GAPS

Decentring the Study of Migrant Returns and Return Policies

Legal and Policy Infrastructures of Returns in the EU

Comparative Report & Country Dossiers (D2.1 – June 2024)

Content

Co-funded by UK Research and Innovation

Toronto Metropolitan University — Canada Excellence Research Chair in Migration & Integration

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Comparative Report (WP2)

Authors:

N. Ela GÖKALP ARAS (SRII)
Neva Övünç ÖZTÜRK (SRII)
Tineke STRIK (SRU)
Rebecca THORBURN STERN (UU)
Anna TRYLIŃSKA (UW)
Umutcan YÜKSEL (SRII)

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List of Abbreviations

AMIF	Asylum, Migration and Integration Fund
AVRR	Assisted Voluntary Return and Reintegration
BAMF	Federal Office for Migration and Refugees
CEC	The Conference of European Churches
CJEU	The Court of Justice of the European Union
COA	Central Agency for the Reception of Asylum Seekers
CoE	The Council of Europe
CPT	Committee on the Prevention of Torture
DESTATIS	Federal Statistical Office
DT&V	Repatriation and Departure Service
EASO	The European Asylum Support Office
EC	European Commission
ECHR	European Convention on Human Rights
ECSR	The European Committee on Social Rights
ECtHR	European Court of Human Rights
EFTA	European Free Trade Area
EIL	Enforcement of Immigration Legislation
EMN	European Migration Network
ERF	European Return Fund
ERPUM	European Return Platform for Unaccompanied Minors
EU	European Union
EUAA	European Union Agency for Asylum
EURAs	European Union Readmission Agreements
EURCN	The European Return and Coordination Network
FRA	The European Union Agency for Fundamental Rights
FRONTEX	The European Border and Coast Guard Agency

GAPs	Decentring the Study of Migrant Returns and Readmission Policies in Europe and Beyond
IND	The Immigration and Naturalisation Service
IOM	International Organization for Migration
IRMA	Integrated Return Management Application
IRMS	Integrated Return Management System
LIBE	The European Parliament's Civil Liberties, Justice, and Home Affairs Committee
MSs	Member States
NGO	Non-governmental organisation
NPM	National prevention mechanism
TCNs	Third Country Nationals
UAMs	Unaccompanied minors

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Summary

Work Package 2 (WP2) of the GAPs Project (Legal and Policy Frameworks of Returns in the EU) focuses on the legal, institutional and policy frameworks regarding the return and readmission policies at the EU level and in the five selected EU member consortium countries (Sweden, Poland, Germany, Greece, Netherlands) as well as the related gaps. Three country snapshots of the non-consortium EU Member States (Italy, France, and Hungary) are also provided.

As a part of WP2, this comparative report is based on the examination and comparison of the return policies of the selected countries through the country dossiers that are provided as annexes of this report. It aims to identify the commonalities and variances within their legal and policy structures concerning the return of migrants against the backdrop of overarching EU directives, particularly the EU Return Directive. This exploration includes a comprehensive examination of fundamental statistics, significant political changes in this realm, and a comparative analysis of the institutional frameworks. After briefly addressing developments at the EU level, the report delves into the main gaps, similarities, and differences identified through the country dossiers in terms of statistics, policy and institutional frameworks. In this framework, the report underscores the critical role of accurate and comprehensive statistics in assessing the effectiveness of return policies, the efficiency of return operations, and adherence to human rights standards throughout the return process. For the political framework, pivotal moments at the EU level are initially delineated through a constructed timeline, followed by an examination of significant policy shifts and critical junctures within the focused countries. This analysis proceeds to explore similarities and some distinct differences specific to each country's context. The EU's institutional framework, characterised by the involvement of various actors, including the European Commission, the Council of the European Union, Frontex, and the European Asylum Support Office, outlines a complex and multi-layered approach to managing returns. This complexity is mirrored in the national contexts, where a blend of governmental and non-governmental entities, along with specialised agencies, play pivotal roles in implementing return policies.

Comparatively, the report reveals a range of policy focuses and implementation strategies among the MSs, influenced by their unique political, social, and geographical contexts. While some countries prioritise strict control and deportations, others emphasise humanitarian approaches and voluntary returns. This diversity reflects the challenge of harmonising return policies within the EU's complex political landscape.

Significant emphasis is placed on the legal considerations pertaining to returns, notably the EU Return Directive's establishment of common standards and procedures. These measures include prioritising voluntary return, ensuring procedural safeguards, and adhering to principles such as non-refoulement and proportionality. The analysis also delves into detention practices within the Member States (MSs), highlighting concerns over the conditions of detention and the treatment of vulnerable groups, especially children. The core legal framework addressed in the report is distilled into three sub-sections, pinpointed by examining the identified "gaps" across all reports. These prominent areas of concern, "Procedure to Issue Return Decisions", "Procedural Safeguards and Non-Returnability", and "Detention", have been analysed comparatively. The procedural safeguards are examined under four key areas: effective access to information and legal aid, the effectiveness of

administrative and judicial reviews and remedies, the effectiveness of guarantees directly related to non-refoulment, and lastly, the situation of persons who cannot be returned.

The report provides valuable insights into the legal and policy infrastructures governing returns in the EU and selected MS. It highlights the importance of data accuracy, the need for humane and efficient return processes, and the critical role of institutional frameworks in shaping national return policies. This comparative analysis serves as a foundation for understanding the intricacies of return policies within the EU, offering a basis for future research and policy recommendations aimed at enhancing the effectiveness, fairness, and humaneness of return practices across the MSs.

Based on the dossiers of the selected five consortium member countries and mainly focusing on the "gaps" dimension of those documents, it can be said that each country demonstrates unique issues, from Greece's legal ambiguity and detention concerns to Germany's decentralised enforcement, Poland's restrictive access to legal remedies, Sweden's legal uncertainties and institutional shortcomings, and the Netherlands' limited judicial review and non-compliance with the EU directives. Common challenges across these countries include the need for more precise legal definitions, ensuring humane detention conditions, better protection for vulnerable individuals, and aligning national practices with EU standards. The country dossiers generally emphasise the need for reforms that balance migration control with human rights protections and the efficient implementation of return policies.

The most important aspects by country:
Germany exhibits a decentralised approach, leading to variable enforcement across states. This country's case emphasises voluntary returns but needs more uniformity in practice.
Greece exhibits legal ambiguities and confronts criticism for its detention conditions. There is a pressing need for clearer legal definitions and humane treatment of detainees.
Poland struggles with providing accessible legal remedies and has restrictive practices that hinder migrants' rights to appeal against return decisions.
Sweden, while seeking to include return policies with broader migration management systems, contends with legal uncertainties and the need for better protection and support mechanisms for returnees.
The Netherlands has been criticised for limited judicial review of return decisions and non-compliance with EU directives, highlighting the need for reforms to ensure rights are upheld.

Based on the legal analysis provided, the main similarities and differences between the five EU member countries (Germany, Greece, Poland, Sweden, and the Netherlands) regarding the return procedure, as well as the most problematic areas, are discussed in detail in the following paragraphs.

All five countries share a common legal framework, being parties to the Refugee Convention and international human rights treaties relevant to the return of migrants. They are obliged to respect fundamental principles such as the principle of non-refoulement. Additionally, all countries have transposed the EU Return Directive into their national laws, though the method of transposition and clarity of application vary. Another similarity is that in all countries, the decision to return is primarily an administrative action, with more than one administrative agency responsible for the return process. Furthermore, the scope of return decisions in all countries is linked to illegal stay, as required by the Return Directive.

However, there are notable differences among the countries. The degree of impact and modalities of adherence to international law vary, with some countries having a more direct interaction between national legal systems and international law than others. There are also differences in the clarity and effectiveness of the transposition of the Return Directive, with some countries preserving existing legal frameworks while others make significant changes to comply with the Directive. Procedural aspects of the return process, including the role and jurisdiction of the police, the clarity of return decisions, and the application of border procedures, also vary among the countries. Additionally, the period allocated for voluntary departure and the regulations regarding entry bans differ among the countries.

Several problematic areas have been identified in the return procedures of these countries. There is legal uncertainty and inconsistencies in some countries due to the lack of clear definitions and inconsistencies in the application of the Return Directive and international law. Concerns exist about the effectiveness of procedural safeguards and the protection from non-refoulement, particularly in border procedures and for vulnerable groups such as children. The use of detention as a default choice rather than a last resort, limited access to legal representation for detainees, and substandard conditions in detention facilities are significant concerns. Lastly, discrepancies in the effectiveness of administrative and judicial reviews and remedies, particularly regarding access to legal aid and the implementation of court decisions, are problematic.

The analysis of return migration policies in the EU countries reveals several key similarities.

- Data Management and Transparency: There is a consensus on the need for improved data collection, processing, and publication to inform policy-making and ensure transparency in return operations.
- Institutional Frameworks and International Cooperation: Recommendations across countries highlight the need for enhanced institutional frameworks and international cooperation to manage return processes effectively, including cooperation with countries of origin and respecting the values underlying foreign and development policies.
- EU Directive Implementation: All countries are working to align their national return migration policies with EU directives, though the extent and effectiveness of implementation vary.
- Human Rights and Legal Frameworks: There is a strong emphasis on ensuring that return procedures respect the human rights of migrants, with a focus on detention conditions and the treatment of vulnerable groups. Clear legal frameworks are needed to ensure transparency and easy navigation for migrants to understand their rights and obligations.
- Voluntary Return Programmes: There is a consensus on promoting voluntary return options as more humane and effective alternatives to forced returns.
- Detention Practices: Despite differences in conditions, duration, and legal oversight, there is a common reliance on detention as a measure for managing return migration. However, there is also a shared view that detention should be used as a last resort, with alternatives to detention to be considered first, especially in the context of children and the humane treatment of detainees.

- Challenges with Vulnerable Groups: Each country acknowledges gaps in adequately addressing the needs of vulnerable migrants, including unaccompanied minors (UAMs), victims of trafficking, and individuals with health issues.

In light of the comparative analysis of the five country dossiers, the most important policy recommendations can be summarised as follows:

- Emphasis on human rights and legal frameworks: All countries underscore the importance of aligning return policies with human rights standards and the legal frameworks safeguarding these rights. They advocate for clear legal definitions, transparency, and procedures that comply with fundamental and human rights.
- Need for data management and transparency: There is a consensus on the necessity for improved data collection, processing, and publication to inform policy-making and ensure transparency in return operations.
- Institutional frameworks and international cooperation: Recommendations across countries highlight the need for enhanced institutional frameworks and international cooperation to manage return processes effectively. This includes cooperation with countries of origin and respecting the values underlying foreign and development policies.
- Detention as a last resort: The countries advocate for detention to be used as a last resort, with alternatives to detention being considered first, especially highlighting the importance of the child's best interests and the need for the humane treatment of detainees.

Keywords: Legal and Policy Framework of Migration Returns, Return, Readmission, Return Policies, Comparative Analysis, Germany, Greece, the Netherlands, Poland, Sweden, EU

The GAPs Project

GAPs is a Horizon Europe project that aims to conduct a comprehensive multidisciplinary study on the drivers of return policies and the barriers and enablers of international cooperation on return migration. The project aims to examine the disconnects and discrepancies between expectations of return policies and their actual outcomes by decentring the dominant, one-sided understanding of "return policy-making". To this end, GAPs:

- Examines the shortcomings of the EU's return governance;
- Analyses enablers and barriers to international cooperation, and;
- Explores the perspectives of migrants themselves to understand their knowledge, aspirations and experiences with return policies.

GAPs combines its decentring approach with three innovative concepts:

- A focus on return migration infrastructures, which allows the project to analyse governance fissures;
- An analysis of return migration diplomacy to understand how relations between EU MSs and third countries hinder cooperation on return and;
- A trajectory approach that uses a socio-spatial and temporal lens to understand migrant agency.

GAPs is a three-year interdisciplinary project (2023–2026) coordinated by Uppsala University and the Bonn International Centre for Conflict Studies with 17 partners in 12 countries on four continents. The 12 countries in which fieldwork has been conducted are Sweden, Nigeria, Germany, Morocco, the Netherlands, Afghanistan, Poland, Georgia, Türkiye, Tunisia, Greece and Iraq.

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1. Introduction

This comparative report aims to scrutinise the return migration policies of selected European Union (EU) Member States (MSs), specifically Germany, Greece, Poland, Sweden, and the Netherlands. By drawing on detailed country dossiers, the report seeks to identify similarities and differences in legal and policy frameworks, assess alignment with EU directives, particularly the EU Return Directive, and understand the roles of institutional frameworks in managing return migrations. The report offers critical insights into the return policies of the EU and its MSs, emphasising the need for humane, effective, and rights-respecting return processes. It lays a foundation for future research and policy recommendations to improve the management of return migrations within the EU, advocating for policy alignment, legal reform, and enhanced cooperation among MSs.

Comparative studies on EU countries' return and readmission policies are instrumental in illuminating the nuances of return migration policies across different national contexts, bridging knowledge gaps and fostering collaboration between the EU, MSs and countries of origin. This report contributes to the academic and policy discourse on return migration. It offers important insights for policymakers to navigate the complexities of migration management in a manner that is effective, ethical, and aligned with the EU's values and international commitments.

In terms of methodology, this report employs a mixed-methods approach to comparative legal analysis that involves a detailed examination of the legal and political frameworks governing return migration policies in each country, including any relevant consumer protection laws or regulations. The analysis is structured in several phases to ensure a comprehensive understanding of each country's approach to return migration, facilitating a nuanced comparison across different legal and political contexts. The analysis is based on the document analysis of five country dossiers, each providing in-depth insights into the respective national frameworks.

In this framework, it reviews the literature regarding the EU and the national reports of the five countries to understand their return policies. Based on the literature review, the report identifies key themes or categories that are relevant to return policies. It extracts relevant information from each country's report according to the identified themes. This extraction reflects the critical aspects such as procedural safeguards, detention policies, procedural mechanisms for issuing return decisions, and notable political shifts impacting return migration policies. The thematic analysis seeks to highlight similarities and differences across the countries, focusing on how each nation navigates the complexities of return migration within its legal and political boundaries.

Based on the thematic analysis, a comparative analysis was developed to systematically assess and contrast the legal and political frameworks of the five countries. This framework guided the examination of each country's approach to return migration, considering the EU directives and international legal standards as reference points. The comparative framework enabled the identification of convergences and divergences in policy implementation, legal provisions, and handling return migration issues. By integrating a thematic analysis under three sub-sections ("procedure to issue return decisions", "procedural safeguards and non-returnability", and "detention") from a comparative perspective, the report offers a comprehensive overview of

the multifaceted nature of return migration policies, highlighting key areas for further research and policy development.

