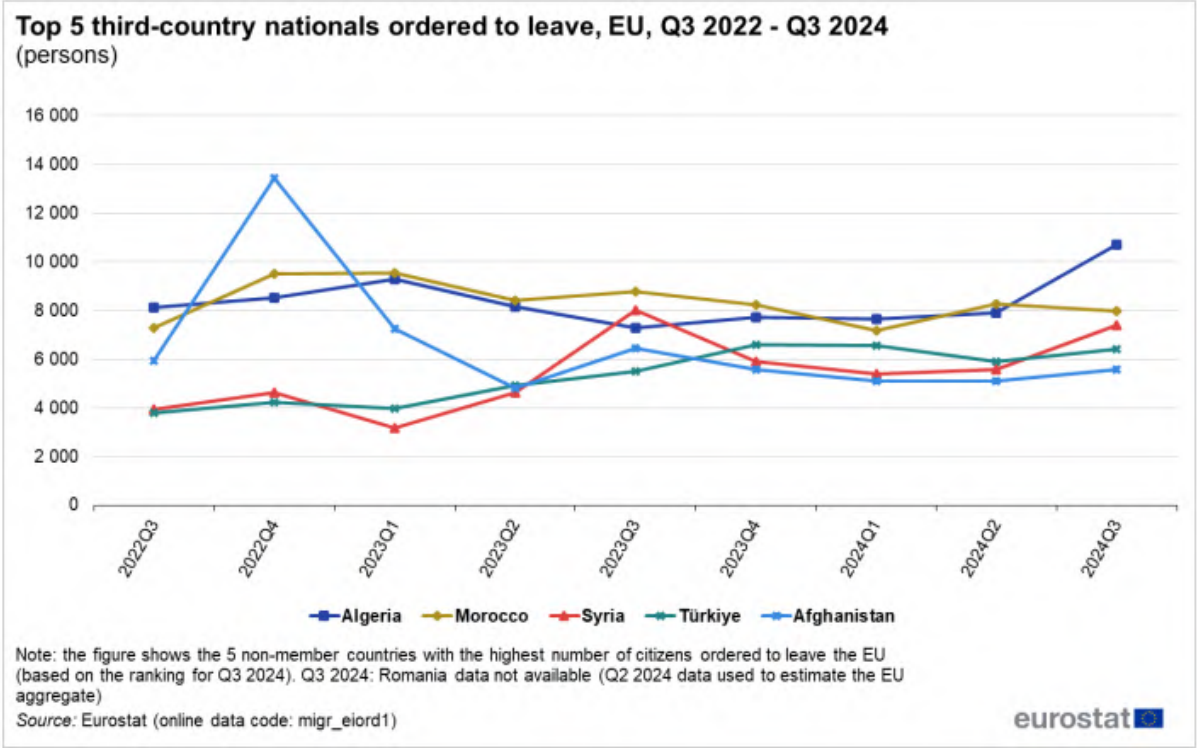


Source: European Commission, Directorate-General for Migration and Home Affairs based on Eurostat data, extracted on 25/02/2025.

[26] UN World Tourism Organisation, International Tourism Dashboard 2024.
[27] For example, the average number of first permits issued over the last three years (2021-2023) has been over 3.5 million.
[28] The return rate is understood as the number of third-country nationals returned to third countries as a percentage of the number of third-country nationals ordered to leave, calculated on the basis of data reported by Eurostat.
[29] Eurostat, Enforcement of immigration legislation. Available at: https://ec.europa.eu/eurostat/databrowser/explore/all/popul?lang=en&subtheme=migr.migr_man.migr_eil&display=list&sort=category&extractionId=migr_eiord1, accessed 6 March 2025.

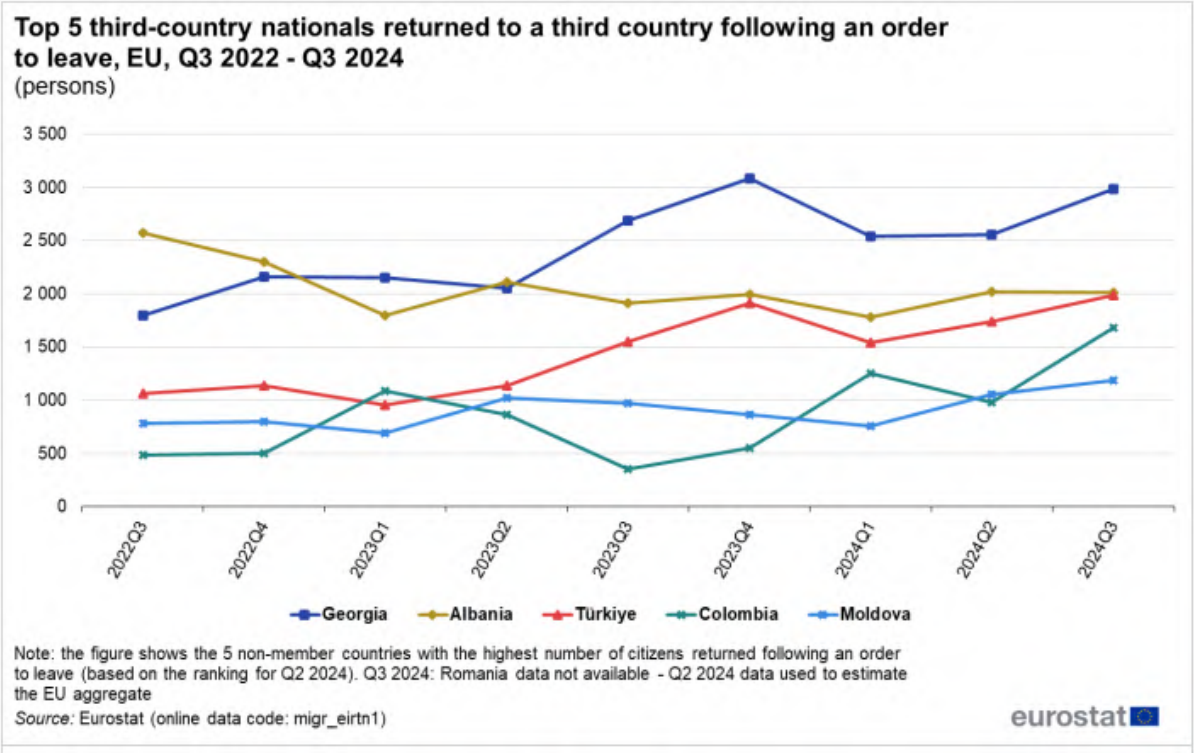
The number of effective returns has been on a steady increase since 2022. Based on Eurostat figures for the first three quarters of 2024, as well as operational data covering the rest of the year, this trend continues in 2024.

Figure 2: *Top five nationalities of third-country nationals ordered to leave, Q3 2022 – Q3 2024*



Source: Eurostat, Returns of irregular migrants - quarterly statistics - Statistics Explained

Figure 3: *Top five nationalities of third-country nationals returned to a third country following an order to leave, Q3 2022 – Q3 2024*



Source: Eurostat, Returns of irregular migrants - quarterly statistics - Statistics Explained

The mismatch between the top nationalities ordered to leave and the top nationalities of third-country nationals returned to a third country underlines the difficult operational context facing the Member States, which is characterised by an increasing number of third-country nationals ordered to leave yet remaining in the EU. The EU has undertaken significant operational initiatives to foster the implementation of return decisions across the EU and to support national efforts to manage returns.

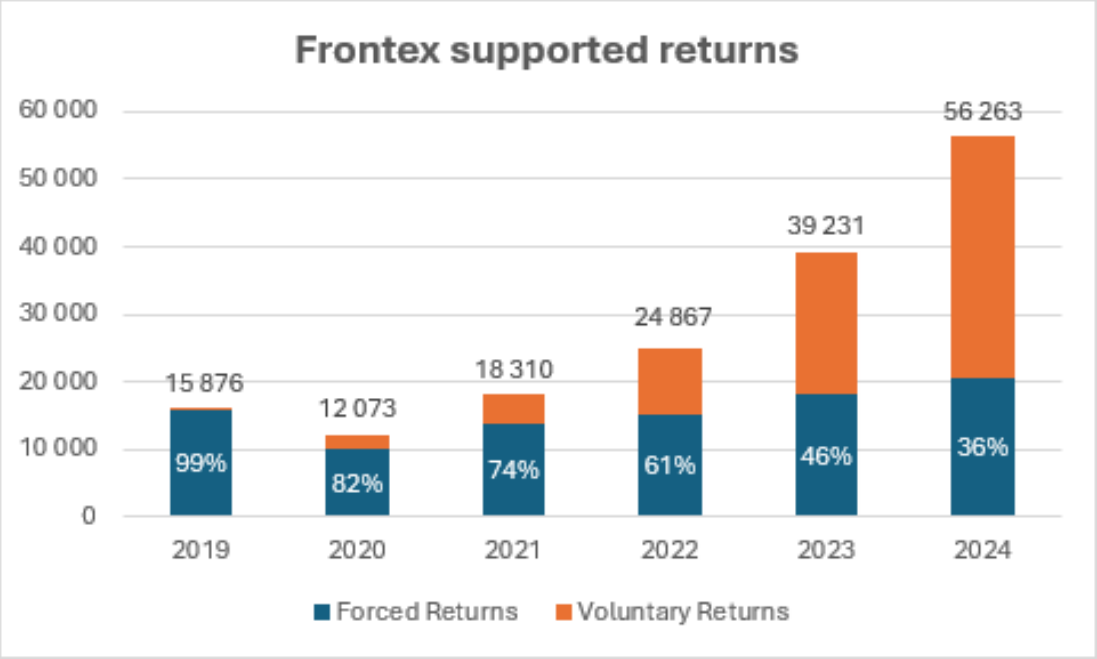
Frontex' expanded mandate on returns[30] has resulted in important operational advancements. The Agency supports around 50% of returns from Member States and provides operational support in all phases of the return and reintegration process. In relation to identification and readmission, Frontex supports Member States with the organisation of identification missions, including joint missions to several Member States, and through deployment of return liaison officers in third countries. There are currently 9 return liaison officers deployed[31] by Frontex, covering a total of 14 third countries. Frontex also offers support by deploying return specialists to Member States, including on return counselling. Between 1 December 2024 and 16 February 2025, there were 82 deployments (including rotations of return specialists between more

[30] Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.
[31] Congo and Democratic Republic of Congo; Côte d'Ivoire and Guinea; Egypt; Ethiopia; Nigeria; Somalia and Kenya; The Gambia; Uzbekistan, Kyrgyzstan and Tajikistan; Vietnam; Ghana (temporary gap).

locations) to 14 Member States[32] covered by 76 return specialists (17 category 1, 36 category 2 and 23 category 3).

In relation to return operations, Frontex increased the number of returnees supported through commercial flights from 27 901 in 2023 to 44 628 in 2024, to 123 third countries of return. In 2024, the majority were voluntary returns (Figure 4). In 2023 and 2024, Frontex supported the organisation of 288 charter flights with more than 11 000 returnees on board each year. Most return operations by air were monitored through the Frontex monitoring pool. The Agency also supports Member States in improving the efficiency of their national return and reintegration systems through gap analyses of their digital return case management systems (21 Member States' gap analysis had been finalised by 2024), as well as by setting up a knowledge exchange network on return and reintegration.

Figure 4: *Number of Frontex supported forced and voluntary returns 2019–2024*



Source: European Commission, Directorate-General for Migration and Home Affairs based on Frontex data

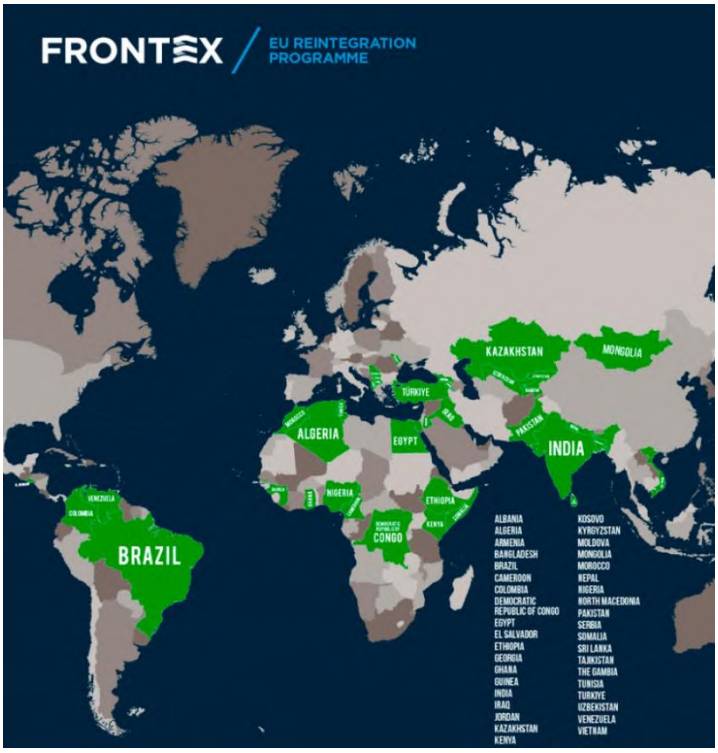
Frontex and the Member States have shown significant operational results based on the **EU Strategy on Voluntary Return and Reintegration**, published in April 2021[33]. This strategy aims at increasing voluntary returns and creating a more coordinated approach among Member States, *inter alia* by enhancing operational assistance by Frontex, improving coordination with relevant partner countries, and enhancing return counselling services. The strategy furthermore emphasises the importance of enhancing the link between voluntary and forced returns, including by strengthening information provision on their rights and obligations to returnees in the return process through counselling. As part of the strategy, Frontex has set up the **European**

[32] Cyprus, Greece, Denmark, Poland, Germany, Italy, Croatia, Slovakia, Bulgaria, Portugal, France, Iceland, Belgium, Romania.

[33] Communication from the Commission to the European Parliament and the Council, The EU Strategy on Voluntary Return and Reintegration, COM/2021/120 final.

Union Reintegration Programme[34], which provides post-arrival and long-term reintegration support to both voluntary and forced returnees in over 35 non-EU countries (Figure 5). From 2022 to the end of 2024, over 19 000 persons were supported (Figure 6)[35]. The programme actively enhances uptake of voluntary returns by a complementary use of counselling and incentives to reintegration (i.e. increase in the value of the assistance provided for voluntary returns), while Member States continue to provide reintegration support under national programmes[36]. Member States and Frontex have significantly stepped up their efforts to provide return counselling to ensure that third-country nationals can obtain correct and timely information about the return process and Frontex has increased the efforts to provide training[37]. Under the EU funded Return & Reintegration Facility (RRF), specific counselling methods have been developed for vulnerable groups, i.e. persons in need of psycho-social support. In the first half of 2024, return specialists conducted 7178 return and reintegration counselling sessions, which resulted in 3866 declarations to return voluntarily[38].