The report highlights similarities and differences and discusses the unique aspects of each country's policy. It presents the findings in a structured format, with clear headings for each theme and sub-sections for each country. It uses tables, charts, or graphs to compare the data visually. Finally, based on the comparative analysis, the report draws conclusions and provides recommendations.

The report is structured as follows. It begins with an analysis of the relevant statistics, policy, and institutional framework, followed by a legal framework analysis. It then details policy recommendations and a conclusion. Each section starts with a general overview of the EU and then continues with the selected five EU MSs. For the country cases, given the voluminous nature of the country dossiers, a short summary is provided, followed by a discussion of the comparative aspects, mainly focusing on similarities and differences.

2. Statistical Overview

2.1. Return Statistics and the EU

At both the EU and Member State levels, accurate and comprehensive data are essential for policy-making, monitoring, and evaluation purposes, enabling authorities to assess the impact of return policies and make informed decisions to address irregular migration. Additionally, statistics provide a basis for transparency and accountability, allowing for assessing compliance with international and EU legal frameworks. The Global Compact also states the importance of data for Safe, Orderly and Regular Migration (2018).[1] Out of the 23 objectives, the very first is to "collect and utilise accurate and disaggregated data as a basis for evidence-based policies" with an additional 11 sub-clauses. Meanwhile, the twenty-first objective is dedicated to returns and readmissions specifically, calling on states to "cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration".

Under this section, this report will delve into the importance of statistics in the realm of return policy within the EU and its MSs, highlighting the critical role that data plays in shaping effective and humane migration management strategies. Systematic data collection plays a pivotal role in shaping migration management policies that are both humane and aligned with human rights principles. By gathering comprehensive statistics, including nuanced breakdowns such as the numbers of unaccompanied and separated children or individuals with disabilities, governments and policymakers are equipped with the crucial insights needed to understand the diverse needs of migrants. This detailed data collection fosters an environment of inclusion, compelling authorities to recognise and address the specific vulnerabilities and requirements of distinct migrant groups. It ensures that no individual falls through the cracks due to generalised policies that may overlook the unique challenges faced by certain populations.
Furthermore, universal data collection serves as a foundation for evidence-based policy-making, enabling the development of targeted interventions that safeguard the rights and

[1] United Nations (UN). 2018. Global Compact for Safe, Orderly and Regular Migration, 2018, Available at: https://www.un.org/en/conf/migration/ (Accessed 8 April 2024).

well-being of all migrants, regardless of their circumstances. Therefore, this section examines the main gaps in current statistical practices, including the challenges of harmonising data collection, ensuring data quality, and facilitating data sharing among various stakeholders. In this framework, the return policy-related statistics and sources will be briefly examined, and then a comparative analysis will be provided in light of the selected countries' dossiers.

However, the country-based analysis as part of this work package (WP2) showed that significant gaps exist in collecting, analysing, and sharing return policy statistics. These gaps can hinder the ability of the EU and MSs to fully understand migration dynamics, evaluate policy effectiveness, and ensure that the rights of returnees are protected. Common challenges include discrepancies in data collection methodologies, lack of standardised definitions, and issues related to data sharing and privacy concerns. Such challenges can lead to incomplete or inconsistent data, making it difficult to draw accurate conclusions or compare policies and practices across different countries.

Since 2001, the EU has been working on a comprehensive and coherent framework for a common analysis and the improved exchange of statistics on asylum and migration. In April 2003, the European Commission (EC) released a communication to the Council and European Parliament, setting out an action plan for collecting and analysing the Union's statistics in the field of migration. This plan included several important changes designed to improve the completeness and degree of harmonisation of these statistics. Under the action plan, the EC aimed to propose legislation on community statistics, which resulted in the Council Regulation (EC) No 862/2007[2] of July 2007 on Community statistics on migration and international protection. Accordingly, the MSs shall supply to the Commission (Eurostat) statistics on the following categories, including one specifically regarding return policy:

- International migration, usually resident population, and acquisition of citizenship (Article 3);
- International protection (Article 4);
- Prevention of illegal entry and stay (Article 5);
- Residence permits and residence of third country nationals (Article 6), and;
- Returns (Article 7).

Enforcement of Immigration Legislation Data (EIL statistics) is based on Articles 5 and 7 of the Council Regulation (EC) No 862/2007, amended by Regulation 2020/851[3] of June 2020. EIL statistics include some significant sections regarding return policy as follows:

- Refused entry at the external border;
- Found to be illegally present;
- Ordered to leave, and;

[2] Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers. Available at: Regulation - 862/2007 - EN - EUR-Lex (europa.eu) (Accessed 8 March 2024).

[3] Regulation (EU) 2020/851 of the European Parliament and of the Council of 18 June 2020 amending Regulation (EC) No 862/2007 on Community statistics on migration and international protection; Available at: Regulation - 2020/851 - EN - EUR-Lex (europa.eu) (Accessed 8 March 2024).

- Returned following an order to leave.

In addition to the national authorities in the MSs, two key actors are involved in the data consolidation, quality and reporting in relation to return:

1. **Eurostat** is the community statistical authority of the Commission, and the legal basis for the production of European statistics is Regulation (EC) No 223/2009.[4] Eurostat collects the data from the administrative records of the national authorities, mainly Ministries of Interior or Immigration Agencies. Eurostat publishes data sets, metadata, and national quality reports produced by countries. [5]
2. **The European Migration Network (EMN)** was formally established by Council Decision 2008/381/EC.[6] The EMN's role is to provide up-to-date, objective, reliable, and comparable information on migration and asylum to support policy-making in the European Union and contribute to the public debate. The EMN has published annual reports on migration and asylum and has outlined significant political and legislative developments and debates in the EU MSs and at the EU level.[7]

Despite some categories of data being collected voluntarily, Regulation 2020/851[8] introduced several changes, such as increasing the frequency of the data collection on returns and collecting more breakdowns for the statistics on third country nationals found to be in irregular situations and third country nationals returned. Statistics on third country nationals who are UAMs subject to return procedures are also collected following Regulation 2020/851. Regulation 2020/851 introduced new quarterly mandatory statistics on returns. The published data are based on the 2021 EIL Technical Guidelines[9] and meet the minimum data quality requirements. From the first quarter of 2021, reporting quarterly statistics on returns became mandatory for all MS. However, some data availability issues still exist, and Eurostat

[4] Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities, Available at: LexUriServ.do (europa.eu) (Accessed 8 March 2024).

[5] Eurostat, Enforcement of Immigration Legislation (migr_eil), Available at: https://ec.europa.eu/eurostat/cache/metadata/en/migr_eil_esms.htm (Accessed 8 March 2024).

[6] 2008/381/EC: Council Decision of 14 May 2008 establishing a European Migration Network, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008D0381 (Accessed 8 March 2024).

[7] European Migration Networks Annual Reports, Available at: https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-publications/emn-annual-reports_en (Accessed 8 March 2024).

[8] Regulation (EU) 2020/851 of the European Parliament and of the Council of 18 June 2020 amending Regulation (EC) No 862/2007 on Community statistics on migration and international protection, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2020.198.01.0001.01.ENG (Accessed 8 March 2024).

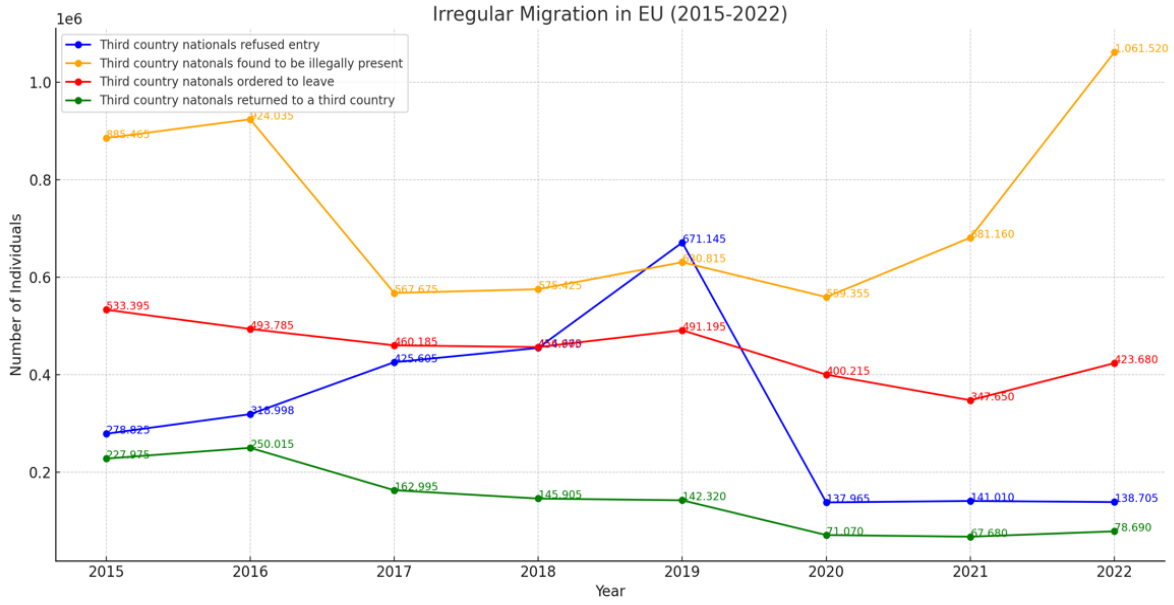
[9] Technical Guidelines For The Data Collection Under Article 5 And 7 Of Regulation 851/2020 Amending Regulation 862/2007– Enforcement of Immigration Legislation (EIL) Statistics, January 2023, Available at: https://ec.europa.eu/eurostat/cache/metadata/Annexes/migr_eil_esms_an_5.pdf (Accessed 8 March 2024).

is in contact with each relevant country to provide the missing statistics. Some of the statistics are also affected by the derogations received for specific categories of data.

Building upon the framework established by the EU for the collection, analysis, and harmonisation of migration and asylum statistics, the data visualisations provided offer a tangible illustration of the trends and shifts in irregular migration and return types within the EU from 2015 to 2022. To create these data visualisations, the comparative report extracted the relevant data of the five countries covered in the report from the existing EU-sourced data in light of the identified indicators. As a result, we have ensured that data from all five countries can be viewed simultaneously in the visuals.

The trends observed in the data visualisations underscore the fluctuating nature of migration flows and the complexities involved in managing migration within the EU. The peak in refused entries in 2019, as depicted in Figure 1, reflects the outcomes of stringent border control policies and the EU's efforts to strengthen its external borders. These policies align with the EU's broader objective of managing migration more effectively and preventing illegal entry and stay.

Figure 1: Irregular Migration in the EU (2015–2022)



Source: Prepared by the authors for the EU level based on Eurostat data.[10]

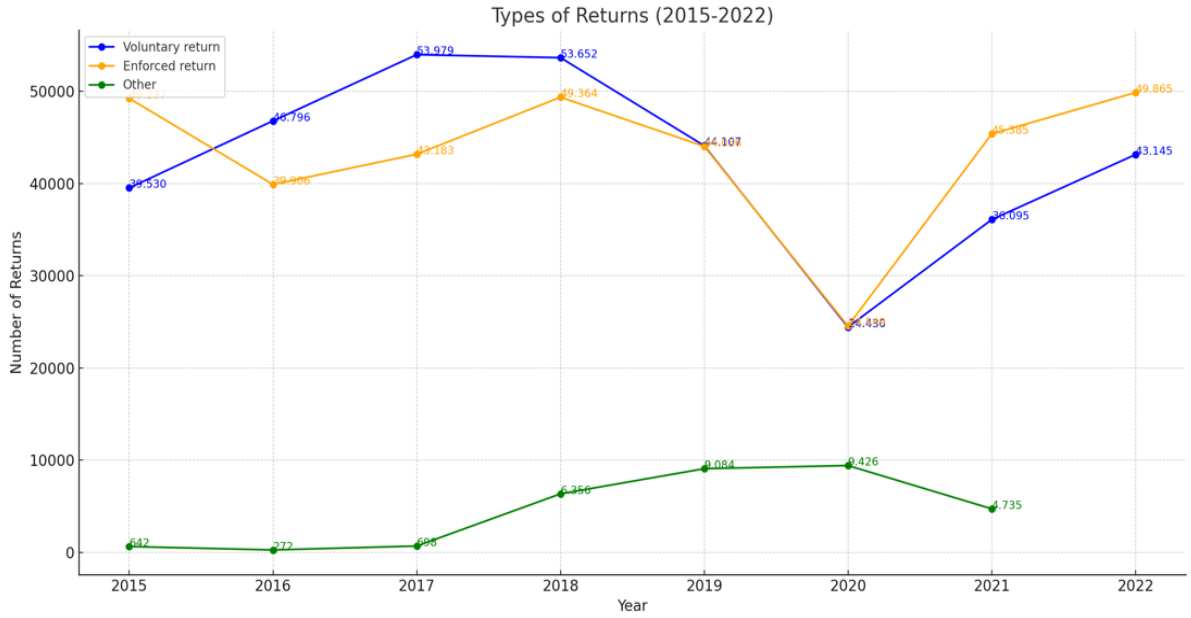
Figure 2 reveals the three types of return — voluntary, enforced, and other — highlighting the EU's multifaceted strategy for returns as part of its broader migration management framework. Return migration and return patterns disclose significant changes over the years,

[10] Further details are available at: https://ec.europa.eu/eurostat/databrowser/bookmark/fdca05e6-3c30-43dd-a929-f975a8764900?lang=en (Accessed 8 March 2024), https://ec.europa.eu/eurostat/databrowser/bookmark/aa6a64c1-96bf-45e6-af40-2caf02dfcdb1?lang=en (Accessed 8 March 2024), https://ec.europa.eu/eurostat/databrowser/bookmark/3edb0480-65bf-4d0a-b469-8db643dac8fe?lang=en (Accessed 8 March 2024), https://ec.europa.eu/eurostat/databrowser/bookmark/2bcbae87-3e65-46ba-8d30-05fc3b121568?lang=en (Accessed 8 March 2024), https://ec.europa.eu/eurostat/databrowser/bookmark/052da2b4-a854-4b27-977c-8228bc7ba4dc?lang=en (Accessed 8 March 2024).

influenced by policy, enforcement, and external factors. However, the balance between voluntary and enforced returns has shifted slightly over the years, reflecting policy shifts.

The return of illegally staying third country nationals is one of the main pillars of the EU's policy on migration and asylum. However, recent Eurostat data show that the number of returns has not increased in proportion to the number of those ordered to leave, despite the significant increase in the number of rejected asylum applications and the number of return decisions issued. As shown by the EU's persistently low return rates in recent years, several significant challenges remain for the effective implementation of returns.

Figure 2: Types of Returns (2015–2022)



Source: Prepared by the authors for the EU as based on Eurostat data.[11]

Despite the data harmonisation strategies, data collection and the actors involved in the process vary by country, reflecting the complexity of return migration governance in the EU. The issues and inconsistencies in the data collection processes significantly impact the comparative analysis of return migration statistics. The lack of a unified European data collection system leads to inconsistencies across all countries in definitions (e.g., variation in the criteria for a "return decision"), reporting standards, and timelines. There is also the problem of double counting, where individuals might be counted in multiple countries if they move within the Schengen area. Furthermore, the difference between the issuance of return orders and actual departures presents a challenge in assessing the effectiveness of return policies. Taking the five EU countries as cases, the section below provides an example of the data issues and actors involved.

[11] Available at: https://ec.europa.eu/eurostat/databrowser/bookmark/13b0f08d-ab4a-4c67-b6ef-13907dc6defb?lang=en (Accessed 8 March 2024), https://ec.europa.eu/eurostat/databrowser/bookmark/d9d4012c-c793-4102-9e3d-7b2bf342490b?lang=en (Accessed 8 March 2024).

2.2. Data Sources, Actors and Inconsistencies: Reflections on the Selected GAPs Countries

2.2.1. General Information

Germany's primary data collection sources are the Federal Office for Migration and Refugees (BAMF) and the Federal Statistical Office (DESTATIS). These bodies are responsible for compiling migration-related data, including asylum applications and enforcement of return decisions. Data from Germany shows complexity and heterogeneity due to the decentralised nature of its data collection, as the states (*Länder*) have their own programmes and practices. Therefore, the data is not standardised, making year-over-year and cross-national comparisons difficult. Remarkably, the number of refusals at the border includes figures for EU citizens, which is not a standard practice across other EU states, leading to inflated numbers compared to Eurostat.

The Hellenic Police and the Ministry of Migration Policy are key actors in **Greece**'s data collection. The national data is also fed into the Eurostat database, where it is compiled and partially standardised. The Greek data show inconsistencies between annual and quarterly Eurostat data on TCNs returned following an order to leave. Moreover, allegations of push-back and other illegal practices have been consistently denied by the Greek government, yet investigations and reports by journalists and human rights organisations provide conflicting evidence and testimonies. The result is a gap between official statistics and on-the-ground reports.

The Office for Foreigners and the Border Guard are the primary agencies managing migration data in **Poland**, including the enforcement of returns. The increasing trend in border refusals and return orders may not be accurately captured due to differences in data collection methodologies between border enforcement and immigration services.

In **Sweden**, the Migration Agency and the Police Authority are the main actors collecting data on asylum, residence permits, and return decisions. Swedish data collection practices have been criticised for not being systematic or coherent. The Swedish Police Authority has stated the difficulty in providing accurate assessments of irregular migrants present. The Migration Agency's data collection on return-related matters is not readily accessible or disaggregated, which hampers external evaluation and contributes to a lack of clarity and potential dissemination of misinformation.

The Immigration and Naturalisation Service (IND), in conjunction with the Central Agency for the Reception of Asylum Seekers (COA) and the Repatriation and Departure Service (DT&V), collect data on migration and returns in **the Netherlands**. In the Netherlands, there are significant discrepancies between national and Eurostat statistics, particularly from 2015 to 2017. The national data do not align with the EMN's findings regarding the number of migrants who refused entry at the borders, were found to be illegally staying, and were ordered to leave. Additionally, there are differences in the reported numbers of forced returns, with the EMN's figures consistently higher than those of the national service (DT&V) from 2016 to 2018.

2.2.2. Comparative Statistical Analysis

In order to provide a comparative statistical analysis for the selected five countries, the Enforcement of Immigration Legislation (EIL) statistics of Eurostat were combined in a macro dataset that includes asylum applicants and irregular migration data categories. This dataset was later imported into the Zoho Analytics Dashboard[12] to contribute to a comparative analysis across the five selected countries. The section below provides the descriptive data analysis and visualisation of the respective data sets of Eurostat. The data in this section evidences the dynamic interaction among national policies, the geopolitical landscape, EU legislation, and the patterns of return migration. It suggests that the EU policy shifts have substantially influenced the enhancement of community statistics on return migration, though the degree of this enhancement varies across the five selected countries. Collecting data that includes origin and destination countries facilitates an analysis of geographical return patterns, which, in turn, informs the development of enforcement strategies and legal frameworks. The standardised collection of EIL statistics, mandated by the EU legislation, aids in unifying and diversifying the data amassed at the Member State level. However, technical issues often stem from divergent definitions, the specific data requirements of the MSs, and their varied institutional arrangements. Certain countries show a correlation between their geographical location along the Mediterranean corridor and rising numbers of asylum seekers and irregular migrants. Additionally, the research uncovers significant discrepancies between the number of "third country nationals ordered to leave" and those "actually returned", highlighting the difficulties in executing return procedures. These insights align with ongoing discussions about the role of datafication in managing migration and forming the basis of evidence-driven policy-making.

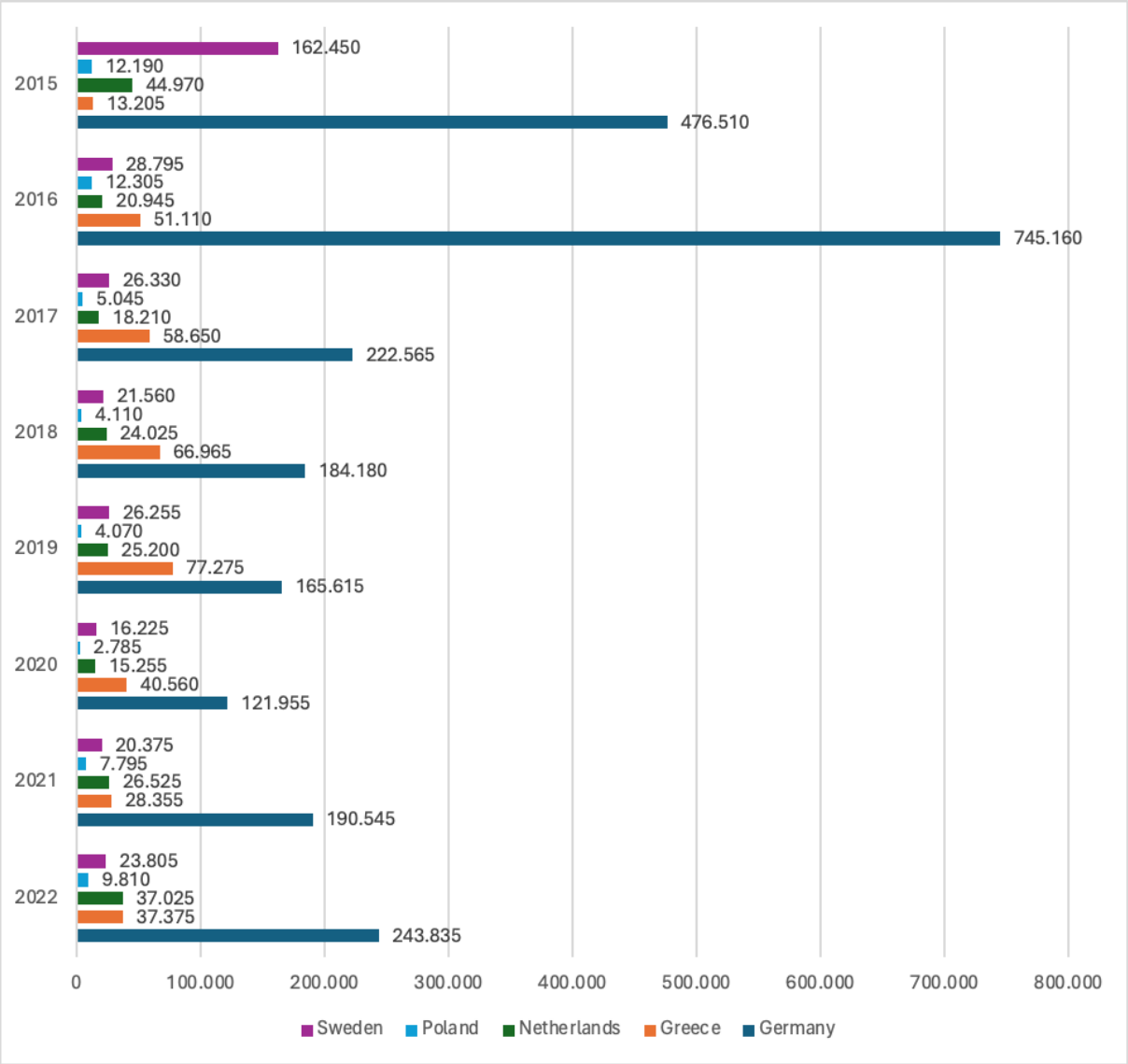
2.2.2.1. Asylum Applicants

The number of asylum applicants varies significantly across the five countries, with Germany experiencing a notable peak in 2016 (745,160 applicants). This peak indicates the social and environmental capacity during the "European migrant crisis".[13] Sweden also saw a significant number of applications in 2015 (162,450). Greece's figures in 2016 (51,110) align with its geographical positioning on the Mediterranean route, showing an increasing trend until 2019. In comparison, the Netherlands and Poland experienced lower and more stable application numbers, suggesting different migratory pressures or policy responses.

Figure 3: Asylum Application in the Five Selected Countries (2015–2022)

[12] Available at: https://analytics.zoho.com/workspace/22528820000000009677/view/22528820000000306780 (Accessed 8 March 2024).

[13] This refers to the governance crisis that emerged during the 2015–2016 refugee emergency, characterised by an extraordinary flows of migrants and refugees into Europe, which exceeded the existing governance capacity and migration policies. This crisis was marked by increased instability and uncertainty, leading to the inadequacy of existing institutions and processes to manage the situation effectively. The governance crisis facilitated a process of policy change, involving the redefinition of institutional roles, transformation of pre-existing rules and norms, and the emergence of new discursive frames. As a result, the crisis significantly shaped migration governance in Europe, with lasting effects beyond the immediate crisis period.



Source: Prepared by the authors for the selected countries based on Eurostat data.[14]

2.2.2.2. Stock of Irregular Migrants

Germany has had an average of approximately 200,984 irregular migrants with a significant standard deviation, indicating a wide variation over the years. The minimum and maximum stocks were 117,930 and 376,435, respectively. Greece shows the highest variability, with an average of 191,895 irregular migrants. The standard deviation is quite large, reflecting the extreme fluctuation in numbers, ranging from a minimum of 38,015 to a maximum of 911,470. This deviation is also based on the significant changes between 2015 (the year of the height of the "European migration crisis" and the "long summer of migration") and 2021 (owing to border closures due to COVID-19 and restrictive policies).

[14] Asylum applicants by type–annual aggregated data, Available at: https://ec.europa.eu/eurostat/databrowser/view/tps00191/default/table?lang=en&category=t_migr.t_migr_asy (Accessed 8 March 2024).

The Netherlands had the lowest numbers, with an average of 3,568 irregular migrants. The figures are more consistent here, with a smaller standard deviation and numbers ranging from 2,120 to 5,510. Poland's average stock was 20,787, with numbers showing moderate variability over the years. The stock ranged from 10,510 to 31,245. Sweden had an average of 2,049 irregular migrants, with relatively low variability. The numbers ranged from 1,210 to 2,635.

Table 1: Stock of Irregular Migrants in the Five Selected Countries (2015–2022)[15]

Year	Germany	Greece	Netherlands	Poland	Sweden	Total
2015	376,435	911,470	3,150	16,835	1,445	1,309,335
2016	370,555	204,820	2,760	23,375	1,210	602,720
2017	156,710	68,110	2,120	28,470	2,145	257,555
2018	134,125	93,365	2,790	31,245	1,720	263,245
2019	133,525	123,025	3,565	30,900	2,170	293,185
2020	117,930	47,295	3,640	12,170	2,615	183,650
2021	120,285	38,015	5,010	12,795	2,635	178,740
2022	198,310	49,060	5,510	10,510	2,455	265,845

Source: Prepared by the authors for the selected countries based on Eurostat data.[16]

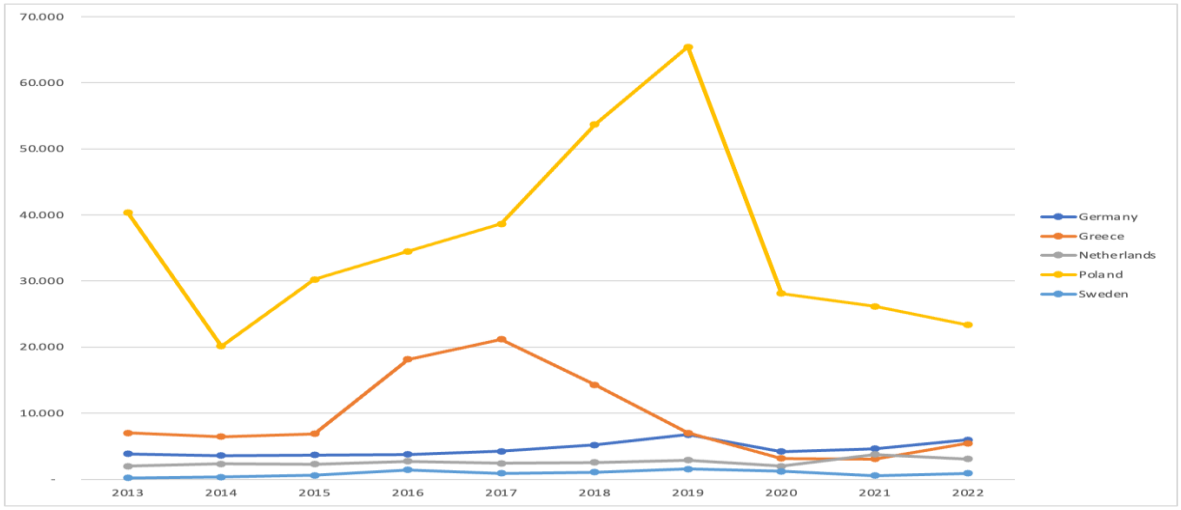
2.2.2.3. TCNs Refused at the Border

Poland's data indicates strict border enforcement, with refusal numbers progressively increasing from 2015 (30,245) to 2018 (53,695). Greece's increase in 2016 (18,145) is likely a consequence of heightened migration flows during the crisis. The lower and stable numbers in Germany, the Netherlands, and Sweden suggest established and effective immigration controls within the Schengen zone.