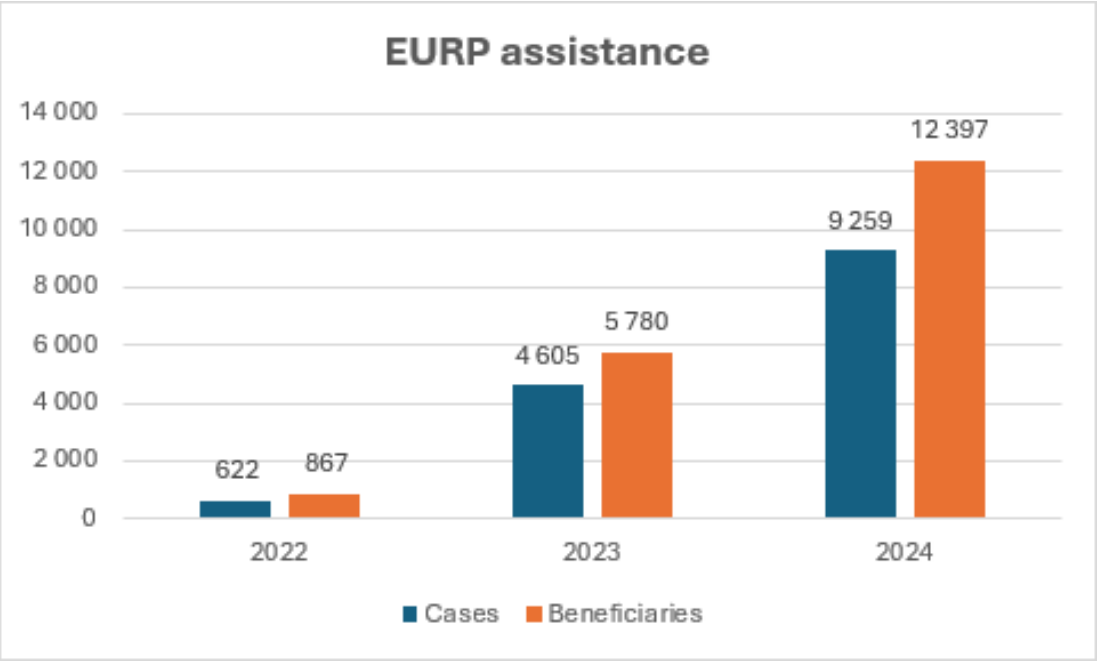
Figure 5: *Third countries where Frontex has set up EU Reintegration Programmes*



Source: https://www.frontex.europa.eu/return-and-reintegration/reintegration-assistance/

[34] Support includes an immediate reception package (up to EUR 205 for forced returns) for housing/transport and cash and up to EUR 1 000 EUR of reintegration services per returnee (doubled if return is voluntary) plus EUR 1 000 for each family member.
[35] Based on discussions with Frontex.
[36] Frontex, Reintegration Assistance. Available at: https://www.frontex.europa.eu/return-and-reintegration/reintegration-assistance, accessed 6 March 2025.
[37] Based on discussions with Frontex.
[38] Frontex, Frontex Risk Analysis for 2024 – First Half, 2024. Available at: https://prd.frontex.europa.eu/wp-content/uploads/fer-2024-1st-half.pdf, accessed 5 March 2025.

Figure 6: *Number of third-country nationals supported by European Union Reintegration Programme 2022–2024*



Source: European Commission, Directorate-General for Migration and Home Affairs based on Frontex data

As part of the Strategy on Voluntary Return and Reintegration, the Commission has worked to improve the efficiency and harmonisation of the reintegration processes through the continued development of the Reintegration Assistance Tool (RIAT), a digital tool that enables Member States to provide reintegration support in third countries to returnees through communication, monitoring and financial and administrative handling of reintegration programmes and individual cases. The Frontex European Reintegration Program is handled in RIAT. In 2024, RIAT was used by 1332 return counsellors and project-coordinators in Member States, up from 877 in 2023 (52% increase).

Since the appointment of the EU Return Coordinator and the establishment of the High-Level Network for Returns (HLN) in March 2022, the HLN members have convened to discuss returns in 16 meetings[39]. The **operational strategy for more effective returns**[40] includes the use of targeted return actions, listed in a Return Roadmap, to pool resources and implement jointly with the Member States and Frontex measures that will result in better coordination of internal efforts, such as planning of joint return operations by Frontex to priority third countries, workshops on incentives for promoting voluntary returns, comprehensive decisions (linking asylum to return), last-minute asylum applications. The EU Return Coordinator has supported the roll-out of the SIS return alerts, fostering coherence and consistency in its use. In-depth meetings were dedicated to the return of illegally staying third-country nationals posing a

[39] 8 in-person and 8 online.
[40] European Commission, Policy Document, Towards an operational strategy for more effective returns, COM/2023/45 final.

security risk. A dedicated Staff Working Document was published by the Commission on 16 December 2024[41].

On 7 March 2023, the renewed **Schengen Information System (SIS)** entered into operation. On 1 January 2025, there were approximately 571 000 return alerts in the SIS. In 2024, there were about 18 000 exit and 10 000 entry hits[42] at external borders and 49 000 hits on the territory of Member States (secondary movements). The SIS is useful to assess the extent of secondary movements and the degree of compliance with return decisions (voluntary return).

With the renewed system, alerts on return entered into SIS must also indicate whether the return decision is issued in relation to a third-country national who poses a **threat to public policy, to public security or to national security** ("security flag"). The Return Directive provides for the possibility to apply stricter rules for third-country nationals posing a security risk (such as no period for voluntary departure and a longer entry ban) and the Return Border Procedure Regulation allows for detention of persons who pose a risk to public policy, public security or national security. The High-Level Network for Returns chaired by the EU Return Coordinator and the Return Directive Contact Group held discussions to identify concrete solutions to identify and speed up the return of third-country nationals posing security risks. Member States' practices have also been examined as part of the Schengen thematic evaluation on return.

The introduction of return alerts in the SIS has created an opportunity to enhance **the recognition of return decisions issued by another Member State**. In 2023 the Commission issued a Recommendation[43] to support Member States in using this tool to speed up and simplify returns. Dedicated discussions and exchange of good practices have taken place in the Return Directive Contact Group and in the Working Party on Integration, Migration and Expulsion (IMEX) of the Council. Despite these recent initiatives, although the majority of Member States have transposed the Directive on mutual recognition, few of them use that possibility. Member States identify the most common obstacle as the lack of or limited enforceability of the decision and the administrative burden.

To improve the **efficiency of readmission**, the EU supports continuous exchange of knowledge and good practices between Member States, including via expert and practitioners' meetings. Operational solutions for the effective implementation of agreements and arrangements are discussed in regular monitoring meetings with third countries. The European Return Liaison officers provide support directly in the third country for identification and return operations, and Frontex organises regularly identification missions to Member States. The Commission has supported the development of digital readmission case management systems (RCMSs) with 6 third countries (Armenia, Bangladesh, Georgia, Pakistan, Sri Lanka, Ukraine). RCMSs translate the readmission process into digital workflows, thereby increasing its efficiency and transparency. Despite these efforts, a significant gap remains between return orders and

[41] European Commission, Commission Staff Working Document, On the return of illegally staying third-country nationals posing a security threat, SWD(2024) 287 final.

[42] The number of hits represents the number of persons detected on the territory of a Member State that did not issue the return decision for these persons.

[43] Commission Recommendation of 16 March 2023 on mutual recognition of return decisions and expediting returns when implementing Directive 2008/115/EC of the European Parliament and of the Council, C (2023) 1763 final.

readmission requests. In 2023, for example, Member States issued 484 160 return decisions but submitted only 65 402 readmission requests to third countries.

Despite these significant efforts and results at procedural and operational level, in particular in relation to voluntary return, **the overall return rate remains around 20%**. Although Member States have made improvements to their internal coordination, complexity and fragmentation at legal, policy and operational levels, remains a challenge negatively affecting the effectiveness of returns. Furthermore, limited cooperation from third-country nationals and third countries remains an area of concern. In relation to this, improvements are also required in addressing the **risk of absconding**, keeping people available for return procedures and incentivising compliance and voluntary return. These and other issues remain to be addressed to ensure that those ordered to leave are effectively returned. A further analysis and avenues for solutions are described below.

1.3. Evidence base

The proposal is underpinned by a solid and diverse evidence base, to ensure that it is both empirically grounded and responsive to stakeholder needs.

Key sources include:

(1) Schengen evaluations

Periodic Schengen evaluations and the thematic Schengen evaluation on returns[44] provide a detailed picture of the current return system. 27 evaluations were carried out between 2019 and 2024, covering all Member States and Schengen Associated Countries fully applying the Schengen acquis. The Commission put forward 254 recommendations to address the common identified challenges. These evaluations identify specific issues in national law transposing the Return Directive, providing an overview of the key challenges with the implementation of the current Directive. The thematic Schengen evaluation on return was carried out in 2024 to identify operational solutions that enhance the effective and swift return of third-country nationals with no right to stay.

(2) Experts' discussions

Discussions in the Return Directive Contact Group chaired by the Commission and gathering Member State experts, the Fundamental Rights Agency and the European Border and Coast Guard Agency ('Frontex') have since the entry into force of the Return Directive analysed the interpretation of specific elements of the Directive. This has allowed the Commission to have

[44] Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No 1053/2013 (OJ L 160, 15.6.2022, p. 1); European Commission, Proposal for a Council Implementing Decision on setting out recommendations addressing identified common areas for improvement resulting from the 2024 thematic Schengen evaluation 'Bridging national gaps: towards an effective EU return system through common solutions and innovative practices, COM (2024) 589 final.

a clear overview of the most difficult elements when it comes to the interpretation and application of the Return Directive[45].

In the Council, under the steer of several Presidencies, discussions on returns have been regularly on the agenda of respective working groups[46]. Exchanges on the future of the return policy and on the views of Member States on the upcoming legislation were particularly intense in 2024 and 2025.

The High-Level Network for Returns chaired by the EU Return Coordinator has discussed issues of practical nature relevant for the new return legal framework.

Targeted discussions with the European Migration Forum and the Expert Group on the views of migrants in November 2024 and January 2025 have been instrumental in shaping the proposal, notably on safeguards in the return process. The Readmission Expert Group analyses of the readmission process focused on the challenges in the identification process, issuance of travel documents, organisation of return operations, use of digital tools, and the EU approach towards specific third countries. The discussions in this context evidence a number of common challenges, and a fragmented approach to the readmission process. Dedicated Frontex working groups have raised operational challenges linked to both the return and readmission processes.

(3) Study on gaps and needs of EU law in the area of return

The proposal is informed by the consultations carried out within a dedicated study on "Gaps and needs of EU law in the area of return", commissioned by the European Commission Directorate-General for Migration and Home Affairs. The study, led by ICF, in collaboration with the Migration Policy Institute (MPI Europe), the European Policy Centre (EPC), and the Odysseus Academic Network for Legal Studies on Immigration and Asylum in Europe (Odysseus Network), has provided high quality analysis of possible options for the new legislative framework on return, based on targeted consultations with stakeholders through surveys, workshops and interviews. While the study will only be concluded later in 2025, the legislative proposal is informed by the consultation process carried out within the study.

(4) European Parliament studies and evaluations

The substitute Impact Assessment of the recast Return Directive proposal[47] and the Return Directive implementation report[48], both done by the European Parliament Research Centre, have fed this analysis and the preparations of the new legislative proposal.

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[45] These discussions have been taking place two to three times a year since 2009. When the Commission presented the proposal to recast the Return Directive in 2018, meetings were suspended for a period but resumed in 2022, and six meetings have taken place since.

[46] For example, the Council Working Group on Immigration, Migration and Expulsion has held dedicated discussions more than 50 times since the adoption of the current directive.

[47] European Parliamentary Research Service, The proposed Return Directive (recast), Substitute Impact Assessment, EPRS Study, February 2019. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2019/631727/EPRS_STU(2019)631727_EN.pdf. https://www.europarl.europa.eu/RegData/etudes/STUD/2019/631727/EPRS_STU(2019)631727_EN.pdf

[48] European Parliamentary Research Service, The Return Directive 2008/115/EC, European Implementation Assessment, EPRS Study, June 2020. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642840/EPRS_STU(2020)642840_EN.pdf. https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642840/EPRS_STU(2020)642840_EN.pdf

(5) Stakeholder consultation

The legislative proposal has been informed by consultations with a broad range of stakeholders, including Member States, European institutions, international organisations, non-governmental organisations (NGOs), civil society, research entities, and third countries. The consultations occurred at political, strategic, and technical level, to ensure that the realities and needs of all relevant actors would be considered. Stakeholders have shared with the Commission relevant resources and targeted input, listed in *Annex I*.

(6) EMN-REG resources

The Commission maintains regular consultations with Member States, Frontex, international organisations and NGOs through the European Migration Network Return Expert Group (EMN-REG)[49]. The ongoing work of EMN-REG has provided a valuable practical evidence base through 50 meetings (18 plenary, 32 thematic), 23 ad-hoc queries and 18 published informs / studies in the 2019-2024 period. These exchanges at practitioners' level ensure that the legislative proposal is grounded in real-world experience and that procedural and operational needs of Member States are addressed. *Annex II* contains a list of EMN meetings, informs and studies which served as background to inform the elaboration of the proposal.

(7) EU funded research

The proposal has been informed by EU-funded (ongoing) research projects in the field of return and irregular migration, in particular: "Measuring Irregular Migration (MIrreM)" on irregular migration in general and "De-centring the Study of Migrant Returns and Readmission Policies in Europe and Beyond (GAPS)", "Motivations, experiences and consequences of returns and readmissions policy: revealing and developing effective alternatives (MORE)" and "Finding Agreement in Return (FAIR)" on return, reintegration and readmission. These research projects bringing together academia, civil society, governments and international organisations have looked into, among others, barriers/enablers to international cooperation on return, motivations, experiences and consequences of return and readmission policy and human rights aspects in voluntary and forced return[50].

2. Definition of problems and challenges

At present, **only around 20% of third-country nationals ordered to leave the territory of the Member States return**. Whilst acknowledging the limitations of the return rate as a measure of effectiveness, this rate remains too low. Persons ordered to leave can mislead the authorities, moving on to other Member States as well as through purposely delaying and frustrating return procedures. Third-country nationals remaining in the Union despite a return decision who pose a threat to public security or national security require particular attention. Overall, the current system is not working well enough, which has an overall impact on the

[49] European Commission, Expert Groups – Networking on legal migration, irregular migration and return. Available at: https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/expert-groups_en.

[50] Irregular Migration Platform. Available at: https://irregularmigration.eu/, accessed 20 February 2025; Return Migration Platform. Available at: https://www.returnmigration.eu/about, accessed 20 February 2025; MORE Project Horizon. Available at: https://www.moreproject-horizon.eu/, accessed 20 February 2025; FAIR-Return. Available at: https://fair-return.org/, accessed 20 February 2025.

efficiency of the migration management in the Union. This can undermine the implementation of the Pact, which foresees an efficient EU return system for the comprehensive migration management system to work. This erosion can lead to a loss of trust in the international protection framework, as the low number of effective returns questions the effectiveness and fairness of current asylum and migration policies.

Several interconnected problems undermine the efficiency and effectiveness of current return and readmission procedures:

(1) Complexity and fragmentation of the return process

Despite the significant efforts to clarify the current rules and support better and more effective implementation, including with guidance[51], discussions and exchanges of best practices in expert groups[52], the complexity of the return process remains a challenge, as evidenced by the stakeholders during the consultations process. A high number of actors, authorities and stakeholders are involved. The absence of strategic planning prevents Member States from comprehensively streamlining national procedures, working on priorities and making the best use of the (limited) available resources[53].

Member States report, in that context, complex national legal frameworks and protracted administrative proceedings[54]. The complexity is also linked to the need to take into account extensive jurisprudence when applying the return rules. Sixty-six judgments on the Return Directive have been rendered by the European Court of Justice since its entry into force.

This is compounded by the fact that in many Member States voluntary and forced return are dealt with by different authorities, and communication, information-sharing and coordination is not always optimal and streamlined[55]. This enhances the possibilities for third-country nationals to frustrate return procedures through administrative and legal proceedings.

Schengen evaluations in the field of return have indicated that Member States have persistent deficiencies when it comes to the effective enforcement of return decisions. Divergences between Member States' practices include how and when return-related decisions are issued to illegally staying third-country nationals and a lack of common format and content of the return-related decisions, with some Member States providing details in fact and in law, while others

[51] 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; Commission Recommendation (EU) 2017/432 of 7 March 2017 on making returns more effective when implementing Directive 2008/115/EC of the European Parliament and of the Council, C/2017/1600; Commission Recommendation of 16 March 2023 on mutual recognition of return decisions and expediting returns when implementing Directive 2008/115/EC of the European Parliament and of the Council, C/2023/1763.

[52] Council Working Party on Integration, Migration and Expulsion (IMEX); Contact Group - Return Directive (E02232).

[53] European Commission, Schengen thematic evaluation report - Bridging national gaps: towards an effective EU return system. Available at: https://home-affairs.ec.europa.eu/schengen-thematic-evaluation-report-bridging-national-gaps-towards-effective-eu-return-system_en.

[54] European Commission, Schengen thematic evaluation report - Bridging national gaps: towards an effective EU return system. Available at: https://home-affairs.ec.europa.eu/schengen-thematic-evaluation-report-bridging-national-gaps-towards-effective-eu-return-system_en.

[55] About half of the Member States have separate authorities dealing with voluntary and forced return.

implementing a minimalistic approach which, among others, creates divergences as to how non-refoulement is assessed.

The lack of effective communication between the relevant authorities further complicates the functioning of the system, both inside each Member State and between Member States in case of secondary movements. A significant complication also relates to the limited use of case management systems in Member States as well as ineffective and incoherent use of (EU) databases, meaning that one person may have multiple digital files. This lack of communication and coordination can hamper the seamless and effective follow-up between the asylum, return and readmission processes and leads to inefficiency and ineffectiveness of return procedures. The current system lacks coherence and alignment with the developments that have occurred since the adoption of the Return Directive in 2008, notably with the legal acts composing the Pact which were adopted in 2024. Most legal acts of the Pact are regulations, leading to more streamlining and harmonisation of Member States' procedures. In general, the Pact legislation reinforces the obligations of third-country nationals to cooperate with the authorities, includes provisions on how to handle third-country nationals posing a security risk as well as how to handle minors in the migration process. These are points on which alignment across the various migration processes are useful for a more streamlined and efficient approach.

The complexity of the process makes it hard for some Member States to have recourse to the recognition and enforcement of return decisions issued by other Member States. In many cases, the procedures that the third-country national was subject to in the issuing Member State are considered too materially different from those of the Member State that would potentially recognise the decision, and there is lack of clarity on how to efficiently enforce a decision issued by another Member State. This means that in practice many Member States start the return procedure from scratch even if the third-country national had already been issued a return decision by another Member State. This is not efficient and opens the possibility to delay the process by moving between Member States and can foster secondary movements.

(2) Insufficient cooperation of third-country nationals

An important element hindering effective returns is the lack of cooperation from third-country nationals. Returning an uncooperative third-country national, who for example does not show up for the different phases of the return procedure, does not provide all the information and documents necessary to facilitate the confirmation of nationality and the issuance of travel documents and obstructs the return operation, is extremely challenging. The EU return legislation currently does not contain any obligation for third-country nationals to cooperate in the return procedure; such an obligation is however included in relation to applicants for international protection in the asylum legislation adopted with the Pact[56]. Provisions on the obligation to cooperate were included in the Commission proposal for the recast Return Directive. Some Member States have provided for the obligation to cooperate in their national legislation[57]. Hence, third-country nationals can be subject to different obligations and eligible

[56] See, e.g., Article 9 of the Asylum Procedure Regulation, as well as similar provisions in the Qualification Regulation.

[57] The stakeholder consultations carried out in the context of the study on gaps and needs of EU law in the area of return showed that more than 10 Member States have an obligation to cooperate at national level.

for different incentives based on the Member State issuing the return decision. This can lead to a distortive effect and cause secondary movements.

(3) Inability to ensure the availability of illegally staying third-country nationals and absconding

Third-country nationals illegally present in the EU may not have been detected following an irregular border crossing or may abscond after receiving a return decision[58]. Reliable data on absconding at EU level is not available. Some Member States estimate it at around 30%[59]. An estimated 261 700 secondary movements were detected in the EU in 2024, based on Eurodac foreign hits (523 367), which is a 11% decrease compared to 2023 (584 936 Eurodac foreign hits, corresponding to an estimated 292 500 secondary movements) and a 18% increase compared to 2022 (443 116 Eurodac foreign hits, corresponding to an estimated 221 600 secondary movements)[60]. The Schengen Information System, as well as the Entry-Exit System and revised Eurodac system, will in time provide more comprehensive data.

Absconding, including by moving to another Member State, represents a significant challenge in the framework of return, as it complicates the management of cases and creates constraints in the allocation of resources. Absconding also leads to an increased administrative workload, as the Member State authorities need to spend time to locate the person to understand if the person is still in their Member State, to uncertainties and challenges in planning, identification and return operations, with significant material and organisational costs, and can raise security risks[61]. A proper assessment of the risk of absconding makes it possible to identify measures best suited to respond to the risk and prevent it, leading to a follow-up of return decisions.

Schengen evaluations show that the elements taken into account by the national authorities for assessing the risk of absconding vary, leading to an inconsistent approach to detention. It is important that return alerts in the Schengen Information System are used in full, as this will help assessing if a person is likely to abscond again, for example by verifying if the person already absconded in another Member State. However, currently there are still gaps in the completeness and timeliness of the data.

Detention is a necessary tool to facilitate returns. When there is a risk of absconding, Member States may be required to detain migrants during the full length of sometimes protracted return and readmission procedures. Detention should be proportionate, imposed when necessary, and take into account the time necessary to prepare the return, in respect of fundamental rights. Through operational exchanges, the Commission understands that the current maximum duration of detention as implemented in national frameworks is not always sufficient in practice

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[58] European Commission, EMN Study on Responses to Long-Term Irregularly Staying Migrants: Practices and Challenges in EU Member States and Norway, 2020. Available at: https://home-affairs.ec.europa.eu/whats-new/publications/emn-study-provides-overview-policies-and-practices-member-states-and-norway-regarding-third-country_en.

[59] Evidence-based approach to underpin the legislative initiatives under the Pact on Migration and Asylum.

[60] Source: eu-LISA.

[61] Frontex, Good Practices on Alternatives to Detention in Return Procedures (European Border and Coast Guard Agency, 2021); EMN, The Effectiveness of Return in EU Member States, 2018. Available at: https://emn.ie/publications/the-effectiveness-of-return-in-eu-member-states-emn-synthesis-report/.

for the necessary procedures to be carried out, particularly for the most complex cases. Moreover, there is an important challenge with detention capacity in many Member States putting a strain on the system. The duration of procedures for identification and issuance of travel documents can be lengthy, even when shorter timeframes are set in readmission instruments, as timeframes are often not respected by the third countries' authorities. Furthermore, return procedures can also take substantial time, including due to administrative and judicial appeals[62], procedural steps, non-cooperation by the third-country national or the third country.[63]

The Commission, the Agencies, the European Parliament and the Member States have been working together with civil society to increase the effectiveness, availability and use of alternatives to detention. The work has been carried out with a view to ensuring the overall efficiency of the Member States' return systems where administrative immigration detention is applied when it proves necessary and proportionate and in full respect of returnees' fundamental rights.

(4) Limited uptake of voluntary return and effectiveness of forced return

While there have been some improvements in the last years, the number of voluntary returns could be increased. Member States report that the uptake of Assisted Voluntary Return and Reintegration programmes remains limited and that returnees who apply may also abscond before returning[64]. A significant number of Member States (15) consider the risk of absconding one of the main challenges linked to voluntary return. The uptake of voluntary returns depends on many factors, including the credibility of the removal option, the available incentives and the consequences in case of non-cooperation. In some cases, third-country nationals who do not cooperate on their voluntary return are not swiftly channelled to a forced return trajectory and abscond. In many Member States, the opportunity to return voluntarily within the 30-day period is granted to most returnees; however, instead of leaving, the Commission understands from operational exchanges with national authorities that this in some cases results in absconding and difficulties in following up with forced return when voluntary return is not respected. The lack of clearly defined rules on when a person should be subject to forced return hampers the overall effectiveness of the system. One of the reasons behind this is the fact that in some Member States authorities dealing with voluntary and forced return are separate, and communication is not always streamlined. Lack of clear and consistent follow-up with forced return reduces incentives of third-country nationals to cooperate and return voluntarily, as there is no clear prospect of forced return. The existence of these loopholes facilitates absconding and hampers returns.

(5) Return of persons posing a security risk

Managing and prioritising the return of persons posing a security risk is an issue commonly flagged by Member States, particularly in view of the public debate following cases where third-country nationals with a return decision conducted acts of terrorism, touching on internal

[62] EMN 2017, the effectiveness of return in EU Member States.
[63] *Workshop on Comprehensive Decisions and Last-minute Asylum applications*, 22 October 2024.
[64] Expert discussions in the Council Working Party on Integration, Migration and Expulsion (IMEX).

security considerations[65]. Sharing information and carrying out security checks related to security risks is essential and can be implemented by making full use of existing tools, including the SIS return alerts and other relevant databases. However, despite the creation of the security flag feature in SIS, the quality of the statistical picture is still limited. The information needed for identifying and assessing a potential security risk can be difficult to obtain, due to the number of authorities involved, often including security services, police and migration authorities, having access to different levels of information[66].

The management of those return cases can be improved. The absence of a specific separate ground for detention in cases where a person poses a security risk further complicates the handling of such cases. Meanwhile, the accelerated implementation of return procedures of persons posing a security risk relies on operational measures internally and readmission cooperation externally.

(6) Insufficient effectiveness of the readmission process

While readmitting own nationals is an obligation under international law, some countries of origin do not cooperate sufficiently in the identification of third-country nationals, the issuance of travel documents, and the organisation of return operations. This obstructs the readmission process and the effectiveness of returns, in particular for irregular migrants without valid travel documents[67].

The readmission process is neither defined nor regulated in the current Return Directive, and Member States implement different approaches. Operational data show limited follow up by Member States of enforceable return decisions, including with the submission of readmission requests. The reason behind this discrepancy is linked to both internal and external factors, such as administrative capacities to follow up on return decisions or the level of cooperation and reactivity of the country of origin. While it is understood that the number of readmission requests cannot equal the number of return decisions or the number of returns, for example because voluntary returns often do not require a readmission request, the gap remains important, pointing, among others, to a lack of systematic follow up of the procedural steps.

Insufficient coordination in engagement with third countries can lead to a fragmented approach and undermine the coherence and effectiveness of the Union's external action[68] and the effectiveness of leverages.

Another specific issue is the lack of clarity and legal uncertainties in the engagement with non-recognised third-country entities for the purpose of identification and return and readmission.

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[65] Commission Staff Working Document on the Return of Illegally Staying Third-Country Nationals Posing a Security Threat, SWD(2024) 287 final.

[66] Commission Staff Working Document on the Return of Illegally Staying Third-Country Nationals Posing a Security Threat, SWD(2024) 287 final.

[67] European Court of Auditors, Special Report 17/2021: EU readmission cooperation with third countries: relevant actions yielded limited results. Available at: https://www.eca.europa.eu/Lists/ECADocuments/SR21_17/SR_Readmission-cooperation_EN.pdf, para 74.

[68] European Court of Auditors, Special Report 17/2021: EU readmission cooperation with third countries: relevant actions yielded limited results. Available at: https://www.eca.europa.eu/Lists/ECADocuments/SR21_17/SR_Readmission-cooperation_EN.pdf, para 125.

The uncertainties related to sharing the necessary data between Member States, as well as the transfer of such data to third countries for the purpose of readmission, lead to inconsistent approaches between Member States and towards third countries. In certain cases, these inconsistencies can lead to ineffective procedures and can prevent the completion of the return and readmission process[69]. This situation is particularly problematic for data relating to the confirmation of nationality of third-country nationals, which is necessary to complete the readmission process.

3. Objectives of an effective EU return policy

An effective EU return policy aims to contribute to the increase of the overall number of returns and, ultimately, to a credible migration management system. To achieve that result, the following specific objectives are sought:

(1) Simplify the return process and increase its effectiveness

Rules, definitions and procedures in relation to forced and voluntary return should be made clearer, less burdensome and more streamlined. Exchange of information and cooperation between competent authorities should be strengthened through a clear framework. Recognition of return decisions issued by other Member States should be further strengthened, to reduce administrative steps, avoid duplication and send a firm signal to third-country nationals that there is no way to avoid the enforcement of return by going to another Member State. There is a need to ensure that information on the return decision exchanged by Member States include the key elements to allow for recognition and enforcement. More clarity is needed on how to assess the risk of absconding, including in relation to third-country nationals who moved to another Member State without authorisation, as well as on conditions for detention and alternatives to it. Alignment with some of the key novelties of the Pact would also reduce administrative complexity and streamline the process. Establishing common rules, including on procedural rights for the individuals concerned, is key for building mutual trust among Member States, which is a necessary element for consistent and efficient action across the EU, and for the recognition and enforcement of return decisions.