[15] This table reflects the stock of irregular migrants in the selected country by year, and therefore does not represent unique number of irregular migrants, rather focuses on stock in the respective year.

[16] Third country nationals found to be illegally present, annual data (rounded), Available at: https://ec.europa.eu/eurostat/databrowser/view/migr_eipre/default/table?lang=en (Accessed 8 March 2024).

Figure 4: Third Country Nationals Refused Entry at the Border in the Five Selected Countries (2015–2022)

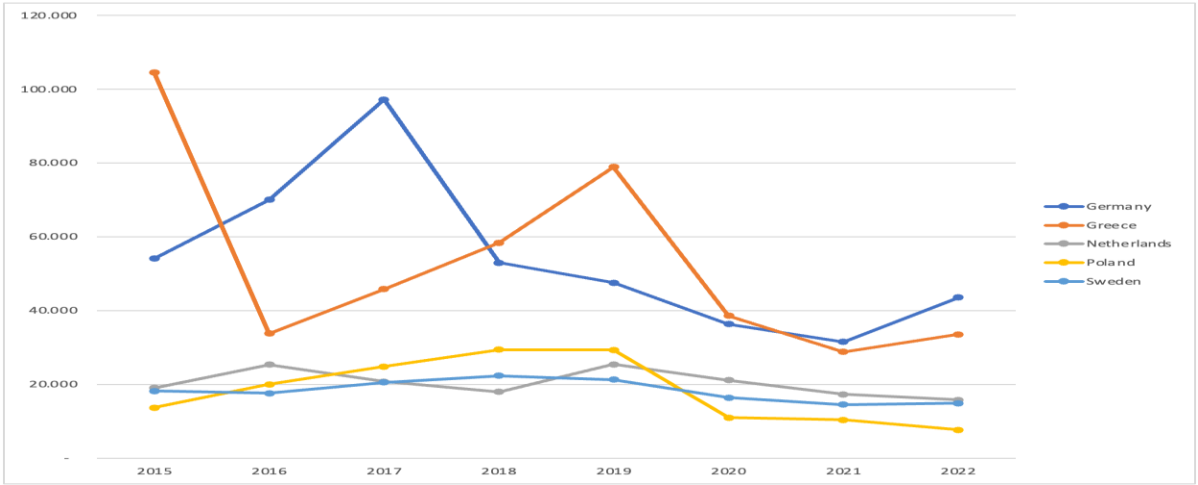


Source: Prepared by the authors for the selected countries based on Eurostat data.[17]

2.2.2.4. TCNs Ordered to Leave

In 2015, Greece directed a substantial number of TCNs to leave (104,575), reflecting the pressures of entry-point management. Germany's significant figures in 2017 (97,165) denote intensified enforcement actions, potentially due to the backlog from the 2016 asylum peak. The data from Poland and the Netherlands illustrate a growing trend of enforcement, while Sweden shows a modest increase by 2018 (22,310)

Figure 5: Third Country Nationals Ordered to Leave by Five Selected Countries (2015–2022)



Source: Prepared by the authors for the selected countries based on Eurostat data.[18]

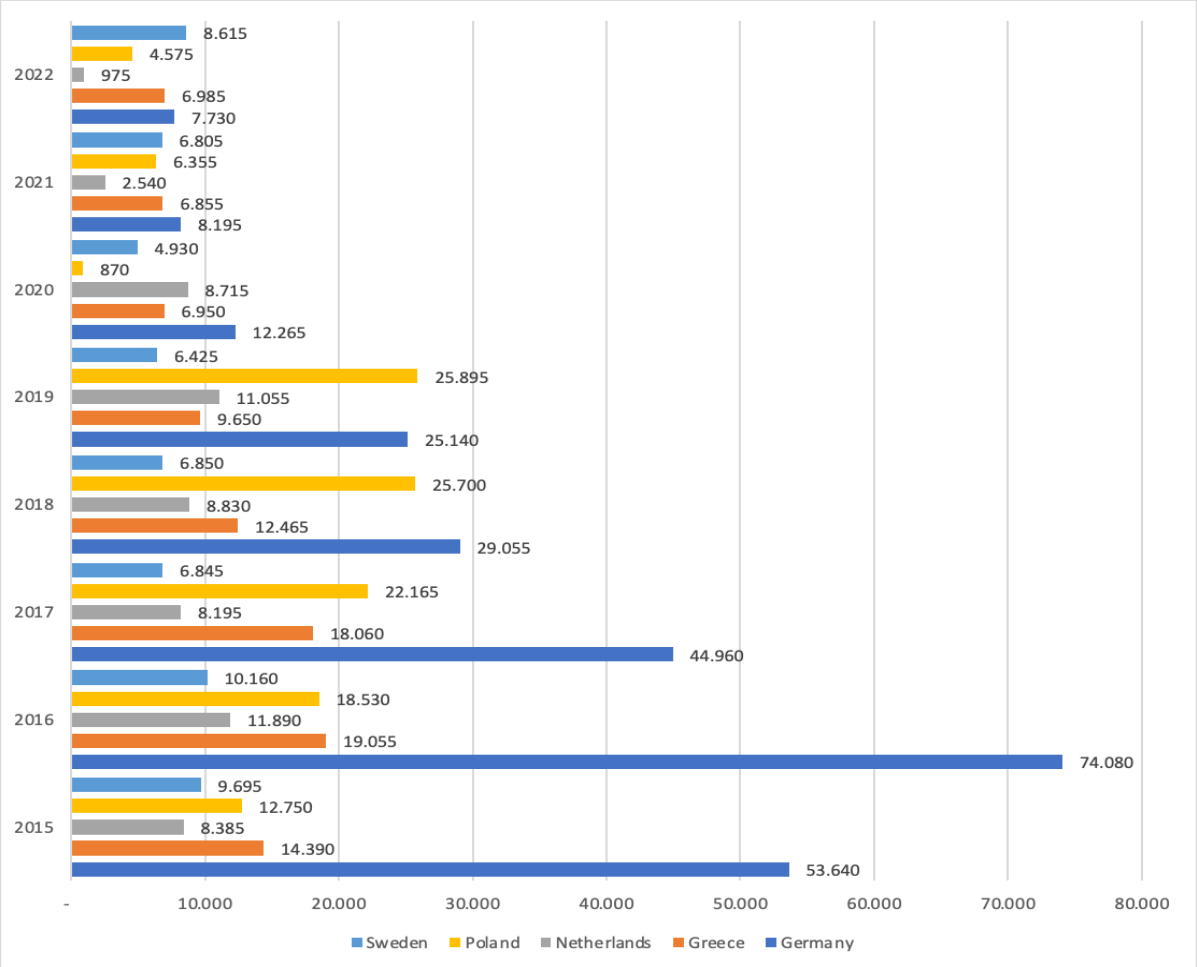
[17] Prepared for the selected countries based on Eurostat data. Third country nationals refused entry at the external borders–annual data (rounded), Available at: https://ec.europa.eu/eurostat/databrowser/view/migr_eirfs/default/table?lang=en (Accessed 8 March 2024).

[18] Prepared for the selected countries based on Eurostat data. Third country nationals ordered to leave–annual data (rounded), Available at: https://ec.europa.eu/eurostat/databrowser/view/migr_eiord/default/table?lang=en (Accessed 8 March 2024).

2.2.2.5. TCNs Returned Following Order to Leave

Germany experienced a peak in the number of TCNs returned in 2016 (74,080), with subsequent years showing a notable decrease to 44,960 in 2017 and down further to 29,055 in 2018. Greece had relatively lower numbers, with a slight increase from 14,390 in 2015 to 19,055 in 2016, followed by a decrease to 18,060 in 2017 and a further decrease to 12,465 in 2018. The Netherlands presented a varied trend, starting with 8,385 in 2015, increasing to 11,890 in 2016, then a decline to 8,195 in 2017, and a slight rise to 8,830 in 2018. Poland demonstrated a consistent year-over-year increase in the number of TCNs returned, from 12,750 in 2015 to 18,530 in 2016, 22,165 in 2017, and reaching 25,700 in 2018. Sweden displayed modest fluctuations over the years, with an initial figure of 9,695 in 2015, increasing to 10,160 in 2016, then decreasing to 6,845 in 2017, and remaining relatively stable with a slight increase to 6,850 in 2018.

Figure 6: Third Country Nationals Returned Following Order to Leave in the Five Selected Countries (2015–2022)



Source: Prepared by the authors for the selected countries based on Eurostat data.[19]

[19] Prepared for the selected countries based on Eurostat data. Third country nationals returned following an order to leave–annual data (rounded), Available at: https://ec.europa.eu/eurostat/databrowser/view/migr_eirtn/default/table?lang=en (Accessed 8 March 2024).

3. Political and Legal Developments Regarding Return Policy: Reflections from the EU and the Selected Member States

This section explores the timelines of policy changes, identifying key moments that have shaped each country's approach to return and readmission. The section aims to uncover the main patterns and insights regarding return migration policies by examining the similarities and differences across these national frameworks. The EU and its return policy will be briefly visited before focusing on the comparative dimension and the cases of the selected countries.

3.1. The Policy Framework of the EU Regarding Return and Readmissions (1990–2023)

The timeline of the EU's policy framework highlights the EU's ongoing efforts to develop a cohesive, fair, and effective return policy as part of its broader migration management strategy. The emphasis has gradually shifted towards more efficient procedures and international cooperation, particularly with the third countries, reflecting migration dynamics' complex and evolving nature. The EU has aimed to balance the need for effective return procedures with the fundamental rights of migrants; ensuring that returns are carried out humanely and dignifiedly through implementing these principles is not always the case.

The EU's return policy encompasses a range of policy tools and mechanisms developed since the 1990s to manage the return of irregular migrants. This policy framework has evolved to address practical, legal, and operational challenges, reflecting the dynamic nature of migration patterns and the geopolitical context influencing migration to and within the EU.

The major turning points for the EU's return policy since the 1990s include the establishment of the Schengen Agreement (1985), the Schengen Convention (signed in 1990, entered into force in 1995)[20] and the Dublin Convention (signed in 1990, entered into force in 1997)[21] in the

[20] The Schengen acquis (Schengen Agreement and the Convention), encompassing the agreement, convention, and associated rules, was incorporated into the EU's legal framework in 1999, and transformed into EU legislation through the Lisbon Treaty, which aims for an "area without internal frontiers" ensuring free movement of people. Today, the Schengen Area encompasses most EU countries, except for Cyprus and Ireland; while as of 31 March 2024, Bulgaria and Romania became the newest Member States to join the Schengen Area, any person crossing the internal air and sea borders will no longer be subject to checks. Nevertheless, a unanimous decision on the lifting of checks on persons at the internal land borders is still expected to be taken by the Council at a later date. Additionally, the non-EU States Iceland, Norway, Switzerland and Liechtenstein also have joined the Schengen Area. See the European Commission, "Schengen Area", 2024, Available at: https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-area_en (Accessed 2 May 2024). Thus, the Schengen acquis includes provisions related to the return of individuals not authorised to stay in the Schengen area. In this regard appears as the early settings for cooperation on returns.

[21] The Dublin Convention is no longer in force, but after the several changes it was replaced with the Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country

early 1990s, which laid the groundwork for the EU cooperation on migration and asylum issues, including returns. The Tampere European Council in 1999 further emphasised the need for a common EU asylum and migration policy. The "Management of Migration Flows" section stressed the importance of assisting countries of origin and transit to promote voluntary return and cope with their readmission obligations towards the EU and the MSs (Conclusion 26).

During the 2000s, the EU developed formalisation and initial policies. In 2002, the Seville European Council emphasised the importance of return policies in managing migration. In 2004, the European Agency for the Management of Operational Cooperation at the External Borders was established (reorganised as the European Border and Coast Guard Agency or Frontex in 2016). It plays a crucial role in coordinating and supporting joint return operations. Frontex assists in organising and funding charter flights for returns, provides training to national authorities, and enhances the operational efficiency of return procedures.

The 2000s also saw the establishment of the EU Readmission Agreements (EURAs) between the EU and non-EU countries, important tools to facilitate the return and readmission of individuals who do not or no longer fulfil the conditions for entry, stay, or residence in the EU or a partner country. EURAs are key instruments to ensure cooperation with third countries on return and readmission, streamlining the process of sending back irregular migrants. The first community readmission agreement with Hong Kong was signed in 2002 and entered into force in 2004.[22] Additional EURAs were subsequently signed with the following countries: Macao (2004); Sri Lanka (2005); Albania (2006); Russia (2007); Ukraine, North Macedonia, Bosnia & Herzegovina, Montenegro, Serbia and Moldova (all in 2008); Pakistan (2010); Georgia (2011); Armenia, Azerbaijan, Türkiye and Cape Verde (all in 2014); and Belarus (2020).[23] In addition, legally non-binding readmission arrangements have also been reached with Afghanistan, Guinea, Bangladesh, Ethiopia, The Gambia, and the Ivory Coast.[24] The EU has concluded legally non-binding readmission arrangements such as the EU–Turkey Statement. In several legal instruments and informal policies, the EU has made other benefits for partner countries conditional upon good cooperation in return, such as in the regulations on visa facilitation and liberalisation and in broader cooperation agreements (such as the Cotonou Agreement, recently followed by the Samoa Agreement).[25] In 2019, the Commission proposed to condition trade tariff preferences for the least developed countries to their cooperation on returns.[26]

national or a stateless person (recast), Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0604-20130629 (Accessed 4 February 2024).

[22] MEMO/02/271/EC of 27 November 2002, "Readmission Agreements". Available at: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/memo_02_271/MEMO_02_271_EN.pdf (Accessed 4 December 2023).

[23] European Commission, "A humane and effective return and readmission policy"., 2024a, Available at: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/irregular-migration-and-return/humane-and-effective-return-and-readmission-policy_en, (Accessed 8 March 2024).

[24] Ibid.