(2) Strengthen the European dimension of return

The complexity and fragmentation of existing approaches within the EU system could be overcome also through a system of common rules, structures and solutions that have a European dimension. It is key that irregular migrants know that moving without authorisation to another Member State will not be a solution to remain in the EU and exploit possible gaps, because they will be subject to the same rules and procedures across the EU.

At the same time, the necessary degree of flexibility should be ensured, taking into account Member States' constitutional, legal, procedural and institutional structures, so that the return legal framework can be successfully and efficiently implemented.

Therefore, there is a need to:

[69] As confirmed by the information collected in preparation of joint committees of readmission agreements and arrangements as well as in relevant Council Working Groups and Commission Expert Groups.

a) Reduce opportunities for the returnee to circumvent return rules due to the inefficient interaction between different national authorities or by absconding to another Member State. Recognition and enforcement of return decisions among Member States as well as measures against absconding would play an important role;

b) Harness efficiencies, allowing for the pooling of resources and expertise and for seamless cooperation among Member States. It would allow effective support from Frontex, building on the work done by the Agency for instance on flight booking and reintegration through the EU Reintegration Programme;

c) Ensure alignment of the return rules with the Pact, in particular with the asylum legislation and the Return Border Procedure Regulation;

d) Ensure that all Member States allocate the necessary resources and capacities to return, including for the purpose of contingency planning and ensuring well-prepared systems;

e) Increase the EU credibility towards third countries, through putting in place coherent and predictable readmission procedures as an integral part of the return process and with increased coordination in external action.

(3) Incentivise cooperation by the third-country national

The cooperation of third-country nationals should be strengthened to get a more efficient and swifter return process, in particular by enabling the establishment and verification of nationality, obtaining travel documents and ensuring that the returnee is available for the successful enforcement of the return decision. The obligation to cooperate should be proportionate and in line with fundamental rights. It should be accompanied by clear information on the rights and obligations of third-country national.

The possibility to carry out returns to countries other than the country of origin or transit that accept the returnee could work as a deterrent for irregular migration and as an incentive to cooperate. It would be important to ensure that any solutions are fully in line with EU's overall approach to the external dimension of migration, which is based on comprehensive, mutually beneficial partnerships with third countries and promoting the shared goal of migration policy that is fair and firm.

(4) Ensure the availability of the third-country national subject to return and prevent absconding and secondary movements

Ensuring the availability of individuals subject to a return decision is a key component of the effectiveness of a system that prevents and limits absconding. Detention or, where appropriate, alternatives to detention, should be implemented where there is a risk of absconding. This is also important for identification of returnees, cases of non-cooperation or people posing a security risk. An integrated and coherent system to manage absconding should also take account of new solutions, including digital ones.

(5) Incentivise voluntary return for returnees who cooperate and make forced return a credible option

Voluntary return is key for the efficiency of the return process as the most cost-effective and easier way to return third-country nationals. A prerequisite and an effective incentive to enhance the uptake of voluntary return is a credible forced return option, and more clarity on the interplay between the two should be sought. To this end, measures are needed to better manage the situation of third-country nationals who do not cooperate, who abscond to another Member State, who pose a security risk or who have not voluntarily returned before the date given to them. Member States should have procedures and capacity to enforce return decisions and to speedily support those who choose to return voluntarily, including by enhancing cooperation between the different authorities.

(6) Facilitate the return of persons posing a security risk

The return of persons posing a security risk is an EU priority. Exchange of information between relevant authorities should be streamlined and all relevant tools should be used to identify such persons and ensure their swift and effective return. Strengthened rules are necessary, in particular on detention, entry bans and the use of forced returns, while ensuring the respect of the principle of non-refoulement.

(7) Uphold the respect of fundamental rights

The respect of fundamental rights should remain a key requirement in the return process, in particular of the rights recognised by the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The jurisprudence in relation to the implementation of the Charter should be taken into account. In addition, compliance should be ensured with relevant obligations stemming from international law, in particular the Geneva Convention on the Status of Refugees, the United Nations Convention against Torture and the United Nations Convention on the Rights of the Child.

(8) Increase the effectiveness of the readmission procedure

The readmission procedure is an integral part of the return process – there is no return without a successful readmission procedure. This success depends on both internal and external factors. On the internal side, much can be done in terms of ensuring a coherent approach towards third countries, building on the experience of implementing the existing EU readmission instruments. This would complement the external efforts, including the conclusion of new readmission instruments and the use of positive and negative leverages. Coordination and transparency in the engagement with third countries should be strengthened to maximise results to the benefit of all Member States.

4. Ways forward considered

With a view to addressing the challenges and meeting the objectives set out above, three ways forward have been considered.

- **Alternative A: Bringing improvements while working within the current framework.** This involves better implementation of the current legal framework by making use of the available non-legislative tools.

- **Alternative B: New legal framework (directive or regulation) introducing new tools, streamlined rules and simplification to make return rules more efficient and put in place an overall more harmonised common system for returns**. This alternative increases the consistency and clarity of common EU rules and includes key novelties, while maintaining a certain degree of flexibility to respond to national realities.
- **Alternative C: New legal framework (regulation) setting out streamlined and fully harmonised rules.** This alternative provides for a fully harmonised common EU return system.

4.1. Alternative A: Bringing improvements while working within the current framework

Under this alternative, the current legal framework, i.e. the Return Directive of 2008, would be maintained. The Commission would continue working with Member States on implementing the Commission's Recommendations of 2017 and 2023[70], which contain detailed guidance on how Member States can use the flexibilities in the current Return Directive to speed up return as well as to recognise and enforce return decisions issued by another Member State.

The innovations brought by the Pact, such as the closer link between asylum and return and the return border procedure, would have a positive impact on the system. On the more novel aspects of the Pact not covered by the Return Directive, such as the obligation of, and the incentives for the returnee to cooperate, the Commission would prepare a new recommendation to guide Member States on how to implement it or amend national law. The Guidelines on Alternatives to Detention drafted by the EU Agency for Asylum and the Good Practices on Alternatives to Detention in return procedures prepared by Frontex would help Member States to strengthen the prevention of absconding[71]. The Commission would build on the efforts already made in the context of the implementation of the EU Strategy on Voluntary Return and Reintegration.

To achieve a more common approach in cooperation among Member States towards the same objectives and ensure a unified approach vis-a-vis third countries, the Commission could issue a communication or a strategy setting out its vision on how to work better jointly. This communication or strategy could task actors such as Frontex or the EU Return Coordinator to work on specific topics or actions for a more unified and integrated approach.

The work of the EU Return Coordinator would continue on the basis of the operational strategy, to be updated, as needed, and taking into account the outcome of the already implemented actions.

[70] Commission Recommendation (EU) 2017/432 of 7 March 2017 on making returns more effective when implementing Directive 2008/115/EC of the European Parliament and of the Council, C/2017/1600; Commission Recommendation of 16 March 2023 on mutual recognition of return decisions and expediting returns when implementing Directive 2008/115/EC of the European Parliament and of the Council, C/2023/1763.

[71] European Union Agency for Asylum, Guidelines on Alternatives to Detention, December 2024 and Frontex, Good Practices on Alternatives to Detention in return procedures, January 2025.

Building on the document issued in December 2024[72], the Commission would take forward work on the return of third-country nationals posing a security risk, notably by developing guidance and supporting the sharing of best practices and cooperation among Member States.

Building on the evaluation of the renewed SIS, the Commission could further guide and support the use of return alerts in SIS through updating the SIS II User Manual. This would complement the endeavours to enhance the use of mutual recognition, as set out in the Commission Recommendation of 16 March 2023 on the mutual recognition of return decisions[73].

Guidance would also be provided to foster a more coherent approach to the readmission procedure. Data collection and data exchange in relation to return and readmission would continue within the current set-up.

Solutions to manage irregular migration would be further explored within the existing legal framework, taking into account the existing definition of the country of return, allowing for return to the country of origin or transit, or to another country where the person voluntarily agrees to return.

To overcome the issues linked to insufficient cooperation of third countries, the EU and Member States would have recourse to the tools available in the current framework, such as Article 25a of the Visa Code.

The respect of fundamental rights would continue to be guaranteed respected in line with the provisions of the Return Directive.

4.2. Alternative B: New legal framework (directive or regulation) introducing new tools, streamlined rules and simplification to make return rules more efficient and put in place an overall more harmonised common system for returns

Under this alternative, a new legal instrument would be proposed by the Commission, putting in place an overall more harmonised common system. While the legislative proposal would aim to create common and streamlined rules for effectively managing returns, it would leave some flexibility to the Member States, where appropriate, for the new framework to be adapted to national specificities.

Such new instrument would include a number of innovations and would further clarify and expand some of the current rules, to address the challenges and attain the identified objectives. It would respond to the political calls for a new approach to manage returns by setting up a coherent and streamlined system, built solidly on the basis of the experiences gained in the implementation of the current rules and on the evidence identified in the evidence base section of this document, and would strengthen the European dimension.

This alternative would allow introducing in the legal framework key novelties tested or discussed in recent years, such as the obligation to cooperate, incentives, counselling and a

[72] Commission Staff Working Document on the Return of Illegally Staying Third-Country Nationals Posing a Security Threat, SWD (2024) 287 final.

[73] Commission Recommendation of 16 March 2023 on mutual recognition of return decisions and expediting returns when implementing Directive 2008/115/EC of the European Parliament and of the Council, C (2023) 1763 final.

permissive approach to returns to third countries other than the country of origin or transit. It would expand and clarify issues not sufficiently addressed in the current Directive, such as the assessment of the risk of absconding and the rules on detention.

To address problems to which the current Directive's responses are not entirely satisfactory, this alternative would further strengthen forced return and make it a credible option so that voluntary return would be incentivised. Specific rules would also bring a tailored solution to swiftly return third-country nationals with no right to stay posing a security risk.

Aiming at simplification, the new instrument would clarify the return rules, reducing the need for interpretation and the divergence in approaches. It would firmly embed readmission procedures as part of the return process, as well as the possibility for a standard form for readmission applications to be used, where possible.

Recognition of return decisions issued by other Member States would become mandatory, to reinforce the European dimension of return. However, a two-step approach could be envisaged where recognition would remain optional for a time while the necessary legal and technical arrangements for an optimal functioning of the system are put in place. Such two-step approach would also allow for the Regulation 2024/1351 on Asylum and Migration Management to start being applied, ensuring the best condition to implement mandatory recognition as part of a comprehensive migration management system.

The new instrument would also be able to address the increased need for communication and exchange of information between authorities within and across the Member States and the transfer of data to third countries, including by setting effective processes and providing for a clear legal basis, where needed. It would complete the alignment of the EU return rules with the Pact, ensuring a coherent and more effective approach.

The new instrument would uphold the respect of fundamental rights of returnees, providing clear procedural safeguards and by aligning the provisions on the protection of minors with the ones established by the Pact. It would also make it possible to introduce a right to information and legal assistance during judicial proceedings.

4.3. Alternative C: New legal framework (regulation) setting out streamlined and fully harmonised rules

Under this alternative, a new legal instrument, which would be a regulation, would harmonise in detail all aspects of the return process, providing for a fully coherent and unified system.

The new regulation would define all the procedural steps of the return process, detailed rules on the interplay between forced and voluntary return, and legislate all aspects and options of key concepts such as the obligation to cooperate, the consequences in case of non-cooperation as well as the relevant incentives to cooperate, which would be fully harmonised among Member States. It would describe in detail all the rules on detention, detention conditions, the types of alternatives to detention, including when and how they are to be applied. It would leave no room for any discrepancies between Member States, including when they carry out the return procedure of illegally staying third-country nationals posing security risks.

The regulation would exhaustively regulate procedural aspects within the EU competence. It would provide for an EU-wide return decision directly applicable and enforceable in all Member States as of the entry into force of the regulation. The regulation would introduce a mandatory readmission form with a view to create a fully harmonised system for return across Member States and would increase the level of coordination and transparency on external action.

Under this alternative, the possibility to carry out returns to a third country other than the country of origin or of transit would be regulated with a detailed procedure setting out all the steps Member States need to follow to ensure return to such third country. A fully harmonised monitoring mechanism to assess the implementation and to take into account possible changes in the third country would be put in place.

The regulation would enhance communication and information exchange among authorities within and between Member States, establishing effective processes and providing a clear legal basis. By fully aligning the EU return rules with overarching European objectives, it would ensure not only a more effective approach but also a thoroughly harmonised and stringent regulatory environment.

5. A comparative analysis of alternatives A, B and C

The three alternative ways forward each have their own merits, advantages and disadvantages, complementing the EU legal framework on migration in different ways. The following comparative analysis assesses how each alternative would address the current challenges and objectives, taking into account the impact in terms of respecting fundamental rights, ensuring political feasibility, proportionality and subsidiarity, and reducing administrative burden.

(a) Bringing improvements while working within the current framework

The limitations of the current Return Directive have been noted. The recast proposal of 2018 identified the main challenges that could not be sufficiently addressed, including difficulties and obstacles to successfully enforce return decisions due to diverging and inefficient national practices implementing the EU framework; inconsistent definitions and interpretations; lack of cooperation on the part of third-country nationals which leads to obstructing the return procedures; insufficient exchanges of necessary information in view of carrying out returns; as well as the efficiency of cooperation of countries of origin. Without a new legislative instrument, these limitations would remain. Some of the key asks of Member States, including clarifying definitions, simplifying the process, allowing for new solutions to manage irregular migration such as returns to a country other than the country of origin or transit, and generally coming forward with a new approach on returns could not be achieved.

The objective to **simplify the process and increase effectiveness** could hardly be achieved by maintaining the current situation. In the past years, expert discussions have focused on how return rules can be clarified to simplify the return process[74]. Divergent practices amongst Member States which have led to efficiency losses have been linked to a great extent to the

[74] Council Working Party on Integration, Migration and Expulsion (IMEX); Strategic Committee on Immigration, Frontiers and Asylum; Contact Group - Return Directive (E02232).

different interpretations of the rules in the current Return Directive. Member States would continue encountering challenges in the implementation of the return rules due to the complexity of the system and the extensive body of jurisprudence. Efforts have been made to try to address those shortcomings through operational action and guidance in the form of recommendations, but their impact has remained limited.

A key discussion point on the questions of simplification and effectiveness has been the **content and form of return decisions**. Under this alternative, no harmonisation, even limited, would be possible.

Recognition and enforcement of return decisions would remain a limited practice: currently some Member States have flexibilities in their national law to allow recognition and enforcement of a decision from another Member State, while others are tied to the legal obligation to issue a new return decision[75].

While remaining key for the implementation of the Pact, the return process would not be fully aligned with the innovations introduced in the asylum legislation and would not benefit of the efficiency gains, creating bottlenecks.

Under this alternative, the objective to **incentivise the cooperation of the third-country national** could only be achieved through recommendations and guidance. This would create a situation where third-country nationals would have different rights and obligations depending on the Member State carrying out the return procedure, which could result in secondary movements. Maintaining the *status quo* and not introducing an obligation to cooperate would prolong current efficiency issues linked to the lack of cooperation of third-country nationals and would not meet the preference of most Member States to include an obligation for returnees to cooperate[76].

The objective to **ensure the availability of the third-country national** could be pursued by providing targeted guidance on how to manage the risk of absconding and on measures other than detention that could be used to respond to a specific risk of absconding. While this could improve the situation in some Member States, it would not provide for a mandatory legal framework and would not result in a streamlined approach across Member States. This could potentially lead to increased chances of evading the return process depending on the Member State where the illegally staying third-country national would be physically present.

The objective to **incentivise voluntary returns for third-country nationals who cooperate and to make forced return a credible option** could only partially be achieved through guidance and sharing of best practices. The initial findings of the ongoing study on gaps and needs of EU law in the area of return and the outcome of the consultation process highlight the importance to clarify the two concepts of voluntary returns and forced returns to help improve the efficiency and predictability of the process. The use of incentives and counselling, which has proven its effectiveness, would remain a choice of the individual Member State, allowing for full flexibility. Voluntary return would remain the priority and central pillar of the system,

[75] Based on discussions in the Contact Group - Return Directive (E02232).
[76] Informed by the stakeholder consultation conducted in the framework of the study on Gaps and Needs of EU Law in the Area of Return.

with no additional tools to follow-up in case voluntary return is not respected. Returnees who do not cooperate and who do not return within the period for voluntary departure would not automatically be channelled into a forced return procedure. This alternative would not improve rules to manage the risk of absconding. The possibility to return a third-country national to a third country other than the country of origin or transit – a possible incentive to cooperate – could not be implemented in the current legal framework.

The objective of **facilitating the return of persons posing a security risk** would be pursued by using the derogations provided for in the Return Directive. It could be facilitated through targeted recommendations and sharing of best practices[77].

The objective of **strengthening the European dimension** would only be partially achieved, including in the framework of the Pact implementation and by developing additional guidance. In the consultation process, stakeholders have highlighted the importance of ensuring alignment with the rules of the Pact. Under this alternative, the revision of the return rules would remain the missing piece of the Pact, and a misalignment with the new rules of the asylum system would persist, creating bottlenecks in the return process that would not allow to build on the efficiency gains made in other parts of the migration management system.

The objective of **increasing the effectiveness of the readmission procedure** would only be reached partially. While the Commission could provide guidelines and recommendations to overcome the strong fragmentation in approaches between Member States, including different procedures in place, the effectiveness of such an approach would be limited in terms of ensuring better coordination, addressing the limited follow-up of enforceable return decisions with readmission requests, and optimising the use of leverages. Increasing the number of EU readmission instruments in the current system would allow to reduce the fragmentation in the Union's engagement with third countries. Working within the current framework would not allow for the introduction of a sound legal basis for the exchange of data between Member States and transfer to third countries necessary to support and clarify the readmission process.

Member States have asked for the possibility to implement so called "return hubs". The current definition of return would not allow to **return third-country nationals to countries different from their country of origin or transit,** except in the cases detailed in the Return Directive.

Fundamental rights would continue to be respected according to the rules of the Return Directive and in line with the Charter of Fundamental Rights. This alternative would not provide for streamlined procedures with the ones of the Pact where relevant.

Some of the identified objectives could, to some extent, be addressed through guidance, recommendations, strategies, action plans and exchanges of best practices. This alternative would have the advantage of leaving full flexibility to Member States to adapt and adjust as they see fit. However, this method has its limits. For example, the experiences in implementing

[77] Such as in the Staff working document on the return of illegally staying third-country nationals posing a security threat adopted by the Commission services on 16 December 2024, which provides an overview of Member States different practices and calls for making full use of the existing tools for the swift return of third-country nationals posing a security threat.

the Commission Recommendation[78] and the thematic Schengen evaluation on return[79] have shown that while some Member States may be able to implement recommendations, others have less margin of manoeuvre, depending on how their national legal framework has transposed the Return Directive, and on the possibility to change such legal framework.

Some of the key objectives identified in this document, such as establishing an obligation for the third-country national to cooperate and ensuring the availability of the returnee, would only be possible by amending national legislation. Several Member States have in fact introduced such provisions in their national law. This approach, however, risks having a distorting effect on the EU system, with different approaches that may prompt returnees to move to Member States with different rules, negatively impacting the coherence of the EU system and the Union and the Schengen area.

(b) New legal framework (directive or regulation) introducing new tools, streamlined rules and simplification to make return rules more efficient and put in place an overall more harmonised common system for returns

A new legal instrument which provides new tools, streamlined rules and possibilities to simplify and render return rules more efficient, would allow to modernise the EU return rules, establishing an overall more harmonised common system, and address the challenges identified, while leaving a certain room to adapt to national realities.

The objective to **simplify the process and increase effectiveness** could be achieved with a thorough revision of the current rules embedded in an entirely new legislative instrument, to increase clarity and facilitate implementation.

A new legal framework would make it possible to provide better clarity and certainty with regards to the application of the safeguards, as enshrined in the Charter, including the right to an effective remedy and legal assistance. Legal and linguistic assistance enables returnees to exercise the right to an effective remedy and can contribute to a more efficient process. Better clarity with regards to the application of the safeguards will create better certainty both for the third-country nationals and for the national authorities, with a view to contribute to a more efficient system. A number of support systems, including counselling and potentially reintegration support where relevant, would support the operational aspects of the return process.

An important step towards the simplification and the European dimension of the system would be to set up the conditions for the **recognition and enforcement of return decisions** to happen systematically, building on the current experience with non-mandatory recognition and enforcement. The new legal instrument would address the issues that have been identified in the expert exchanges, discussions with the Member States and in the ongoing study on gaps and needs of EU law in the area of returns, including by aligning key steps of the procedure and improving the capacity to communicate on return decisions between authorities. This

[78] Commission Recommendation of 16 March 2023 on mutual recognition of return decisions and expediting returns when implementing Directive 2008/115/EC of the European Parliament and of the Council, C/2023/1763.
[79] European Commission, Schengen thematic evaluation report - Bridging national gaps: towards an effective EU return system. Available at: https://home-affairs.ec.europa.eu/schengen-thematic-evaluation-report-bridging-national-gaps-towards-effective-eu-return-system_en.

mechanism would avoid issuing a new return decision to the same person, thereby preventing that a new appeal is launched in the Member State where the third-country national is illegally staying. If necessary, the original return decision would instead be appealed in the issuing Member State.

To ensure the completeness and effectiveness of the communication between national systems, without changing the form and content of national return decisions, the new legal instrument would introduce a '**European Return Order'**, a common form in which the key elements of the return decision would be inserted. The European Return Order would provide the necessary basis for recognition and enforcement of return decisions. It would co-exist with the national return decision and would be made available in the Schengen Information System. To allow for the necessary legal and technical arrangements to be in place so that the European Return Order could be made available in the Schengen Information System, a two-step approach would be necessary, where the recognition and enforcement of return decisions would remain optional for a limited period of time. The start of the implementation of the Pact would further support at systemic level the implementation of the recognition and enforcement of return decision, which would complement and strengthen the other measures linked to return and asylum. The new legal instrument would clearly define how the recognition and enforcement of return decisions should take place. To ensure proportionality, it would take into account the concerns raised by Member States during consultations and set out limited derogations on which Member States may decide not to recognise the return decision issued by another Member State.

With this alternative, the **common European dimension of the return system could be further strengthened** to make cooperation simpler and more effective, minimise distortions and opportunities for abuse and increase coherence internally and towards third countries. In addition to the new rules on mutual recognition, the new legal instrument would identify the components of the EU common system for returns and identify avenues for cooperation between Member States. It would promote alignment between the key stages of the migration process and complement the rules introduced by the Pact, for example when it comes to legal assistance in case of an appeal or review before a judicial authority. The alignment with the relevant rules of the Pact would be sought particularly to further simplify and ensure coherence between the asylum and the return process. For example, alignment regarding health issues, protection and age assessment of minors, would avoid unjustified diverging standards, repetitions and ensure coherence with different parts of the migration process. The new legislative framework would provide an option for Member States to jointly manage irregular movements between Member States, based on cooperation with a view to safeguarding the Schengen area without internal border controls.

The new rules would offer the appropriate degree of flexibility to allow Member States to adapt in the most efficient way to the different situations encountered. This would notably be done by allowing them to **determine which administrative decisions should be issued separately or together**. Issuing a return decision jointly with an entry ban and a detention order may be an efficient way for a national process, but in other instances flexibility would be needed for the latter two decisions to be issued at a different moment. The new system would create more

clarity as to what decisions are related to the return process but would also allow Member States to retain flexibility as to when and how these decisions are issued, whether jointly or separately depending on what is most efficient.

The objective to **incentivise cooperation of third-country nationals** would be achieved by introducing a clear obligation for the third-country national to cooperate, building on the approach adopted in the legal acts composing the Pact. The obligation imposed on the third-country national should comply with the principles of necessity and proportionality. Such obligation could be strengthened using incentives and consequences of non-cooperation, also building on the experience of certain Member States. Governmental and non-governmental entities in Member States have explored incentives, such as enhanced counselling and reintegration support, in many cases adapted to the level of needs and the profile of the third-country national[80] (intensive case management has proven effective to increase compliance with return decisions[81]). Along with incentives, some Member States have also introduced consequences for non-cooperation. In such cases, consultations suggest the need for a balance between encouraging voluntary compliance and safeguarding against vulnerability[82].

Consequences for non-cooperation would be proportionate and based on an individual assessment, and could include, among others, the seizure of identity or travel documents, financial penalties and the extension of entry bans. The dissuasive effect of a longer entry ban or the incentivising effect of a shorter entry ban could be a particularly important tool to strengthen the cooperation of the third-country national. Incentives could also include the possibility to return voluntarily within a certain date set out in the return decision or perceiving voluntary return and reintegration assistance. The new legal instrument would leave some flexibility to the Member States on incentives and consequences of non-cooperation, to best adapt to the local context and to the situation of the third-country national.

The European Parliament's substitute impact assessment on the recast Return Directive proposal found that the proposed recast did not present a clear link between the duty to cooperate and the rights of returnees and suggested to "clarify the balance between fairness and effectiveness in relation to the duty to cooperate"[83]. To achieve this, alternative B would reinforce procedural safeguards by including clear provisions on the right to information, to ensure that the third-country nationals are clearly informed about their rights and obligations and about the consequences in case the obligation is not respected. To this end, the requirements of the current framework concerning translations would be maintained, to ensure the person is properly informed, understands his or her obligations, to ensure clarity and predictability both

[80] Targeted consultation conducted within the study on Gaps and Needs of EU Law in the Area of Return; European Commission, Incentives and Motives for Voluntary Departure: EMN, Incentives and motives for voluntary departure, 2022. Available at: https://home-affairs.ec.europa.eu/system/files/2022-07/EMN_Voluntary-depart_INFORM_final_080722.pdf, p. 3.

[81] European Commission, Schengen thematic evaluation report - Bridging national gaps: towards an effective EU return system. Available at: https://home-affairs.ec.europa.eu/schengen-thematic-evaluation-report-bridging-national-gaps-towards-effective-eu-return-system_en.

[82] Targeted consultation conducted within the study on the Gaps and Needs of EU Law in the Area of Return.

[83] European Parliamentary Research Service, The Return Directive 2008/115/EC: European Implementation Assessment, EPRS Study, PE 642.840, June 2020.

for the third-country national and the national authorities, including to prevent unnecessary litigation.

Enhanced cooperation by third-country nationals would also help **ensure their availability during the return process**. Currently, the use of alternatives to detention varies, and so do national practices, in particular when it comes to the requirements for detention and the use of alternatives[84]. The new legal instrument would provide more clarity and streamline the use of detention and alternatives to detention. It would provide an exhaustive list for grounds of detention and a clear framework for Member States to substantiate the need for detention to judicial authorities. Periodic Schengen evaluations show that this is already common practice in certain Member States and allows them to decrease administrative burden and apply detention more effectively. To address the lack of detention capacity, Member States would have the possibility to detain third-country nationals in dedicated branches of facilities other than specialised facilities. On the assessment of the risk of absconding, the new legal instrument would build on discussions with stakeholders and on the provision of the Reception Conditions Directive[85] and take into account the considerations of civil society and expert groups[86]. Improved assessment capacity would help national authorities not only to increase effective returns, but also to identify the kind of preventive measure to be applied to a specific case, considering the necessity and proportionality of these measures. Member States would retain some flexibility to continue implementing good practices that have proven their value in the national context.

The new legal instrument would further **incentivise voluntary returns and make forced return a credible option**, for example in connection to cases of lack of cooperation, and by providing for additional options such as the possibility to return to a third country other than the country of origin or transit. Voluntary return would not be an option as a rule to persons posing a risk of absconding or that represent a security risk. Moreover, this alternative would add flexibility, compared to the current framework, on the period of time for voluntary return. In parallel, the use of counselling and reintegration could further strengthen the uptake of voluntary returns. The legal instrument would provide for Member States to establish return and reintegration counselling structures and national programmes to support readmission and reintegration. However, Member States would retain flexibility to adapt counselling to their national systems and to decide the modalities and beneficiaries of counselling and reintegration

[84] EMN, Study on Detention of Third-Country Nationals in the Context of Immigration, 2014.
[85] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).
[86] Meijers Committee, Comment on the Recast of the EU Return Directive. Available at: https://www.commissie-meijers.nl/comment/meijers-committee-comment-on-the-recast-of-the-eu-return-directive/#:~:text=CM2409-,Meijers%20Committee%20comment%20on%20the%20recast%20of%20the%20EU%20Return,existing%20procedural%20and%20substantive%20rights; Amnesty International, Key considerations in the context of the upcoming revision to the EU legislative framework on returns; Civil society organisations, Comments on the European Commission's proposal for a recast of the Return Directive (COM(2018) 634 FINAL).

provisions. The new instrument would clarify the possibility to "switch" between the different paths, which has been identified as a challenge in several Member States[87].

Forced return monitoring is identified as a key gap in the periodic Schengen evaluations and both Member States as well as other stakeholders have called for more clarity. To strengthen monitoring of removals[88], the new legal instrument would define some of its key aspects.

The objective of facilitating the **return of persons posing a security risk** could be further achieved by facilitating the identification of third-country nationals through identity and security checks carried out based on the Screening Regulation and other provisions of national law. Third-country nationals posing a security risk would be subject to a forced return procedure and stricter rules on entry bans. Based on an individual assessment made by a judicial authority, they could also be subject to longer detention periods. The return of these third-country nationals should not be suspended, except if there is a risk to breach the principle of non-refoulement. This alternative would achieve the objective of having a more structured way to identify security risks in place but would leave margin for Member States to go into more details and implement additional security assessments if they identify a specific risk[89], when and if needed. The legal instrument would clarify the scope concerning the return of persons posing a security risk by reinforcing the rules proposed in the recast Return Directive proposal i.e. removal as a rule, the possibility for longer entry bans and a separate ground for detention.