[25] Article 8 and recital 22 of Regulation (EU) 2018/1806, Article 25a of Regulation (EU) 1155/2019; Art. 13(5)(c)(i) of the Cotonou Agreement, Decision 2000/483/EC of the Council of 15 December 2000.

[26] See Article 19(1)(c) of COM(2021) 579, the Commission proposal for a Regulation on applying a generalised scheme of tariff preferences and repealing Regulation (EU) No 978/2012.

However, the most important legal development was the adoption of the Return Directive in 2008,[27] which established common procedures for returning third country nationals who were staying illegally. This Directive can be seen as the cornerstone of the EU's return policy, setting common standards and procedures for returning illegally staying third country nationals. It introduced clear rules on voluntary return, removal, detention, and re-entry bans, aiming to ensure effective return procedures across MSs while respecting migrants' rights. Since then, the EU has continued to refine its return policy, with revisions proposed to the Return Directive. Following its adoption, the MSs were required to transpose the Directive into national law by December 2010. The initial years focused on monitoring the implementation across MSs, identifying best practices, and addressing challenges in harmonising return procedures. In order to support the MSs in implementing the Return Directive and financing measures to promote voluntary returns and improve the management of return processes, the decision[28] was taken regarding establishing the European Return Fund (ERF) in 2007. The ERF has facilitated the development of national return programmes and supported reintegration projects for returnees in their countries of origin.

During the 2010s, the enforcement and cooperation of the EU's return policy were strengthened. In 2011, the European Return Platform for Unaccompanied Minors (ERPUM) was launched, focusing on the return of UAMs.

In 2014, the Asylum, Migration and Integration Fund (AMIF) was established for the 2014–2020 period by merging the previous three separated funds for the 2007–2013 period, namely the European Refugee Fund, the ERF and the European Fund for the Integration of Third Country Nationals. AMIF funds significant actions regarding return policy management at the EU and the Member State level, such as supporting an integrated and coordinated approach to return, capacity development regarding effective and sustainable return, supporting assisted voluntary return and reintegration, cooperating with third countries, countering irregular migration and on effective return and readmission to manage migration.[29]

In 2015, the European Agenda on Migration[30] proposed a more coordinated approach to managing migration across the EU, emphasising the role of returns. The EU's controversial and highly criticised hotspot approach was introduced as part of the Agenda as a strategy to manage the sudden and significant influx of migrants at the EU's external borders. It involves

[27] 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, Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115 (Accessed 2 February 2024).

[28] Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme Solidarity and Management of Migration Flows, Available at: https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vitgbgim0xzr (Accessed 4 January 2024).

[29] European Commission, "Asylum, Migration and Integration Fund (2021–2027)"; Available at: https://home-affairs.ec.europa.eu/funding/asylum-migration-and-integration-funds/asylum-migration-and-integration-fund-2021-2027_en (Accessed 4 January 2024).

[30] Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration', Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015AE4319 (Accessed 2 February 2024).

the establishment of first reception facilities, known as hotspots, where EU agencies such as the European Union Agency for Asylum (EUAA), Frontex, Europol, and Eurojust collaborate with the authorities of frontline MSs facing disproportionate migratory pressures. The primary goals are to enhance the registration, identification, and fingerprinting of incoming migrants and ensure that those needing international protection are quickly channelled into the appropriate asylum procedures. The hotspot approach is closely related to several critical aspects of EU return policy. For migrants not qualifying for international protection, Frontex assists MSs by coordinating the return of irregular migrants. The collaboration aims to dismantle smuggling and trafficking networks, thereby addressing one of the root causes of irregular migration. Despite these criticisms, the hotspot approach remains one of the key components of the EU's strategy to manage migratory pressures and align with its broader migration policy objectives, including the return and readmission of migrants not in need of international protection. After the European Council and the European Parliament endorsed the New Pact on Migration and Asylum (2023), the hotspot approach, which had initially been introduced as a temporary measure, was institutionalised. It involves treating individuals arriving at the border as if they had not entered EU territory, which leads to diminished protections and the confinement of these individuals in reception centres.

The EU has released several action plans on return, outlining measures to improve the effectiveness of return procedures during the 2010s. These plans include enhancing cooperation with third countries, improving data management, and increasing the capacity of MSs to carry out returns. The EC adopted the first EU Action Plan on Return in 2015, focusing on increasing the effectiveness of the EU system in returning irregular migrants and enhancing cooperation on readmission with countries of origin and transit. It was renewed in 2017 by the Commission.[31]

The "European migration crisis" has reinforced return efforts and collaboration with third countries. One of the developments in this regard is the Valletta Summit on Migration (2015),[32] where the Action Plan outlined five specific areas. Regarding return, the Summit addressed enhancing measures for return, readmission, and reintegration of irregular migrants. The return element was the crucial element of the Summit, and the EU pledged to work with African partners to target criminal networks involved in migrant smuggling and trafficking. The EU offered to open more legal migration channels in return for greater cooperation. However, as legal migration remains primarily a competence of the MSs, where legal migration is often a contentious political issue, this intention has not led to a significant increase in the number of legal pathways.

In 2015, the Commission launched the "Integrated Return Management System" (IRMS) to improve practical cooperation among the MSs. This system is supported by the Integrated Return Management Application (IRMA), an online platform and a toolbox for return practitioners, "featuring a knowledge store with return related information on Third Countries

[31] Communication from the Commission to the European Parliament and the Council on a more effective return policy in the European Union–a renewed action plan, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017DC0200 (4 February 2024).
[32] Further information is available at: https://www.consilium.europa.eu/en/meetings/international-summit/2015/11/11-12/ (Accessed 9 February 2024).

[…]; information on (the transfer of activities of) EU-funded programmes; secure (national) workspaces; encrypted messaging and return data collection".[33]

The closure of the Balkan route in March 2016 was a significant event in the European migration crisis, profoundly impacting the flow of refugees and migrants towards Western Europe. This decision left thousands of asylum seekers stranded and underscored the EU's divisions on how to handle the crisis. It also referred to the returns and refusals at the borders., With the adoption of the EU–Turkey Statement in 2016,[34] a new era of next-generation bilateral agreements based more on political consensus than traditional readmission agreements began. The Statement included provisions for return and readmission arrangements. Also in 2016, the European Border and Coast Guard Agency (Frontex) was established, replacing the European Agency for the Management of Operational Cooperation at the External Borders with a strengthened mandate, including the return of irregular migrants. In 2016, the Schengen Border Code[35] was adopted as a regulation, which has essential arrangements regarding return. In April 2024, the Parliament and Council adopted another revision of the Schengen Border Code, which allowed the MSs to immediately return undocumented third country nationals at the internal borders to the Member State they departed from unless they wanted to apply for asylum.

In 2017, the EU Return Handbook[36] was updated to provide more explicit guidance to the MSs on returning migrants. It was first issued in 2015 and updated subsequently. It clarifies procedures and best practices for returning migrants, aiming to enhance the effectiveness and uniformity of return practices across the EU. In 2018, the European Commission proposed a revision of the Return Directive intending to harmonise return procedures further and improve their efficiency.[37] Key proposals among the suggested changes to make returns more effective included removing the obligation to grant a voluntary departure period or shortening the deadlines for voluntary departure, a non-exhaustive list with criteria defining the risk of absconding, an extension of the grounds for detention and an obligation for a minimum detention period in national legislation, and more restrictions on the right to appeal if the asylum procedure has been completed. In addition, more straightforward rules on detention and a more streamlined appeal process have been suggested for more effective returns.

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[33] Frontex, "Integrated return management application",, *Frontex Publications Office*, 2020, Available at: https://op.europa.eu/en/publication-detail/-/publication/7f17a76a-719e-11eb-9ac9-01aa75ed71a1 (Accessed 5 March 2024).

[34] The EU–Turkey Statement, 18 March 2016, Available at: https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/EU–Turkey-statement/ (Accessed 5 March 2024).

[35] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification), Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399 (Accessed 3 February 2024).

[36] Return Handbook of 16 November 2017, C(2017)6505; its Renewed Action Plan, COM(2017); the Communication on voluntary return, COM(2021)120 and the Communication on enhancing cooperation on return and readmission, COM(2021)56.

[37] COM (2018)634, 12 September 2018, proposal for a recast of the Return Directive, https://eur-lex.europa.eu/resource.html?uri=cellar:829fbece-b661-11e8-99ee-01aa75ed71a1.0001.02/DOC_1&format=PDF

As of 2024, the EU's efforts to recast the Return Directive, initially proposed in 2018, have seen significant procedural developments but have yet to culminate in a finalised piece of legislation. Despite the urgency and risk of absconding, the initial proposal by the EC in September 2018, the legislative process encountered delays. The European Parliament's Civil Liberties, Justice, and Home Affairs Committee (LIBE) has been central to the discussions, considering numerous amendments to the proposal. In the European Parliament, a draft report was presented but not adopted within the 2014–2019 parliamentary term, leading to a decision to resume work until after the 2019 elections. The COVID-19 pandemic further delayed proceedings, with a new draft report published in February 2020 and discussed in September 2020.

The committee has since been deliberating over the proposed amendments, indicating ongoing negotiations and adjustments to the initial proposal, but taking account of the negotiations on the New Pact, which include one part of the recast proposal (notably the return border procedure) and many other provisions on return.[38] The Council had already adopted a partial agreement in June 2019 but is currently working towards a more fundamental revision of the Return Directive, intending to provide guidance for a new Commission to replace the current Commission proposal with a new one.[39] The Council discusses, amongst others, the achievement of mutual recognition of a return decision with the establishment of a "European return decision", the simultaneous issuance of the rejection of an asylum claim and a return decision, more derogations to the safeguards for public policy reasons and an increased use of Frontex.

As of the 2020s, the new era starts for the EU's return policy, where instead of EURAs, the new pacts and enhancement take place. During this period, enhancements in operational cooperation for returns, including using Frontex for coordinated returns, have been observed. In 2020, the New Pact on Migration and Asylum was proposed to overhaul the EU's migration and asylum system, with the claim of being more efficient and humane return policies. However, the return border procedures, the numerous derogations from the safeguards in the border procedure and the Crisis Regulation[40] risk the opposite, which gives right to the MSs in crisis situations and exceptional circumstances, to derogate from certain rules and request solidarity and support measures.

In 2021, the EC adopted the EU strategy on voluntary return and reintegration.[41] It promotes the importance of voluntary returns and aims to increase their share and number while

[38] European Parliament, "Proposal for a recast of the Directive on common standards and procedures in Member States for returning illegally staying third-country nationals". 20 March 2024, Available at: https://www.europarl.europa.eu/legislative-train/theme-promoting-our-european-way-of-life/file-proposal-for-a-recast-of-the-return-directive (Accessed 2 February 2024).

[39] See Council document 15277/23, 13 November 2023, 'Making the Returns System more effective", https://www.statewatch.org/media/4107/eu-council-return-plans-return-decision-15277-23.pdf, (Accessed 28 March 2024).

[40] European Council, "Response to the migration crisis and force majeure situations", 23 April 2024, Available at: https://www.consilium.europa.eu/en/policies/eu-migration-policy/eu-migration-asylum-reform-pact/migration-crisis/ (Accessed 2 May 2024).

[41] European Commission, "Communication from the Commission to the European Parliament and the Council: The EU strategy on voluntary return and reintegration", 27 April 2021, Available at:

improving the quality of the support provided to returnees. The return coordinator, appointed by the EC in March 2022, is supported by the MSs' representatives on the High-Level Network for Return and Frontex.

In December 2023, the European Parliament and the Council formally authorised the New Pact on Migration and Asylum. Implementation of the New Pact is set to begin in 2024, although full implementation may take up to two years. One of the core elements of the New Pact that pertains to returns is the enhancement of the EU's return policy. This includes making asylum, return, and border procedures more effective and flexible. The aim is to ensure a fair, efficient, and enforceable return strategy that respects fundamental rights and the principle of non-refoulement. The New Pact proposes to streamline and expedite return procedures to reduce the time irregular migrants spend in the asylum system if their applications are not successful. This includes the introduction of a new expedited border procedure for individuals deemed unlikely to win asylum, ensuring that their claims are processed quickly and, if rejected, that they are returned to their home countries within a specified timeframe.

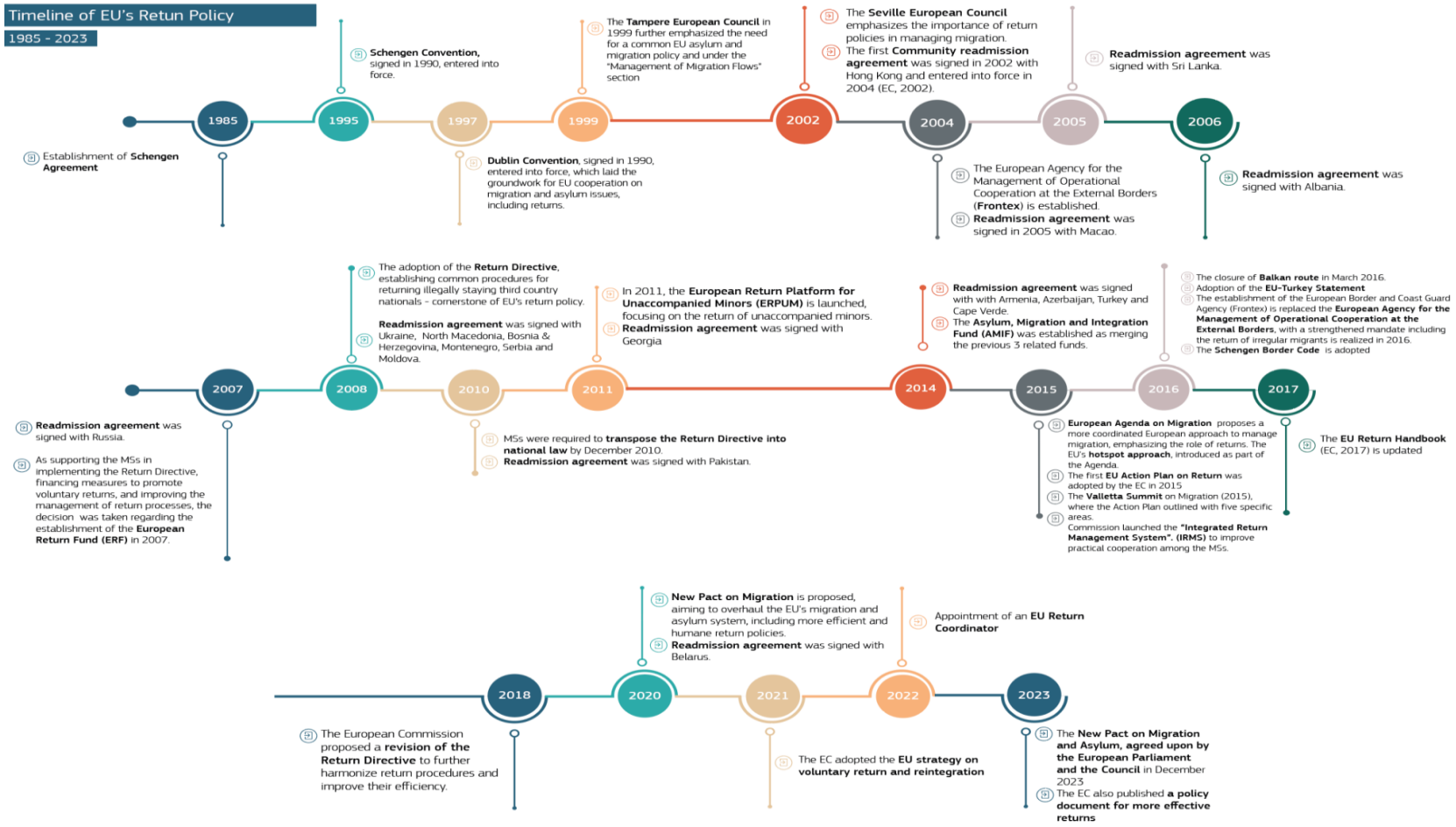
Moreover, the New Pact emphasises the need for solidarity and responsibility sharing among the MSs, which extends to the return process. Such joint action entails improving cooperation on readmission with third countries and enhancing the operational support provided by Frontex in coordinating return operations. Finally, in 2023, the EC published a policy document for more effective returns.[42]