Some stakeholders have raised the risk of arbitrariness in qualifying a person as posing a security risk, noting the need for clear definitions of what constitutes a risk to public order or national security[90]. Alternative B would clearly frame and define the categories of third-country nationals who can be considered to fall within the scope of posing security risks for the purpose of applying the specialised rules in the return legislation and ensure proper follow up and monitoring of persons falling into this category.

The interplay between criminal law and the return legislation would remain unchanged. Convicted criminals could remain outside the scope of the new legal framework since nothing prevents Member States from, where applicable, imposing criminal sanctions to illegally staying third-country nationals in accordance with national criminal law.

The objective of **increasing the effectiveness of the readmission procedure** could be achieved under this alternative by introducing some basic common rules and increasing the coherence in the Union's approach. To facilitate data exchange between Member States and

[87] European Commission, Schengen thematic evaluation report - Bridging national gaps: towards an effective EU return system. Available at: https://home-affairs.ec.europa.eu/schengen-thematic-evaluation-report-bridging-national-gaps-towards-effective-eu-return-system_en.

[88] European Council on Refugees and Exiles, Monitoring the implementation of returns: a complex puzzle with missing pieces; Caritas Europa, Position Paper on Return – Human rights and human dignity at the centre in return policies; Finding Agreement in Return, Improved Return Monitoring Guidelines.

[89] Commission Staff Working Document on the Return of Illegally Staying Third-Country Nationals Posing a Security Threat, (2024) 287 final.

[90] Council of Bars and Law Societies of Europe (CCBE), Remarks with regard to the upcoming Commission new proposal for a Return Directive; Platform for International Cooperation on Undocumented Migrants (PICUM), Position paper on EU Return Directive; European Council on Refugees and Exiles (ECRE), ECRE Comments on the Commission Proposal for a Recast Return Directive.

with third countries, the necessary legal base would be provided. Data would be shared, whenever possible, through the existing and upcoming EU information systems[91]. Whenever the data cannot be shared via the EU information systems, a legal basis[92] to share this data via other secured channels in compliance with the General Data Protection Regulation (GDPR)[93] would be established. In any event, the GDPR would apply in full as regards exchanges of data outside the EU information systems. To ensure proportionality, a reasonable threshold related to which categories of persons would be concerned should be established for the exchange of information concerning the criminal record.

The implementation of **returns of third-country nationals to countries other than the country of origin or transit** would be made possible under alternative B. This would be achieved by expanding the definition of country of return, to include return to a third country with which there is an agreement or arrangement on return. Discussions with stakeholders on the concept of "return hubs" have highlighted that such returns should happen on the basis of an international agreement or arrangement for return. The legal instrument would define the key elements of such agreements or arrangements, the conditions under which such returns could take place and the applicable safeguards. Families with minor children and unaccompanied minors would be excluded from the scope of such returns. To ensure sustainability and credibility, such agreements or arrangements would only be concluded with third countries that respect international human rights standards and principles in accordance with international law, including the respect of the principle of non-refoulement. A dedicated monitoring mechanism by an independent body would be put in place to monitor implementation and consider any changing circumstance in the third country. These rules will be subject to the supervision of courts. Such an approach would add the necessary flexibility for return to reflect the Member States' bilateral relations with certain third countries, migratory realities and conditions on the ground, while ensuring full adherence to international and human rights law.

Furthermore, the new rules should also allow for returns to a safe third country and to the first country of asylum in cases where an application for international protection of a third-country national has been rejected as inadmissible in relation to such third countries. This would close any remaining technical gaps linked to Article 37 of the Asylum Procedures Regulation that requires that a return decision is issued following a decision on inadmissibility on an asylum application.

Finally, since alternative B could be implemented by a **directive or a regulation**, the question of the form of the instrument should be explored, as it would have important implications in terms of the extent to which certain objectives would be attainable.

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[91] EES, VIS, ETIAS, Eurodac, SIS and ECRIS-TCN, as defined by point 15 of Article 4 of Regulation (EU) 2019/818 of the European Parliament and of the Council.

[92] Within the meaning and in compliance with Article 6(1)(e) and Article 6(3) of the General Data Protection Regulation.

[93] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

On the one hand, a directive would grant flexibility to Member States to adapt the return rules to their national context. Several Member States have indicated their preference for this solution. However, other Member States have advocated for more approximation and a common system. A directive would imply significant limitations in relation to the objectives identified. For example, it could not establish directly applicable obligations on third-country nationals. While the new rules could be more detailed, partially reducing the need for interpretation, their transposition would most likely result in new divergences between Member States, replicating the current challenges. The lack of coherence and harmonisation among Member States would remain a key obstacle to achieve recognition and enforcement of other Member States' return decisions across the EU. A directive could not establish a direct legal basis on data exchange in the context of return and readmission, on which the Member States could rely directly. Finally, in the ongoing discussions on new solutions to manage irregular migration, many Member States have called for the possibility to have an EU approach, which would not be possible to achieve through a directive.

A regulation would ensure that key novelties are coherently addressed in all Member States, streamlining the return procedures and ensuring a more harmonised common approach. While in the short-term this would require an important adaptation in some Member States' practices, significant efficiency gains can be expected over time with better clarity of the rules and less scope for diverging national jurisprudence. A regulation would provide the necessary foundation for recognition and enforcement of return decisions and would guarantee that all Member States apply the rules in the same way[94], reducing the risk of divergent application. The rules would enter into force at the same time. Obligations imposed on third-country nationals would be equal in all Member States. This would help to address the distortions in the current system, where differences between Member States lead to loopholes in the functioning of the EU return system. Minimum safeguards for the rights of affected third-country nationals would be harmonised, encouraging greater mutual trust. A regulation would put in place the elements for a more joined-up return system at EU level and ensure better coherence with the Pact and the Schengen rules, which are almost all regulated through regulations.

(c) New legal framework (regulation) setting out streamlined and fully harmonised rules

Alternative C would take the form of a regulation setting up a common EU system for returns with detailed rules laying down all its elements. It would include many of the elements identified in the previous option, which will be harmonised. It would result in full coherence and unity among Member States.

The objective to **simplify the process and increase effectiveness** would be achieved by establishing a harmonised system with detailed rules and deadlines, as well as a distinction between administrative and judicial procedures for return. The clarity, uniformity and level of detail of the rules would reduce the risk of unclarity. Going further in the harmonisation of the

[94] The targeted consultation conducted within the study on the Gaps and Needs of EU Law in the Area of Return indicates that for mandatory recognition and enforcement of return decision a regulation is necessary.

return system, a unified governance structure would increase the operational effectiveness by coordinating returns across Member States and creating synergies[95]. For example, the evaluation of the Frontex Regulation found that Frontex is hindered by the currently fragmented governance structures in Member States[96].

The content and form of the return decision would be fully harmonised and take the form of an **EU return decision**, applicable across Member States and directly uploaded in the SIS. This would give a strong EU dimension to returns but would require exceptions for joint decisions on termination of legal stay and return decisions that would be difficult to design in a fully harmonised return system due to national approaches and competence on legal residence. The consultation process carried out in the context of the study on gaps and needs of EU law in the area of return showed that the feasibility of providing an exhaustive set of mandatory common elements in the return decision is considered very low by the stakeholders[97].

The introduction of an EU return decision would make **recognition and enforcement of such return decisions** mandatory in all cases as soon as the regulation would enter into force. The harmonisation would also have to cover legal remedies (deadlines for lodging appeals and duration of appeal procedures, suspensive effect, legal aid, etc.) and detention rules. By reaching such a degree of harmonisation, the need for Frontex support could increase and its tasks would have to be adapted accordingly.

The objective of **strengthening the European dimension** would be fully achieved with this alternative. A regulation with fully streamlined and harmonised rules would enable the establishment of a truly common EU approach to returns. However, this alternative might be premature and would go against the need for a minimum of flexibility, strongly advocated for by the majority of Member States.

The objective to **incentivise cooperation of the third-country national** would be achieved with the introduction of the obligation to cooperate for the third-country national, complemented by detailed rules on the applicable consequences in case of non-respect and on the possible incentives. This would ensure that the same incentives and consequences are applied uniformly across Member States and could reduce secondary movements. This approach would exclude, however, many of the good practices currently implemented in Member States to incentivise cooperation, which are based on access to certain privileges such as social benefits and trainings, largely provided for by national legislation.

The objective to **increase the availability of third-country nationals subject to return** could be achieved by addressing the issue of the risk of absconding of returnees through imposing strict rules on detention and laying down the details of the use of alternatives to detention. This would guarantee uniformity in the Member States' approach.

[95] This is informed by the stakeholder consultation and preliminary analysis carried out within the ongoing study on Gaps and Needs of EU Law in the Area of Return.
[96] Report from the Commission to the European Parliament and the Council on the evaluation of Regulation (EU) 2019/1896 on the European Border and Coast Guard, including a review of the Standing Corps, COM(2024) 75 final.
[97] Targeted consultation conducted within the study on the Gaps and Needs of EU Law in the Area of Return.

The objective to **incentivise voluntary returns by making forced return a credible alternative** could be pursued by working on the strands identified under the previous alternative. The possibility to allow for voluntary returns could be subject to more detailed conditions. The regulation would comprehensively address all the possible consequences and incentives for non-cooperation as well as regulate in detail forced return monitoring.

The objective of **facilitating the return of persons posing a security risk** could be achieved similarly to the previous alternative. Security checks could be made mandatory for all illegally staying third-country nationals. While this would increase the possibility to detect early a security risk, the additional administrative burden should be considered.

The objective of **increasing the effectiveness of the readmission procedure** would be largely achieved under this alternative. It would set up readmission as a fully regulated part of the return process, with definitions and procedures unified at EU level, put in place strong assurances of transparency and strengthening coherence towards third countries. Similarly to the second alternative, it would create a sound legal basis for the exchange of personal information between Member States and with third countries.

Under this alternative, **return to a third country other than the country of origin** or transit would be possible, like under the previous alternative. To ensure a coherent and unified approach, the new legal instrument could list in detail the procedure for such returns. Fundamental rights safeguards would need to be included. However, such returns would inevitably involve the need to conclude an agreement or arrangement with a third country. Having the exact procedure set out in EU law would significantly limit the possibility to adapt each agreement or arrangement to different realities and severely constrain the room for manoeuvre of the EU and Member States in negotiations with third countries.

This alternative would ensure that all steps under the return procedure are carried out under the framework of the Charter of Fundamental Rights. This alternative would make it possible to reinforce and clarify the procedural safeguards at each step of the procedure, providing further procedural rules compared to alternative B.

Introducing a new legal framework in the form of a regulation with streamlined and fully harmonised rules **could not fulfil the objective to provide the appropriate degree of flexibility**. Some of the key identified objectives, such as incentivising cooperation of the returnees, encouraging voluntary returns and managing the risk of absconding do not need to be exhaustively regulated at EU level to be effective. Some flexibility would enable Member States to better target the implementation of the rules to their national realities, which in turn would create a better and more efficient system overall.

Some **important horizontal considerations** also come into play. Going from the current Return Directive to a comprehensive regulation harmonising return in detail would likely be premature, technically challenging to implement and politically difficult for Member States to accept. The targeted consultations indicate that such proposal may result in difficult and lengthy negotiations, contrary to the call of Member States to swiftly put in place a revised legal framework on return.

A regulation with little or no flexibility, harmonising all aspects of the return policy would arguably go much further than the harmonisation achieved in the Pact. The legislative framework of the Pact, though mainly based on regulations, streamlines and harmonises an important part of the asylum process, while leaving some flexibility to Member States. In the context of the Pact implementation, Member States have come a long way to find solutions in their national systems to link asylum and return. A new regulation harmonising all aspects of the return process may be difficult to reconcile with some of these efforts and create unintended complexity.

6. Identified way forward

Following an assessment of how the different alternatives perform in terms of addressing the challenges and achieving the objectives identified, and taking into account considerations relating to subsidiarity, proportionality and administrative burden, the impact on fundamental rights and the political feasibility, **alternative B emerges as the identified way forward**.

The identified way forward is expected to **simplify and speed up the return process** by creating a common system with the necessary unity and coherence at EU level, to ensure the effective functioning of the Pact, the stability of the Schengen area, and a stronger position vis-à-vis third countries. It would combine the need for streamlined and more harmonised common EU rules on return, with the need for granting a certain degree of flexibility to the Member States. It would allow for adjustments to fit the national realities and the national contexts of migration management, particularly when it comes to incentives to cooperate, consequences of non-cooperation, choice and modalities of alternatives to detention, and procedural aspects of the process, including the appeals. By bringing all these strands together and increasing the overall performance of the return and readmission system, the identified way forward would allow to increase the number of returns, in line with the public expectations.

The identified way forward would provide **several key innovations** aimed at increasing the effectiveness, consistency, and fairness of the return process across Member States, while respecting the principles of subsidiarity and proportionality and leaving appropriate flexibility to Member States, where needed, to better achieve the objectives identified.

The identified way forward would foresee **common procedural rules** for the issuance of return decisions and entry bans, ensuring consistency across Member States. Under the new system, the return decisions will continue to include a clear obligation to leave the EU that, if not complied with, should be accompanied by an entry ban. To foster the credibility of the Union's return system, the dissuasive effect of entry bans should be enhanced by increasing their length. The maximum duration of an entry ban would be even longer for persons posing security risks. In any case, the new rules would allow to extend the duration of the entry ban by successive periods based on an individual assessment. National authorities would have the flexibility to determine the total duration of entry bans so as to respond in a proportionate manner to the relevant circumstances of each case. The regulation would set clear common rules that enhance the coherence of the EU-wide system and facilitate cooperation between authorities of different Member States in case of secondary movements, while identifying specific situations in which Member States need flexibility to address specific national circumstances arising from the

national legal order. In terms of administrative burden, the standardised rules would **reduce complexity**, making return procedures more efficient and less burdensome for authorities.

The introduction of the **EU Return Order and of a mechanism for the recognition and enforcement of return decisions issued by another Member State** would be an important step for simplification. It would reduce administrative burden at EU level by reducing the number of return decisions issued by individual Member States. It would also give a truly European dimension to returns and discourage secondary movements between Member States. The EU Return Order, which would include the key elements of the return decision, would be made available in SIS and the additional administrative burden would be minimal, as the form would complement and streamline some of the information that is already to be introduced in the SIS. It is expected also to limit the need for additional exchanges. To give Member States time to adapt to the new mechanism, the switch from voluntary to mandatory recognition would be delayed compared to the entry into application of the legal instrument and linked to the outcome of a review aimed at verifying that all the necessary legal and technical arrangement for the making available of the European Return Order in SIS are in place. This would also allow for the implementation of the Pact to have started, creating the optimal conditions for the recognition of return decisions to be implemented as part of the migration management system.

The **fundamental rights of returnees** would be fully respected also by means of procedural safeguards, ensuring that return decisions are subject to scrutiny, including the right to appeal and the prohibition of refoulement, with due attention to vulnerable persons and the best interests of the child. The enforcement of return decisions, removal orders and entry bans would be suspended until the time limit within which third-country nationals can appeal has expired. During that time limit, national authorities would not enforce the return decision but would nonetheless be able to prepare the return operation or detain the person if conditions are met. After that time limit, a judicial authority would decide if an appeal should suspend the decision pending the outcome of the appeal. The new rules would also provide clarity by aligning with the caselaw of the European Court of Justice on the suspension of the enforcement of the return decision in case of a breach of the principle of non-refoulement. The right to good administration would remain a central pilar and be ensured by the safeguards around administrative decisions.

The possibility for the third-country national to request a written or oral translation of the main elements of the return decision (the grounds on which the return decision is based and information about a remedy), already provided for in the current legal framework, would be maintained to ensure that the third-country national is informed and able to comply with the obligation to cooperate. Similarly, the new instrument would preserve Member States' flexibility on how to organise the translation - including by having a standardised template. Provisions on free legal assistance upon request, also provided for in the current legal framework, would be maintained and partially aligned with the Pact rules. Common rules ensuring that third-country nationals are properly informed of their rights and obligations is an important step in reducing as much as possible the risk for lengthy litigation and can ultimately serve to facilitate and speed up the process. Enabling third-country nationals to be correctly informed would contribute to better reasoned claims and a faster treatment by courts.

Specific rules or derogations would be introduced for minors, unaccompanied minors or families with children, where necessary. The right to liberty would be protected by rules framing detention, which could be ordered only to the extent that it is proportionate and necessary to prepare the return or carry out the removal. The new instrument would go further than the current Directive by introducing common rules on alternatives to detention, which should be proportionate to the risk of absconding. It would also guarantee a right to information of the returnee by setting clear rules and procedures to exercise this right. The new instrument would maintain the current provisions on the need to establish a monitoring mechanism for removals, but would provide more clarity as to what this implies concretely in line with the recommendations provided regularly in the context of Schengen evaluations, agreed by the Council.

In line with the new asylum legislation, the identified way forward would explicitly impose an **obligation on third-country nationals to cooperate** with the return process, to be complemented by **positive incentives and clear consequences for non-cooperation**. The system would remain fair and balanced, respecting the fundamental rights of individuals by offering them the opportunity to challenge decisions and access legal remedies. In terms of subsidiarity, the introduction of the obligation to cooperate would ensure that Member States can pursue returns more effectively, while retaining flexibility in implementation at the national level. This innovation would aim at significantly reducing administrative burden, as the lack of cooperation of the third-country nationals, particularly in the identification process and in terms of availability for the procedures, has been identified as one of the main elements hampering the return process.

One of the core responsibilities of the Union is to ensure an area of freedom, security and justice for its citizens. In light of the evolving geopolitical landscape and the emergence of new security threats, the EU must adopt a comprehensive and coordinated approach to security. In line with the European Internal Security Strategy[98], this also requires that security considerations be integrated and mainstreamed across all EU legislation. Those aspects have been duly taken into account in shaping the identified way forward, which would provide for **specific rules to facilitate and speed up the return of third-country nationals posing a security risk,** to respond to a clear political priority and to the concerns expressed by citizens. For this reason, persons posing a security risk would be included in the scope of the identified way forward. By issuing return decisions, entering return alerts and flagging security risks, the collective interest of having common rules on how to handle the situations raised by these individuals, including also a trace in SIS, would be met. Convicted criminals, on the other side, could remain outside the scope as they are subject to criminal law: for this reason, there would be no need to provide explicitly for an exemption in the regulation, given the different legal base. To facilitate identification, third-country nationals illegally staying in the territory of the Member States would be subject to identity and security checks. Stricter rules would apply to third-country national in terms of the form of return, the time and conditions of detention, length of entry bans and appeals. To ensure that persons posing security risks leave the territory

[98] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on ProtectEU: a European Internal Security Strategy (COM(2025) 148 final).

of the EU as swiftly as possible, those third-country nationals would be subject to removal without being granted a date until which they need to leave. These measures would be proportionate in view of the important security and public order risks, ensuring the respect of the principle of non-refoulement.

Voluntary and forced return would be made mutually reinforcing under the identified way forward. The obligation to issue a return decision to all illegally staying third-country nationals would remain in the identified way forward to ensure adequate accountability and to be able to monitor returns from the EU. The return decision would be enforced through removal of those third-country nationals who refuse to cooperate, abscond to another Member State, pose security risks or do not respect the terms for voluntary returns. A date by which the person can leave voluntarily would be indicated in the return decision in the other cases. The system would be built so as to allow to switch from voluntary return to removal, and vice versa. For instance, if a third-country national involved in a removal process decides to cooperate, Member States could redirect that person in the voluntary return channel. Moreover, voluntary return would remain a flexible form of return: the date by which a third-country national must leave the territory of the Member States could either be prolonged when it expires or extended from the outset beyond the normal period usually granted, for example to ensure alignment with national voluntary return programmes. The right to information for returnees would be reinforced, enabling individuals to make informed decisions about their return, while understanding the consequences of non-cooperation. The proportionality principle would be maintained, with removals to be used when necessary and clear safeguards in place. Fundamental rights would be protected, including by the availability of legal remedies, the provision of information to ensure that individuals are fully aware of their choices and their rights in the return process, and free legal assistance and representation upon request for appeals and judicial review (with certain limitations). Legal assistance and representation would be automatic for unaccompanied minors. These choices take into account the consideration that voluntary returns are the most effective option, while ensuring that returns are actually implemented and the risk of absconding minimised.

The identified way forward would enhance Member States' ability to manage the **risk of absconding** by introducing objective criteria to assess this risk and providing tools to ensure that the third-country national is available for the return process. Detention would be necessary to ensure efficiency in the return process where there is a risk of absconding. In addition, in case where a third-country national does not cooperate with the obligation to remain on the territory of the concerned Member State and moves to another Member State, this would be tantamount to absconding. Consequently, the voluntary return option would not be available as a form of return. This would be balanced with the need to respect individual freedoms, using alternatives to detention where appropriate, in accordance with the principle of proportionality. In terms of subsidiarity, Member States would have the flexibility to apply the criteria and tools in a manner suited to their national realities. The overarching framework would ensure that the national tools align with EU-wide standards, reducing potential inconsistencies that could encourage secondary movements. To respect the fundamental rights, the identified way forward would ensure that individuals' dignity and rights are upheld throughout the process and would

provide for alternatives to detention. The availability of the returnee for the return process is key to reduce the administrative burden and increase the effectiveness and speed of the process.

An innovative feature of the proposal would be to expand the definition of countries of return to include additional options compared to the current Directive. The proposal would include the possibility of **returning individuals to a third country other than their country of origin or a country of transit**, subject to various condition as described in the previous sections. Regarding proportionality, this innovation would provide flexibility for Member States to pursue returns in a way that ensures effective returns and migration management. This way forward has been identified taking into account the results of a number of strategic discussions with Member States and the input of civil society, international organisations and the Fundamental Rights Agency, to arrive at a solution that is both practically feasible and in respects of fundamental rights.

Introducing **readmission as an integral part of the return process**, the identified way forward would lay down common steps in the readmission procedure, with the necessary flexibility, to bring a more coherent and credible approach towards third countries and increase effectiveness. The administrative burden in implementing these innovations would consist in adapting to a certain extent national processes, building on the already existing procedures for the implementation of EU readmission agreements and arrangements. The identified way forward would remain proportional, taking into account operational realities and bilaterally agreed procedures. Upcoming work on digitalisation of case management, announced in the Political Guidelines, would further mitigate the administrative burden.

The identified way forward would provide for a **clear legal basis for data exchange** among Member States and with third countries, reducing inconsistencies and ensuring more efficient and secure information-sharing, which further streamlines the return process. Such approach would mirror the one followed in the context of the Pact on Migration and Asylum, whereby a clear legal basis for information sharing between Member States was established[99]. The specific technical means of communication of this data may also be detailed in a separate legislative proposal that will address the digitalisation of case management in the area of return, readmission and reintegration. Establishing a clear legal basis or data exchange among Member States and with third countries would reduce administrative burden by facilitating exchanges between national systems and with third countries, thereby enabling more effective coordination and reducing duplication of efforts. Proportionality would be maintained by ensuring that data exchange is focused and limited to relevant cases, avoiding unnecessary intrusions on privacy. Proportionality would also be guaranteed by establishing a reasonable threshold with regards to the cases for which criminal data that could be transferred to third countries. This would only concern convictions of serious offenses, such as the ones mentioned in European Travel Information and Authorisation System (ETIAS) Regulation[100]. Subsidiarity would be respected by establishing at EU level a clear legal basis for processing, while giving

[99] Article 51 of Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management.

[100] Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226.

Member States the responsibility to ensure compliance with the remaining data protection requirements (such as the retention period). The identified way forward would ensure that data exchanges are carried out in a way that upholds fundamental rights, with clear protections in place to prevent misuse of personal data and ensure that the rights of individuals are safeguarded.

The preferred choice in terms of legal instrument would be a **regulation**. This instrument would respond to key objectives linked to simplification, streamlining, efficiency and coherence among Member States, and create an overall more harmonised common system at EU level to manage returns with obligations imposed directly on the Union, the Member States and the third-country nationals. A regulation would provide the best basis for a more uniform approach among Member States to cooperate on returns and readmission, including through Frontex support. While not being an end in itself, the harmonisation of the procedures would serve the purpose of bringing rules closer so that the discrepancies that are detrimental to the effectiveness of the process would be addressed. It would lead Member States' authorities and Frontex to work more coherently together and among themselves thereby facilitating and simplifying the process for all actors acting under common rules. While a shift from a directive to regulation is an important change and will require adaptations to Member States' system it should result in efficiency gains for the common EU system for returns. A regulation will ensure that third-country nationals are treated coherently through all steps of the return procedure regardless of the Member State in which they are illegally present and will provide the necessary tools to tackle together a common EU challenge. It would align with the Pact legislation on asylum, where the majority of legal acts are regulations. The needs of Member States that expressed a preference for a directive, with a view to ensuring the necessary flexibility to adapt to national systems, have been taken into consideration. Flexibility would be maintained as necessary by way of derogations or exceptions, without compromising the coherence and effectiveness of the system.

The stakeholders' political **acceptance** of the identified way forward has been carefully assessed, including through a wide consultation of stakeholders, as detailed in this document.

The proposal for a Return Regulation is part of the comprehensive approach to manage migration as set out in the Asylum and Migration Management Regulation and complements the legislative framework of the Pact adopted in May 2024. The identified way forward would align with the key aspects of the Pact legislation, notably the Asylum Procedures Regulation and the Return Border Procedures Regulation, the Screening Regulation, the new Reception Conditions Directive as well as the Schengen Borders Code.

The choices made in the identified way forward would also **encourage cooperation and foster a unified approach to returns**, eventually increasing common trust in the EU migration management system. Returns would take place in a dignified manner by reinforcing provisions on voluntary return and by encouraging reintegration and promoting the use of counselling. By introducing a system of obligations and incentives, the identified way forward would increase returnees' ownership of their trajectory.

Annex I – Stakeholder consultations

Broad stakeholder consultations on the future return legislation have taken place to gather views and concrete suggestions from Member States, European Institutions, international organisations, non-governmental organisations (NGOs), civil society, research entities, and third countries working on, or with experience in the subject of returns. The consultations have allowed the Commission to gather updated information and address possible gaps in the current return legislation.

Meetings

- *Strategic Committee on Immigration, Frontiers and Asylum Consultations*, 10 April 2024.
- *COREPER II – Towards a more assertive return policy*, 16 September 2024.
- *Strategic Committee on Immigration, Frontiers and Asylum Consultations*, 27 September 2024.
- *MPI Europe and UNHCR – Beyond the Pact: Addressing Maritime Arrivals and Strengthening Return*, 8 October 2024.
- *JHA Council – Enhancing the effectiveness of EU's return policy*, 10 October 2024.
- *Workshop on Comprehensive Decisions and Last-minute Asylum applications*, 22 October 2024.
- *Strategic Committee on Immigration, Frontiers and Asylum Consultations*, 1 November 2024.
- *Meeting on EU return policies between COM and Civil Society (PICUM, JRS Belgium, Caritas EU and EuroMed Rights),* 19 November 2024.
- *Meeting with the Netherlands on the future return legislation*, 20 January 2025.
- *Meeting with Sweden on the future return legislation*, 22 January 2025.
- *Strategic Committee on Immigration, Frontiers and Asylum Consultations*, 13 February 2025.

Papers and non-papers from Member States

- Spain, *Non-paper on Key priorities for Spain regarding a new legislative framework on returns – forced return aspects*, 22 January 2024.
- Denmark, *Non-paper on a more effective return system*, March 2024.
- Germany, Austria, Switzerland, Denmark, Norway and Lichtenstein, *Non-paper on the need for legislative reforms for more effective returns*, 8 March 2024.

- Denmark and other Member States[101], *Joint Letter on New Solutions to address irregular migration to Europe*, 15 May 2024.
- Austria and the Netherlands, *Non-paper on Objectives for a New Legislative Proposal for More Effective Returns*, 4 October 2024.[102]
- *Revision of the legislative framework on return*, 9 December 2024.
- Germany, *Proposal on a New version of the Return Directive*, 16 December 2024.
- Germany, *Suggestions for reform of the Return Directive*, 10 January 2025.
- France, Germany, the Netherlands and Sweden, *Non-paper on Concerns about the idea of mandatory mutual recognition of return decisions*, 24 January 2025.
- Netherlands, *Non-paper on Required legislative reforms for more effective returns*.
- Denmark, *Priorities for a new upcoming act on return*.
- Czech Republic, *Preliminary suggestions for the new Return Directive*.

European Parliament Research Service:

- European Parliamentary Research Service**,** *The proposed Return Directive (recast), Substitute Impact Assessment*, EPRS Study, February 2019.
- European Parliamentary Research Service**,** *The Return Directive 2008/115/EC: An Overview of its Implementation***,** EPRS Study, PE 631.727, June 2019.
- European Parliamentary Research Service**,** *The Return Directive 2008/115/EC: European Implementation Assessment***,** EPRS Study, PE 642.840, June 2020.
- European Parliamentary Research Service**,** The proposed Return Directive (recast), Substitute Impact Assessment, EPRS Study, February 2019.