The New Pact introduces an asylum border procedure and a return border procedure (mandatory for three categories of asylum seekers, optional in case a ground applies for an accelerated procedure) with a maximum duration of up to 6 months, in which asylum seekers (with the exception of UAMs) are subject to detention. This procedure includes a limited deadline for appeals and more derogations to the automatic suspensive effect of an appeal. The Crisis Regulation allows for more derogations from the Return Directive in situations of crisis, force majeure and instrumentalisation, and an expanded scope as well as a prolongation of the border procedures. Moreover, the New Pact introduces a mandatory solidarity system obliging MSs to support MSs under migratory pressure, in which they can choose to relocate asylum seekers, to support with funding or capacity, to contribute to the return process of rejected asylum seekers or to invest in enhanced cooperation on return with a third country.

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0120 (Accessed 3 February 2024).

[42] European Commission, "Policy Document: Towards an operational strategy for more effective returns", January 2024, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A0045%3AFIN (Accessed 3 February 2024).

Figure 7: Timeline of EU's Return Policy (1985–2023)



Source: Prepared by the authors.

As Figure 7 shows, the development of the EU's return policy framework has been a dynamic process, marked by a gradual shift towards more efficient procedures and international cooperation, particularly with third countries. Over the years, the EU has aimed to balance the need for effective return procedures with the fundamental rights of migrants, although ensuring humane and dignified returns has remained a challenge.

Key milestones in the evolution of the EU's return policy include the establishment of the Schengen Agreement, the Dublin Convention, and the adoption of the Return Directive in 2008, which set common standards and procedures for returning irregularly staying third country nationals. The creation of Frontex and the introduction of EURAs have been instrumental in coordinating and supporting joint return operations and ensuring cooperation with third countries on return and readmission.

In response to the European migration crisis, the EU introduced the hotspot approach and the EU–Turkey Statement, aimed at managing migratory pressures and facilitating the return of migrants not in need of international protection. The New Pact on Migration and Asylum, proposed in 2020 and politically agreed upon in 2023, represents a significant step in enhancing the EU's return policy, introducing a mandatory solidarity system and a return border procedure, among other measures.

In conclusion, the EU's return policy framework has evolved significantly over the past decades, reflecting the complex and evolving nature of migration dynamics. The recent developments under the New Pact on Migration and Asylum signal a continued effort to streamline return procedures and enhance cooperation among MSs and third countries. However, ensuring the effectiveness, fairness, and humanity of return policies remains an ongoing challenge that requires a balanced approach, respecting the rights of migrants while managing migration flows effectively.

3.2. The Selected Country Cases from a Comparative Perspective

The detailed selected country dossiers are provided as annexes to this report. Under this section, only the important developments, country-specific differences, and main similarities in terms of policy framework will be reflected in those country cases.

Based on the country dossier,[43] the main feature of the policy framework in **Germany** regarding return migration displays that, in particular, during 2015–2022, there is a continuity in migration and return policy focus despite government change in 2021, with over 35 amendments to asylum and residence laws aiming to demonstrate control over deportable rejected asylum seekers. Germany's return migration policies focus on enforcing return decisions, increasing deportations, and enhancing cooperation with countries of origin. Significant policy developments include legislative changes to expedite the return process, the establishment of return centres, and initiatives aimed at improving the efficiency of the asylum

[43] Mielke K., Mencutek, Z.S., & Wolf, D., "Legal and Policy Infrastructures of Returns in Germany. WP2 Country Dossier" in *GAPs: Decentring the Study of Migrant Returns and Readmission Policies in Europe and Beyond*, 2024. DOI: 10.5281/zenodo.10671530.

system. These measures reflect Germany's approach to managing migration flows, balancing humanitarian responsibilities with public concerns about security and integration. Since 2020, Germany has introduced more extended periods of suspension to those in vocational training (max. three years), paving the way to regularisation. However, the scope and extension of such measures remained limited vis-à-vis the numbers of asylum seekers and the scale of their needs for certainty.

Greece's return migration policies have evolved through various periods, marked by significant policy shifts and legislative changes. Based on the country dossier[44], in the 1990s, Greece initially focused on deporting irregular migrants, mainly from Albania. Initially characterised by mass deportations and "sweep operations", policy shifted towards regularisation ahead of the 2004 Olympics, the aim being to stabilise the status of undocumented migrants. The mid-2000s saw the Dublin II agreement's impact, increasing the number of migrants trapped in Greece amidst deteriorating living conditions. After 2008, a deep economic recession led to voluntary returns and the launch of the International Organization for Migration's (IOM) AVRR programme. This period was also marked by spontaneous non-assisted returns, apart from the launch of AVRR. The 2015–2016 European migration crisis introduced new challenges, leading to the EU–Turkey Statement (2016) aimed at curbing refugee movements, yet actual returns remained low compared to arrivals. Ongoing issues with push-back operations and establishing a National Coordinator for Returns in 2023 indicate a continuous evolution in response to internal and external pressures. This period also saw an increase in reported push-back operations, which were criticised internationally but defended by Greek authorities as border protection measures. In recent years, we have witnessed further legal and operational developments, including establishing a National Coordinator for Returns and engaging with EU agencies like Frontex to strengthen border surveillance and manage returns more effectively.

Poland's return policy efforts to create a cohesive migration policy, with significant changes post-2015 election and 2021–2023 tightening of return regulations related to the humanitarian crisis on the Polish-Belarusian border.[45] For Poland, the country dossier outlines a journey from having a relatively open policy towards migration and focusing on integration to a more controlled and security-oriented approach, especially post-2015. Key turning points include implementing stricter asylum laws, increased border security measures, and a focus on voluntary returns alongside reintegration programmes. The policy shifts reflect Poland's response to the European migration crisis, changing domestic attitudes towards migration, and evolving geopolitical concerns, particularly concerning neighbouring countries.

On the other hand, **Sweden's** migration policy from 1999 to the present highlights significant changes and initiatives over the years due to the liberalisation of migration policies, the impact

[44] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., "Legal and Policy Infrastructures of Returns in Greece", 2024, WP2 Country Dossier in *GAPs: Decentring the Study of Migrant Returns and Readmission Policies in Europe and Beyond*. DOI: 10.5281/zenodo.10665482

[45] Trylińska, A., Sieniow, T., Pachocka, M., Krępa, M. and Wach, D., "Legal and Policy Infrastructures of Returns in Poland", 2024, WP2 Country Dossier in *GAPs: Decentring the Study of Migrant Returns and Readmission Policies in Europe and Beyond*.

of the 2015/2016 migration crisis, and subsequent shifts towards more restrictive asylum policies.[46] The country dossier outlines various legislative changes, including the introduction of the "Temporary Law" and the Upper Secondary School Act, aimed at managing asylum seekers and integration. It also covers efforts to enhance the effectiveness of return policies for those without residency permits and discusses the political context influencing these policies, including the role of the Sweden Democrats and the Tidö Agreement. Lastly, it mentions Sweden's role in the EU Pact on Migration and Asylum during its EU Council Presidency in 2023 and ongoing reforms to align with EU standards.

The dossier argues that from 1999 to 2014, there was a shift in responsibility for enforcing return decisions to the Migration Agency and a focus on voluntary returns. The 2015–2021 period can be seen as the response to the European migration crisis, with temporary laws for residence permits and a focus on increasing returns. From 2022 onwards, in line with the current government's restrictive position on migration, the migration authorities are instructed to prioritise the returns of TCNs. Sweden's migration return policies emphasise a humanitarian approach alongside strict regulations. Key turning points include legislative reforms to facilitate voluntary returns, integration of returnees, and cooperation with countries of origin. Sweden's policies reflect a balance between ensuring humane treatment for migrants and fulfilling international obligations, highlighting a commitment to human rights and effective migration management.

The country dossier of **the Netherlands**[47] reflects the important shifts in policy after 2015 related to rejected asylum seekers' access to services, with significant developments in addressing the needs of irregular migrants and unaccompanied minor migrants. The Netherlands' approach towards migration return policies highlights a pragmatic stance that includes enforcement of return decisions and emphasis on voluntary returns, whereby the "individual responsibility" of the migrant to leave the Netherlands is key. Significant developments involve adjustments in legislation to streamline return processes, enhanced cooperation with countries of origin, and the introduction of programmes to improve returnees' reintegration. These policy shifts reflect the Netherlands' commitment to managing migration flows efficiently while respecting human rights and international obligations. The most contentious policies are the increased use of detention without an individual assessment of proportionality and the availability of alternatives, as well as the prison-like regime of immigration detention. In addition, the Dutch policies tend to leave UAMs of 15 years and older, whose asylum claim has been rejected, in legal limbo, despite a judgement from the Court of Justice of the European Union (CJEU) to provide a real perspective for this group and not to distinguish between minors based on their age. Furthermore, rejected asylum seekers who face obstacles to return are excluded from social services (mitigated by a number of municipalities offering temporary housing for them) despite decisions of the European Committee on Social Rights of the Council of Europe to always provide them with basic needs.

[46] Thorburn Stern, R. & Shakra, M., "Legal and Policy Infrastructures of Returns in Sweden", 2024, WP2 Country Dossier in *GAPs: Decentring the Study of Migrant Returns and Readmission Policies in Europe and Beyond*.

[47] Ebrahim, S. & Strik, T., "Legal and Policy Infrastructures of Returns in the Netherlands", 2024, WP2 Country Dossier in *GAPs: Decentring the Study of Migrant Returns and Readmission Policies in Europe and Beyond*.

Based on the country dossiers from Germany, Greece, Poland, Sweden and the Netherlands, the main similarities appear as follows:

- Use of regularisation and detention: All countries have implemented policies involving the regularisation of undocumented migrants and the detention of irregular migrants to some extent.
- Focus on voluntary returns: There is a common emphasis on encouraging voluntary returns, often facilitated by programmes offering assistance in the return process.
- Collaboration with international organisations: Countries collaborate with international organisations like the IOM to manage returns and reintegration, as well as Frontex.

The 2015–2016 European migration crisis appears as an important turning point with a substantial impact on all countries' policies, national legislative changes specific to each country's migration approach, and policy shifts. A commonality across these timelines is the reactive nature of policy changes to external migration pressures and internal political shifts, reflecting a broader European context of dynamically managing migration flows and return policies.

The major differences can be summarised as follows:

- Policy focuses and implementation: While some countries, like Germany, have focused on strict controls and deportations, others, like Sweden, initially adopted a more welcoming stance before tightening policies in response to crises.
- Treatment of asylum seekers and irregular migrants: There are differences in the treatment of asylum seekers and irregular migrants, with some countries being more receptive and others adopting more restrictive approaches, particularly in terms of detention and deportation.
- Political context and public sentiment: The political context and public sentiment towards migrants and return policies vary significantly among these countries, influencing policy formulation and implementation.

The selected country cases of Germany, Greece, Poland, Sweden, and the Netherlands highlight the diversity in national approaches to return migration policies. While all countries have implemented policies involving regularisation and detention and have emphasised voluntary returns, there are notable differences in policy focus, treatment of asylum seekers and irregular migrants, and the political context influencing these policies. In summary, the connection between the EU and the selected countries regarding return policy is characterised by the alignment of national policies with EU directives, collaboration with EU agencies like Frontex, participation in EU Readmission Agreements, and adherence to EU-wide initiatives such as the European Agenda on Migration and the New Pact on Migration and Asylum.

It should be noted that migration return policies are complex and multifaceted, influenced by political, economic, and social factors, as well as international agreements and crises. These policies are dynamic, evolving in response to changing migration patterns, public sentiment, and political leadership.

4. Institutional Framework of Return Policy in the EU and the Selected Countries

4.1. The Institutional Framework of the EU

In the context of return policy, the institutional framework encompasses a wide array of actors, including government agencies, law enforcement bodies, judicial authorities, international organisations, civil society groups, and other stakeholders involved in migration management. In this part of the report, we embark on an examination of the institutional frameworks governing migration return policies within the EU and the five selected MSs. This comparative analysis delves into the complex tapestry of legal, administrative, and operational structures that underpin the execution of return policies, a critical aspect of migration management that balances the need for effective immigration control with the imperative of safeguarding human rights. By dissecting the institutional infrastructure across these jurisdictions, we aim to illuminate the similarities and divergences that characterise their approaches to return migration, offering insights into how each framework contributes to the overarching objectives of the EU's migration policy.

In the EU's institutional framework regarding return policy, we see a complex institutional structure that spans multiple actors and agencies across different levels of governance. When we look at the primary actors and their roles within the EU's return and readmission framework, the European Commission develops and proposes legislation and policies on return and readmission, monitors the implementation of the Return Directive, and facilitates cooperation between MSs and third countries. The European Parliament and the Council of the European Union appear as co-legislators that adopt legislation related to return and readmission policies based on proposals from the Commission.