Papers and comments from different stakeholders:

- Platform for International Cooperation on Undocumented Migrants (PICUM), *Position paper on EU Return Directive*, April 2015.
- Swedish Red Cross, *Asylum Application Rejected – Return: Results and Challenges 2008–2015*, 2016.
- European Council on Refugees and Exiles (ECRE), *Policy Note 09: Return – No Safety in Numbers: ECRE's Analysis of Recent Developments in EU Policy on Return of Migrants*, 2017.
- European Council on Refugees and Exiles (ECRE), *Policy Note 13: Voluntary Departure and Return: Between a Rock and a Hard Place*, August 2018.

[101] BG, CZ, EE, EL, IT, CY, LT, LV, MT, NL, AT, PL, RO and FI.
[102] Supported by CH, CZ, DE, DK, EL, FI, FR, HR, IT, LI, LU, MT, NO, PL, SE and SK.

- Caritas Europa, *Position Paper on Human Rights and Human Dignity at the centre in return policies*, 9 February 2018.
- European Council on Refugees and Exiles (ECRE), *ECRE Comments on the Commission Proposal for a Recast Return Directive*, November 2018.
- European Council on Refugees and Exiles (ECRE), *Policy Note 19: Return Policy: Desperately Seeking Evidence and Balance,* July 2019.
- European Council on Refugees and Exiles (ECRE), *Policy Note 17: Protection in Afghanistan: The Impact of Ongoing Conflict and Security Risks on Returns*, February 2019.
- ACT Alliance EU; Caritas Europa; European Federation of the Community of Sant'Egidio; CCME – Churches' Commission for Migrants in Europe; ICMC – International Catholic Migration Commission; COMECE – Commission of the Bishops' Conferences of the European Community (Secretariat); JRS-Europe – Jesuit Refugee Service Europe; Protestant Church in Germany (EKD); Don Bosco International; QCEA – Quaker Council for European Affairs, *Comments on the European Commission's proposal for a recast of the Return Directive (COM(2018) 634 FINAL)*, 7 February 2019.
- Council of Bars and Law Societies of Europe (CCBE), *CCBE Comments on the Commission Proposal for a Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals,* 29 March 2019.
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- ACT Alliance and other civil society organisations[103], *Joint letter on deleting the reference to readmission as a conditionality in the draft GSP reform*, 27 February 2023.
- Caritas Europa, *What's Wrong with the EU's Pact on Migration?,* 10 April 2024.
- European Council on Refugees and Exiles (ECRE), *ECRE Comments on the Regulation of the European Parliament and of the Council on Asylum and Migration Management, Amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and Repealing Regulation (EU) No 604/2013*, May 2024.
- United Nations High Commissioner for Refugees (UNHCR), *Strengthening Protection and Solutions in the Context of Mixed Movements of Refugees and Migrants,* June 2024.
- European Council on Refugees and Exiles (ECRE), *Comments on the Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protections (recast),* September 2024.
- Finding Agreement in Return (FAiR), *Working Paper: Legal Review of Fundamental Rights in Return processes,* 30 September 2024.
- Hungary, *Presidency Paper: Towards a more assertive return policy*, 2 October 2024.
- United Nations High Commissioner for Refugees (UNHCR) and Migration Policy Institute (MPI Europe), *Beyond the Pact: Addressing maritime arrivals and strengthening returns*, 8 October 2024.
- Platform for International Cooperation on Undocumented Migrants (PICUM), *FAQ: Reporting Obligations and 'Firewalls',* November 2024.
- 11.11.11 and other civil society organisations[104], *EU Leaders should uphold right to asylum in Europe*, 12 November 2024.
- Council of Bars and Law Societies of Europe (CCBE), *Statement on recent developments and upcoming EU actions in the field of asylum,* 21 November 2024.
- Meijers Committee, *Comment on the Recast of the EU Return Directive*, December 2024.

[103] EU Anti-Slavery International, Brot für die Welt, CARE International, Caritas Europa, Caritas International Belgium, Churches Commission for Migrants in Europe, Clean Clothes Campaign - International Office, CSW, Danish Refugee Council, European Council on Refugees and Exiles (ECRE), European Evangelical Alliance, GSP Platform, Human Rights Watch, International Federation for Human Rights (FIDH), International Federation of ACAT (FIACAT), Migration Policy Group, Terre des hommes Deutschland e.V., Quaker Council for European Affairs (QCEA) and Oxfam.

[104] ActionAid International, AGDDS, Amnesty International, Asociación Rumiñahui, Bedsteforældre for Asyl, Brot für die Welt, CARE Denmark, Caritas Europa, CCFD-Terre Solidaire, Centre for Peace Studies, CGIL, Christian Council of Norway, Churches' Commission for Migrants in Europe (CCME), Ciré, CNCD-11.11.11 (BE), Danish Refugee Council, Danish United Nations Association / FN-forbundet, Dutch Council for Refugees, Ellebæk Kontaktnetværk / Ellekbaek Contactnetwork, EuroMed Rights, Europe Cares e.V., European Network on Statelessness, Federation of Protestant Churches in Italy (FCEI), Finnish Refugee Advice Centre, Finnish Refugee Council, Fundacja Inicjatywa Dom Otwarty, Grandparents for Asylum, Kongelunden, Greek Council for Refugees (GCR), Human Rights Legal Project, Human Rights Watch, International Rescue Committee, Irídia - Centre for the Defence of Human Rights, JRS Europe, Lysfest for Humanisme, Migration Consortium, MISSION LIFELINE International e.V., Movement for Peace (MPDL), Novact, Oxfam EU, r42-SailAndRescue, Red Acoge, Refugees International, Refugees Welcome – Denmark, RESQSHIP, Right to Protection, SOLIDAR, and SOS Humanity.

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- Swedish Red Cross, *Diversion from Immigration Detention: A Study on Alternatives to Detention and the Effects of Deprivation of Liberty*.
- International Detention Coalition (IDC), *Tech and ATD: The use of digital technologies in Alternatives to Detention,* 2025.
- Convive Fundación Cepaim, *Europe Consultation on digital tech in alternatives to immigration detention (ATD), 2025.*

Annex II – EMN meetings, informs and studies

Meetings

- *22nd REG Plenary Meeting (Copenhagen, Denmark)*, 25th and 26th February 2019.
- *Workshop on the development of an EU Framework on return counselling*, 24th April 2019.
- *Workshop on the development of an EU Framework on return counselling,* 16th May 2019.
- *23rd REG Plenary Meeting (Helsinki, Finland)*, 11th and 12th June 2019.
- *Workshop on the development of an EU Framework on return counselling*, 11th and 12th July 2019.
- *24th REG Plenary Meeting (Vienna, Austria)*, 24th September 2019.
- *25th REG Plenary Meeting (Oslo, Norway),* 6th and 7th February 2020.
- *2nd Expert workshop on Representatives of Detention Centres (Luxembourg),* 28th February 2020.
- *Advanced workshop on 'Information Management on the Application of the Principle of Non-Refoulement in Asylum and Return Procedures',* 4th March 2020.
- *26th REG Plenary Meeting (Online),* 11th June 2020.
- *Workshop on Data Protection in the field of return,* 1st July 2020.
- *Workshop to validate the final text of the EU framework on return counselling,* 22nd September 2020.
- *Workshop on 'Effective Elements of reintegration',* 22nd and 23rd September 2020.
- *27th REG Plenary Meeting (Online),* 5th and 6th November 2020.
- *Webinar on 'Alternatives to detention: A state of play',* 15th December 2020.
- *28th REG Plenary Meeting (Online),* 10th February 2021.
- *Thematic expert group on RIAT,* 21st April 2021.
- *Thematic expert workshop on implementation of data protection regulation in international data transfers*, 19th May 2021.
- *29th REG Plenary Meeting (Online)*, 21st June 2021.
- *Thematic expert workshop on returning vulnerable persons,* 6th July 2021.
- *Thematic expert workshop on return of unaccompanied children,* 13th September 2021.
- *Thematic expert workshop on return of families with children,* 14th September 2021.
- *Thematic expert workshop on return of victims of trafficking,* 12th October 2021.

- *Thematic expert workshop on return of migrants with medical conditions,* 13th October 2021.
- *30th REG Plenary Meeting (Online),* 26th and 27th October 2021.
- *31st REG Plenary Meeting (Online)*, 15th and 16th February 2022.
- *32nd REG Plenary Meeting (Brussels, Belgium),* 28th and 29th June 2022.
- *EMN-REG: 4th thematic workshop on Directors of detention centres (hosted by EMN LU),* 27th and 28th September.
- *EMN-REG Workshop: Cooperation with third countries on return procedures (Norway)*, 27th and 28th October 2022.
- *EMN-REG: thematic workshop on return of vulnerable groups: individuals with medical conditions (Hosted by EMN NL)*, 10th and 11th November 2022.
- *33rd REG Plenary meeting (Brussels, Belgium),* 15th December 2022.
- *34th REG Plenary meeting (Bratislava, Slovakia),*1st February 2023.
- *EMN-REG-Frontex workshop on return and reintegration counselling (Sweden),* 4th April 2022.
- *EMN-REG expert workshop on Effective Alternatives to Detention (Cyprus),* 13th and 14th June 2023.
- *35th REG Plenary meeting (Online),* 22nd June 2023.
- *5th Workshop of Representatives of Detention Centres*, 20th and 21st September 2023.
- *36th REG Plenary meeting (Tallinn, Estonia),* 7th and 8th November 2023.
- *EMN-REG workshop on cooperation with third countries in return (Norway)*, 23rd and 24th November 2023.
- *EMN-REG workshop on multistakeholder governance (Belgium)*, 5th and 6th December 2023.
- *37th REG Plenary meeting (Paris, France),* 27th and 28th February 2024.
- *EMN-REG-Prague process workshop on the value of return and reintegration support (Larnaca, Cyprus),* 18th and 19th June 2024.
- *38th REG Plenary meeting (online),* 18th July 2024.
- *6th Workshop of Representatives of Detention Centres,* 25th and 26th September 2024.
- *EMN-REG workshop on Reintegration, referrals and reintegration systems in third countries (an EU-perspective) (Oslo, Norway),* 7th and 8th November 2024.
- *39th REG Plenary meeting (online),* 10th December 2024.
- *EMN-REG workshop on RIAT (Brussels, Belgium),* 12th December 2024.
- *EMN-REG workshop on Return centers (online),* 19th December 2024.

- *EMN-REG workshop on Return counselling approaches for migrants with psychosocial issues (online),* 19th December 2024.

REG Inform (or equivalent analytical output)

- European Migration Network (EMN), *The Effectiveness of Return in EU Member States*, 2018.
- European Migration Network (EMN), *Inform on Policies and Practices on Return Counselling for Migrants in EU Member States and Norway*, 2019.
- European Migration Network (EMN), *Inform on Policies and Practices for the Support of Return Counsellors in Their Role to Provide Migrants with Timely and Reliable Information on Return,* 2020.
- European Migration Network (EMN), *Inform on Policies and Practices of Outreach and Information Provision for the (Voluntary) Return of Migrants in EU Member States and Norway,* 2020.
- European Migration Network (EMN), *Inform on Overview: Incentives to Return to a Third Country and Support Provided to Migrants for Their Reintegration,* 2020.
- European Migration Network (EMN), *Inform on the Impact of the COVID-19 Pandemic on Voluntary and Forced Return Procedures and Policy Responses,* 2021.
- European Migration Network (EMN), *Umbrella, Inform on Impacts of COVID-19, Also Covering Return,* 2021.
- European Migration Network (EMN), *Responses to long-term irregularly staying migrants: practices and challenges,* 2021.
- European Migration Network (EMN), *Study on Detention and Alternatives to Detention in International Protection and Return Procedures,* 2021.
- European Migration Network (EMN), *Bilateral Readmission Agreements,* 2022.
- European Migration Network (EMN), *Study on Detention and Alternatives to Detention in International Protection and Return Procedures,* 2022.
- European Migration Network (EMN), *Incentives and motives for voluntary departure,* 2022.
- European Migration Network (EMN), *Migration and development cooperation,* 2024.
- European Migration Network (EMN), *Inform on (Comparative Analysis on the Implementation of) Coherent Return and Reintegration Assistance,* 2024.
- European Migration Network (EMN), *Migration diplomacy: An analysis of policy approaches and instruments,* 2024.
- Non-binding compilation paper for policy-makers and practitioners on select data protection aspects to take into account in return-related issues, May 2021/January 2022.

- Mapping document on Member States approaches to assess and address vulnerabilities in return procedures, May 2021/January 2022.
- Overview of return and reintegration counselling practices in Member States (Draft), December 2024.

Ad hoc queries (AHQs, launched by COM)

- Overview of AVRR assistance for Tunisia (REG), February 2019. (sensitive/restricted)
- REG AHQ: Policies and practices on return counselling for migrants in EU Member States, March 2019.
- REG Ad-Hoc Query on policies and practices for the support of return counsellors in their role to provide migrants with timely and reliable information on return, May 2019.
- Challenges and good approaches on (access to) consular services related to return of third-country nationals, October 2019. (sensitive/restricted)
- The policies and practices on outreach and information provision for the return of migrants in EU Member States and Norway, October 2019.
- Inform #5 - impact of covid-19 pandemic on voluntary and forced return procedures and policy responses in EU member states, Norway and Switzerland, August 2020. (sensitive/restricted)
- Umbrella Inform – Covid-19 and Return – (Part 1) (REG Practitioners and NCPs), December 2020. (sensitive/restricted)
- Inventory of external IT systems containing reintegration case data (Part I & II), March 2021.
- AHQ on Returning Criminal Offenders (REG Practitioners, restricted), May 2021. (sensitive/restricted)
- (AHQ for EMN inform on) Bilateral readmission agreements: inventory, characteristics and effectiveness (part 1 and part 2), August 2021.
- Cooperation with consular authorities of third countries in readmission procedures, May 2022.
- Cooperation with consular authorities of third countries in readmission procedures - Part 2, May 2022.
- Use of the European Travel Document (EUTD) in return and readmission procedures, September 2022. (sensitive/restricted) Returning individuals with medical conditions, October 2022. (sensitive/restricted) Policies and practices on return and reintegration counselling for migrants in EU+, February 2023.
- Implementation of Coherent Return and Reintegration Assistance, October 2023.

- Multistakeholder governance towards case resolution or holistic orientation of undocumented migrants: Whole-of-government and whole-of-society approaches, October 2023.
- Link between asylum and return procedures and last-minute asylum applications (LMAs), February 2024. (sensitive/restricted)
- Conditions and practice of mutual recognition of return decisions in EU Member States, September 2024. (sensitive/restricted)
- Return counselling approaches for migrants with psycho-social needs, November 2024.
- Return Centres, November 2024. (sensitive/restricted)