In addition to its major actors, the EU has important agencies regarding implementing the return policy. Among them, Frontex plays a crucial role in ensuring the support of the MSs in the technical and operational implementation of return operations, including organising and coordinating joint return flights. Although primarily focused on asylum support, the European Asylum Support Office (EASO) can be involved in the broader context of migration management, indirectly affecting return processes by supporting MSs under pressure. The European Union Agency for Fundamental Rights (FRA) provides expertise on fundamental rights considerations in the context of return and readmission, ensuring that policies and practices comply with EU fundamental rights standards. The European External Action Service (EEAS) assists in negotiating readmission agreements between the EU and third countries and promotes the EU's return and readmission policies within its broader external relations.

The EU financially supports its return policy through various funding mechanisms, with the primary source being the AMIF, which is a part of the EU's Multiannual Financial Framework. Within the 2021–2027 period, specifically for return, the AMIF supports actions that contribute to efficient return management, voluntary returns, reintegration support and capacity building. In addition to AMIF, the EU utilises other funding instruments and budget lines to support specific return-related actions, including emergency assistance funding for the MSs under pressure and financial support for cooperation with third countries in managing migration more broadly. The AMIF also financially supports the European Return

and Coordination Network (EURCN), which facilitates collaboration and exchange of information on return management among the MSs. The Commission and Frontex are the strategic partners of this ICMPD-coordinated project.

Non-governmental organisations (NGOs) and international organisations are not directly involved in the institutional structure. NGOs and organisations like the IOM play significant roles in advocating for the rights of returnees, providing support and assistance in voluntary return programmes, and monitoring the National Commission for Human Rights for monitoring returns and protecting rights.

This multi-layered framework aims to balance the effective management of return and readmission with respect for the rights of migrants, operational efficiency, and cooperation with third countries.

4.2. The Institutional Framework in the Selected Countries

The country dossier of **Germany**[48] outlines this country's return governance, emphasising a complex three-tiered governmental structure intertwined with courts and non-state actors, underpinned by the EU regulations and Frontex support. The Federal Ministry of the Interior leads policy-making, while the BAMF handles operational aspects, including asylum decisions. The framework also involves the Federal Ministry for Economic Cooperation and Development, the Federal Foreign Office, and the Federal Police. At the sub-national level, state and local foreign authorities play significant roles, with varying administrative structures impacting return enforcement. Inter-ministerial coordination and federal–state liaison facilitates policy implementation and advocacy, highlighting the dynamic interaction between different governance levels and the critical role of non-governmental counselling centres in return processes. In Germany, non-state actors, primarily NGOs, play a crucial role in return counselling and support for asylum procedures, operating independently or with government support. Regarding monitoring and evaluating returns, it is impossible to see a structured mechanism. However, the latest approach by the Federal Ministry of the Interior appears significantly centralised as it is based on "integrated refugee management" that consolidates various agencies and actors (state and non-state).

Based on the country dossier of **Greece,**[49] the institutional framework for return policy is primarily based on Law 3907/2011, which incorporates the EU Return Directive into Greek law, alongside Law 3386/2005 for other expulsion cases. The Ministry of Migration and Asylum is responsible for returns along with the Directorate of Returns and Withdrawals, which coordinates return processes under the Greek Asylum Service. The framework involves various actors, including the police, who issue return decisions and implement removals, and the IOM for assisted voluntary returns. In addition, the dossier highlights a collaborative approach involving multiple actors at national and European levels, supported by funding from the AMIF or Frontex, as providing operational support for return operations. The return process also engages civil society in mediation, and the Greek Ombudsman manage migration comprehensively.

[48] Mielke K., Mencutek, Z.S., & Wolf, D., Ibid.

[49] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., Ibid.

Unlike the other EU consortium partner countries of GAPs, in **Poland**, migration and border policy is primarily overseen by the Ministry of Interior and Administration, with the Border Guard being the primary authority for return policy and readmission.[50] Furthermore, the recent legislative changes in March 2023 expanded the Border Guard's responsibilities, making it the sole authority for processing return cases. The Border Guard manages detention centres and decides on alternative measures to detention, carries out the legality of stay control, issues decisions on return obligations, and accepts foreigners under readmission agreements. The reform in April 2023 shifted full responsibility for obliging foreigners to return from the Office for Foreigners to the Border Guard, highlighting a centralised approach to managing returns within the Border Guard's jurisdiction. The centralised control of return policy in Poland, primarily managed by law enforcement (the Border Guard), could lead to potential issues such as a lack of comprehensive support for returnees, limited access to legal and humanitarian assistance, and challenges in ensuring the dignity and rights of individuals during the return process. Centralisation might also reduce transparency and accountability in handling returns, impacting the effectiveness and humaneness of the process. In Poland, the EU's role, notably through Frontex, is significant in providing operational support for return operations, including organising and coordinating return flights. The IOM has collaborated with the Polish government, specifically through an agreement with the Minister of Interior and Administration since 2005, to facilitate voluntary returns.

In **Sweden**, the Migration Agency and the Police Authority are central to return governance, alongside other actors within a structured institutional framework.[51] The Migration Agency is primarily responsible for decisions on return, enforcement, and detention, initiating the return process even before decisions take legal effect to encourage voluntary return. The Police Authority takes over when enforcement involves coercion or individuals evade the process. The Migration Agency manages detention centres, while enforced returns are planned and executed with the involvement of the Police Authority and the Prison and Probation Service, highlighting a collaborative approach to managing returns within Sweden and through EU collaborations.

The country dossier of the **Netherlands**[52] outlines that the return process involves collaboration between governmental, intergovernmental, and non-governmental organisations within the "migration chain". Non-state actors, including NGOs and the IOM, play significant roles in assisting returns, with the IOM being a key partner for voluntary returns. Like the Germany dossier, it does not detail a specific monitoring and evaluation mechanism for returns, focusing instead on the collaborative framework established for implementing return policies to ensure they adhere to international human rights standards. However, the inspector of the Ministry of Justice and Security is formally mandated to monitor the return processes, and the national prevention mechanism or NPM (which implements the Convention Against Torture) is tasked with monitoring the detention of migrants. This NPM was transferred from the ministry to the National Human Rights Institute at the beginning of 2024 after persistent calls from the UN Committee against Torture and the National Ombudsman.

[50] Trylińska, A., Sieniow, T., Pachocka, M., Krępa, M. and Wach, D., Ibid.
[51] Thorburn Stern, R. & Shakra, M., Ibid.
[52] Ebrahim & Strik, Ibid.

Regarding similarities, the institutional frameworks for return policy across Germany, Greece, the Netherlands, Poland, and Sweden exhibit structured approaches involving various governmental and non-governmental actors. Central authorities such as the Ministry of Interior or Migration Agencies, along with specialised agencies like the Border Guard or Police Authority, play significant roles in overseeing and enforcing return procedures. The involvement of the EU, chiefly through Frontex, enhances operational support in return operations. Non-state actors, including NGOs and the IOM, provide essential voluntary return assistance and reintegration support, highlighting a blend of national and EU-level coordination to manage return processes efficiently while adhering to legal and humanitarian standards. However, the direct responsibility of the national authorities in MSs to issue return decisions, organise return operations, and negotiate bilateral readmission agreements with third countries reflects a shared commitment to managing return migration humanely and orderly. This collective approach addresses the challenges of irregular migration within the broader framework of EU policies and international cooperation, underscoring a commitment to human rights and efficient return management.

These selected country cases underscore the complexity and dynamic nature of return policies and the responding institutional framework, reflecting the balancing act between managing migration flows, upholding human rights, and responding to domestic and international pressures.

5. Comparative Analysis of the Legal Framework Regarding Return Policy in the EU and the Selected Member States

This section of the report provides a comparative analysis of the relevant legal frameworks a) at the European level and b) in the selected MSs. For the second part, the analysis draws upon country-specific dossiers to identify key differences, gaps, and noteworthy aspects of each country's approach to these issues.

The comparison of the EU's MSs is structured around three main sub-sections, as outlined below:

- **Comparison of the Regular Procedure to Issue Return Decisions:** This section examines the procedures each Member State follows in issuing return decisions against non-EU nationals who are found to be irregularly staying within their territories.
- **Comparison of the Procedural Safeguards and Non-Removability/ Returnability:** This subsection delves into the procedural rights and safeguards provided to individuals subject to return decisions, as well as conditions under which non-removability or returnability may apply.
- **Comparison of the detention-related framework:** The focus here is on the legal framework surrounding the detention of non-EU nationals pending their removal.

This comparative analysis aims to highlight the diversity of approaches among EU's MSs concerning the return of non-EU nationals, providing insights into areas where harmonisation might be improved or where best practices could be identified and adopted more widely.

5.1. European Standards on Return

5.1.1. The EU Level: EU Return Directive

The Treaty of Amsterdam provided for the legal basis of EU legislation on return procedures, which led in 2008 to the adoption of the Return Directive.[53] The Directive sets out common standards and procedures for returning irregularly staying TCNs in accordance with the fundamental rights enshrined in international and EU law.[54] The Directive aims to terminate irregular stay, which can be materialised through voluntary return or expulsion or by granting a residence permit. The Directive also aims to harmonise the return process as well as the procedural safeguards of those subject to these procedures. The Directive builds upon the principle of proportionality, which must be observed throughout all the stages of the return

[53] Directive 2008/115, adopted on 16 December 2008, on common standards and procedures in Member States for returning illegally staying third-country nationals. See for the legal basis Article 63(3)(b) EC Treaty.

[54] See Article 1 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, Available at: https://eur-lex.europa.eu/eli/dir/2008/115/oj (Accessed 8 March 2024).

procedure. This implies that the EU MSs have to apply the least possible coercive measure based on an individual assessment and that voluntary return must be prioritised.[55]

Throughout the return procedure, the members must respect the principle of non-refoulement and consider the state of health, family life, and the child's best interests.[56] The application of the Directive must also be in compliance with the EU Charter of Fundamental Rights.[57] While interpreting many parts of the Directive, the CJEU has provided guidance on the application of the Directive. This case law also formed a basis for the Commission's recommendations.[58] Some of the recommendations however contradict the case law, like the encouragement to make more use of detention, while the CJEU emphasised in its El Dridi judgement that MSs must respect the proportionality principle through the gradation of measures from the least restrictive to the most restrictive one. [59]

The MSs must issue a return decision, which implies an order to leave the EU territory, to TCNs who are not authorised to stay. However, if the person applies for asylum afterwards, all effects of the return decision will be suspended as long as he/she is allowed to await the outcome of the asylum procedure.[60] Also, if the TCN has a serious illness, it can have consequences for the possibility of issuing a return decision or its suspensive effect.[61] After issuing a return decision, MSs must grant the TCN concerned a period for voluntary departure between 7 and 30 days.[62] MSs may impose a reporting obligation, a deposit of a financial guarantee, submission of documents or the obligation to stay at a specific place during the period for voluntary departure.[63]

By departing within the voluntary departure period, TCNs avoid the issuance of a ban on entry into EU territory. Shortening or refusing the period is only justified as a measure of last resort, for instance, in case of a risk of absconding or a risk to public policy or if an application for legal stay was fraudulent or manifestly unfounded. Article 11 of the Directive obliges MSs to impose an entry ban if no period for voluntary departure has been granted or if the returnee has not departed within, but at the same time, it allows MSs to refrain from doing so or to suspend an extant entry ban in a number of cases, for instance for humanitarian reasons. Violating an entry ban (i.e., after having left the country) as such cannot be grounds for a criminal penalty but can be if the entry ban is issued on account of the criminal record of the

[55] This is again emphasised in the Communication of the Commission, 'The EU strategy on voluntary return and reintegration', COM(2021) 120, 27 April 2021.
[56] Article 5 Directive 2008/115.
[57] See for the implications of the Charter for example the judgements Abdida, C-562/13 and Gnandi,C-181/16, on the right to an effective remedy (Article 47) and the principle of non-refoulement (Article 19(2) of the Charter.
[58] See for instance the Return Handbook of 16 November 2017, C(2017)6505; its Renewed Action Plan, COM(2017); the Communication on voluntary return, COM(2021)120 and the Communication on enhancing cooperation on return and readmission, COM(2021)56.
[59] CJEU 28 April 2011, *El Dridi*, Case C-61/11 PPU.
[60] CJEU 19 June 2018, C-181/16, *Gnandi*.
[61] See CJEU 18 Dec. 2014, C-562/13, *Abdida*, and CJEU 22 Nov. 2022, C-69/21 *X*.
[62] Article 7 Directive 2008/115. Also, the decision on the exact duration must be proportionate. See CJEU 11 June 2015, C-554/13, *Z.Zh. and I.O*.
[63] Article 7(3) Directive 2008/115.

TCN or the threat that he/she represents, and if the national legislation provides for such a ground.[64] Nevertheless, an irregular stay may be punished as an offence when the third country national stays in the EU territory without a well-founded reason for not pursuing a return if this would not undermine the effectiveness of the Directive (so not impeding the actual return).[65]

Detention is only allowed on the grounds that there is a risk of absconding or if the TCN hampers the preparation of the return, as long as there is a reasonable prospect of removal.[66] The proportionality principle requires that returnees may only be detained where other less coercive measures cannot be applied and for the shortest possible term.[67]

The Directive requires more safeguards for the detention of children and their families, as well as their detention circumstances.[68] Although Article 17(5) reiterates that the child's best interests must be the primary consideration, their detention is still allowed as a measure of last resort (which applies to adults as well). According to the UN Committee on the Rights of the Child, immigration detention is never in the best interests of the child and should, therefore, be abolished.[69] UAMs, who have the right to independent and adequate assistance before the issuance of a return decision, can only be returned to their family, a nominated guardian or adequate reception facilities in their country of return.[70]

TCNs have the right to be heard during the whole return procedure, to appeal the return decision, and to request suspensive effect if this is not automatically granted.[71] They have the right to free legal aid upon request. A detention measure requires a speedy judicial review, followed by periodic reviews during the detention, either automatically or upon appeal by the TCN.[72] Courts must conduct full scrutiny in fact and in law to be able to replace the decision of the immigration authority.[73]

[64] CJEU 17 Sep. 2020, C-806/18, *J.Z.*
[65] See for instance CJEU 28 Apr. 2011, C-61/11 PPU, *El Dridi*; CJEU (GC) 6 Dec. 2011, C-329/11, *Achughbabian*; CJEU 6 Dec. 2012, C-430/11, *Sagor*.
[66] Article 15 Directive 2008/115.
[67] See also CJEU 14 May 2020, C-924/19 PPU and C-925/19 PPU, *FMS, FNZ, SA, SA Junior*.
[68] Article 17 Directive 2008/115.
[69] See the joint general comment no. 4 of the CMW and CRC, on state obligations regarding the human rights of children in the context of international migration in countries of origin, transit destination and return, CMW/C/GC/4-CRC/C?GC/23, 16 November 2017. See also the End Immigration Detention of Children advocacy letter of the United Nations Task Force on Children Deprived of Liberty, February 2024, Available at: https://www.unicef.org/media/151371/file/Advocacy%20Brief:%20End%20Child%20Immigration%20Detention%20.pdf
[70] Article 10 Directive 2008/115. See also CJEU 14 January 2021, C-441/19, *T.Q.*
[71] Article 13 Directive 2008/115. See for the right to be heard CJEU 11 December 2014, C-249/13, *Boudljida*.
[72] Article 15(2) Directive 2008/115.
[73] CJEU 5 June 2014, C-146/14 PPU, Mahdi.

5.1.2. Council of Europe

The legal instruments[74] of the Council of Europe (CoE), along with the jurisprudence of its monitoring bodies and policy statements from CoE bodies, form a comprehensive framework for protecting migrant rights, including in the context of return.

The ECHR provisions most relevant in return cases include Article 2 (right to life), Article 3 (the principle of non-refoulement), Article 5 (Article 5.1(f) on immigration detention), Article 13 (procedural rights in asylum and expulsion/extradition procedures) and Protocol 4, Article 4 (collective expulsion).

While the ECtHR, in its migration-related case law, routinely recognises that "States have the right [...] to control the entry, residence and expulsion of aliens",[75] the ECtHR's dynamic interpretation of the ECHR has helped advance the rights of migrants, including regarding the potential risks faced upon return to the country of origin (non-refoulement). The non-refoulement principle is crucial in the context of forced returns, serving as a legal constraint on the deportation practices of Contracting States derogation from which is disallowed.[76] Also, the ECtHR's case law on the extraterritorial scope of Article 3 has greatly impacted the protection to be afforded to migrants.[77] At the same time, the ECtHR has been criticised for making excessive concessions to the interests of Contracting States in cases concerning border control and collective expulsion, not least in the aftermath of the 2015–2016 European migration crisis.[78]

In addressing immigration detention, the ECtHR has established that for detention under Article 5.1(f) not to be arbitrary, certain basic conditions need to be met: detention needs to be carried out in good faith, be closely connected to a permitted ground; the place and conditions of detention should be appropriate, and the length of the detention should not exceed that reasonably required for the purpose pursued.[79] The Court has emphasised the need to consider less severe or alternative measures to immigration detention as well as the need for special considerations to be made regarding vulnerable individuals, minors in particular.[80] ECtHR case law stresses that detention of minors should only be used as a last

[74] Including the European Convention on Human Rights (ECHR), the European Social Charter and the European Social Charter (revised).

[75] The phrase was first used in ECtHR, *Abdulaziz, Cabales and Balkandali v. the United Kingdom,* 28 May 1985, § 67, Series A no. 94.

[76] For an overview, see e.g., ECtHR, Guide on the case law of the European Convention on Human Rights: Immigration, Available at: https://www.echr.coe.int/documents/d/echr/Guide_Immigration_ENG (Accessed March 12, 2024).

[77] A key ECtHR judgement in this context is Hirsi Jamaa and Others v. Italy (GC), Application No. 27765/09, 23 February, 2012.

[78] Cf. ECtHR, N.D. and N.T. v. Spain (GC), Application No. 8675/15 and 8697/15, 13 February 2020.

[79] See e.g., ECtHR, Saadi v. The United Kingdom, Application No. 13229/03, 29 January 2008,; A and Others v. The United Kingdom, Application No. 3455/05, 19 February 2009, § 164.

[80] For an overview, see e.g., ECtHR, Guide on the case law of the European Convention on Human Rights: Immigration, Available at: https://www.echr.coe.int/documents/d/echr/Guide_Immigration_ENG and ECtHR, Guide on Article 5 of the European Convention on Human Rights: Right to liberty and security, Available at: https://www.echr.coe.int/documents/d/echr/guide_art_5_eng (last accessed March 12, 2024).

resort and that placing minors in unsatisfactory premises may constitute a violation of Article 3 as well as of Article 5.1(f).[81] The Court's position on immigration detention, however, also has been criticised for diverting from otherwise generally applicable principles to deprivation of liberty, including its approach to "transit zones".[82]

The CoE's Committee on the Prevention of Torture (CPT) considers the situation of individuals in immigration detention a primary focus of its work. The CPT standards for immigration detention concern detention as a last resort, safeguards during detention, suitable premises, adequate material conditions, an open regime qualified staff, established procedures for discipline, segregation and means of constraint, effective monitoring and complaints mechanisms, adequate health care and care of vulnerable individuals, children in particular.[83] The CPT has repeatedly expressed concern regarding detention conditions, pushbacks, and the situation of vulnerable individuals in the CoE Member States.[84]

The CoE Committee of Ministers' 2005 Twenty Guidelines on Forced Return stress the importance of conducting returns in a humane manner, minimising the use of coercion and ensuring that the health and well-being of returnees are protected throughout the process.[85] The guidelines address the following themes: voluntary return, the removal order, detention pending removal, readmission and forced removals. The guidelines may be seen as a set of standards regulating expulsion/return according to which the practice of CoE Member States may be assessed. The Committee of Ministers' 2022 recommendation[86] on protecting the rights of migrant, refugee and asylum-seeking women and girls underscores that voluntary return should be the preferred option and that "returns should always be carried out in safety and with dignity, in line with the principle of non-refoulement".[87]

The European Social Charter is applicable to nationals and legal residents of the ratifying states, but in some circumstances, it is also applicable to third country residents who are not authorised to stay. In 2009, the European Committee on Social Rights (ECSR), which serves as a supervisory body of the charter, concluded upon a complaint by the NGO Defence for Children that the Dutch policy to deprive children of all basic needs constituted a violation of

[81] See e.g., Mayeka and Mitunga v. Belgium, Application No. 13178/03, 12 October 2006, M.H. and Others v. Croatia, Application No. 15670/18 and 43115/18, 18 November 2021.
[82] See e.g., Cathryn Costello, 'Immigration Detention: The Grounds Beneath Our Feet', Current Legal Problems, Volume 68, Issue 1, 2015, pp. 143–177 and Vladislava Stoyanova, "The Grand Chamber judgment in Ilias and Ahmed v. Hungary: Immigration Detention and how the ground beneath our feet continues to erode" blogpost, Strasbourg Observers, https://strasbourgobservers.com/2019/12/23/the-grand-chamber-judgment-in-ilias-and-ahmed-v-hungary-immigration-detention-and-how-the-ground-beneath-our-feet-continues-to-erode/ (accessed 25 February, 2024).
[83] CPT Fact Sheet on Immigration Detention 2017.
[84] CPT annual report 2009, CPT annual report 2022.
[85] Council of Europe Committee of Ministers. (2005). Guidelines on forced return.
[86] Recommendation CM/Rec(2022)17 of the Committee of Ministers to members on protecting the rights of migrant, refugee and asylum-seeking women and girls (Adopted by the Committee of Ministers on 20 May 2022 at the 132nd Session of the Committee of Ministers.
[87] Ibid, Section VI.

Articles 31(2) and 17(1) of the European Social Charter. [88] It ordered the Dutch government to provide adequate shelter and basic care to children who are unlawfully present in the Netherlands. [89] In 2013, the Conference of European Churches (CEC) requested the provision of the same basic needs for adults as well. The ECSR decided that denying irregular migrants the right to necessary food, water, clothing, and shelter constitutes a breach of the right to human dignity.[90] According to the ECSR, the equal treatment provision regarding social and medical assistance of Article 13(4) of the Revised European Social Charter (which refers to lawfully present migrants) is also applicable to migrants in an irregular situation. It concluded that the right to shelter, as enshrined in Article 31(2) RESC, must unconditionally apply to adult migrants in an irregular situation, "even when they are requested to leave the country".[91]

5.2. Interaction of Common Sources with National Laws Regarding the Return Procedure

The instruments of international and EU law described in the preceding section collectively form a common legal framework for the countries included in this comparative study. This common legal framework aims to ensure the harmonisation of norms and establish minimum legal standards. However, the existence of a common legal framework does not in itself lead to the harmonisation of legal instruments and case law at the national level.

The five EU countries studied for the purpose of this comparative report are all parties to the Refugee Convention and international human rights treaties relevant to the return of migrants and, therefore, also obliged to respect fundamental principles such as the principle of non-refoulement. However, the degree, impact, and modalities of adherence vary according to whether states adopt a monist or dualist approach[92] to the relationship between international law and national law, as well as, or maybe more dominantly, according to the level of practical implementation and clarification of these principles and their limits in national law. On this point, there are clear differences between the countries studied. In some countries, the impact of these common sources on national law and their interaction with national law is relatively more clearly guaranteed and more effectively reflected in practice, while in others, the situation is different.

Even in monist systems, where the interaction of national legal systems with international law is assumed to be more direct, in practice, the immediate impact of international law may be

[88] Complaint no. 47/2008, Defence for Children International v. The Netherlands, ECSR, Council of Europe.
[89] ECSR, 20 October 2009, Decision on complaint no. 47/2008, Defence for Children International v. The Netherlands, www.coe.int.
[90] ECSR, 25 October 2013, Decision on Immediate Measures, complaint no. 90/2013.
[91] ECSR, 1 July 2014, CEC vs the Netherlands, complaint no. 90/2013, report to the Committee of Ministers, published 10 November 2014.
[92] As the country dossiers mainly rely on constitutional provisions and, in more controversial cases, on majority opinions in the doctrine, the Netherlands, Greece, and Poland have a monist system, while the legal systems of Germany and Sweden are considered to be dualist.

obscured. For instance, Greece[93] and Poland,[94] which are considered to be predominantly monist, are reported to lack a consistent tendency towards effective direct application of international law. The Greek Constitution (Article 28) states that international agreements, once ratified by an Act of Parliament, become an integral part of Greek law and take precedence over any earlier provision, except for the provisions of the constitution. However, Greek judicial practice has not always fully embraced international law; instead, it relies on constitutional provisions related to fundamental values and human rights.[95] In Poland, although the Convention relating to the Status of Refugees and the Convention on the Rights of the Child are frequently enforced directly, the same cannot be said for other international conventions addressing issues relevant to return and readmission. The Poland Country Report suggests that other conventions in this field are often disregarded.[96] There is even a controversial approach of the Polish Constitutional Tribunal, which found some provisions of the EU Treaty and Article 6.1 of the ECHR contrary to the Polish Constitution, which, although not directly related to return, is an example of the dilution of the influence of international law (and the EU law) in general.

On the other hand, the Dutch legal system, which is moderately monist, is known for being relatively open toward international law. This means that the national and international legal systems complement each other and that national authorities must follow national and international laws. The Constitution of the Netherlands not only clarifies the direct effect and the primacy of international law but also explicitly refers to the binding decisions of international organisations, including the ECtHR and the CJEU. The Minister of Foreign Affairs also submits an annual report to the parliament on the judgements made against the Netherlands and those made against other state parties that could affect the Dutch legal system.[97]

Although customarily perceived as a country in the dualist tradition, the effect of the ECHR and the ECtHR is similarly evident in Sweden's legal system. Under Swedish law, the ECHR is granted special constitutional protection. Chapter 2, Section 19 of the Instrument of Government (one of four fundamental laws forming the Swedish Constitution) states that no law or other provision conflicting with Sweden's obligations under the ECHR may be enacted. This stipulation means no law or provision contradicting Sweden's obligations under the ECHR may be issued. Since the ECHR was incorporated, both the treaty and ECtHR case law have increasingly had an impact on the interpretation and implementation of Swedish law, not least in the field of migration law. Over the years, the ECtHR has addressed several migration-related issues concerning Sweden, and in certain cases, it has led to significant changes or clarifications in Swedish practice.[98] One famous example is the case of RC v. Sweden (2010), which focused on the allocation of the burden of proof.

[93] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., Ibid, p. 17.
[94] Trylińska, A., Sieniow, T., Pachocka, M., Krępa, M. and Wach, D., Ibid., p. 20.
[95] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., Ibid, p. 17.
[96] Trylińska, A., Sieniow, T., Pachocka, M., Krępa, M. and Wach, D., Ibid., p. 19.
[97] Ebrahim, S. & Strik, T., Ibid. p. 16.
[98] Thorburn Stern, R. & Shakra, M., Ibid., pp. 15, 16.

Just like the difference in the interaction between international law and national laws of the five countries scrutinised in this report, there is also a difference in the interaction of the Return Directive with national laws. The difference arises especially in terms of the method of transposition and the clarity of the Directive's effective application. All five countries have transposed the Return Directive. In most countries, this transposition has reshaped the relevant legal arrangements through the adoption of amendments and new regulations deemed necessary for harmonisation with the Directive. However, it can also be observed that there are differences in terms of transposition. For example, in Sweden, the existing legal framework has been largely preserved on the grounds that it is already compatible with the Directive. In Greece, on the other hand, it is observed that some legal arrangements have been made in order to comply with the Directive, but other regulations on forced removal are still in force. The preference for different methods of transposition of secondary legislation of EU law into domestic law may be considered both necessary and natural in light of the specific structures and requirements of legal systems. However, in some cases, these choices may also have practical consequences that affect a fully harmonised or foreseeable implementation. At this point, a common tendency is observed in most of the countries. This is the tendency to adapt the interpretation of the requirements of the Directive to national law rather than to adapt national law to the requirements of the Directive in a strict sense. In this context, it can be argued that the countries concerned aim to preserve the existing legal framework as much as possible, leaving themselves a more expansive room for manoeuvre.

This approach can be seen as positive, particularly in terms of ensuring the effective use of existing experience and preserving the safeguards provided in national law, which exceed those of the Directive. However, it is also understood that this approach may sometimes aim to shift the balance of freedom and security in favour of security and to bypass the obligations stipulated by EU legislation. In such cases, the flexible limits of manoeuvrability may also risk complicating the return procedure, undermining legal certainty and creating outcomes incompatible with human rights law and EU law, particularly in terms of procedural safeguards. Examples of such situations can be found in all five countries. For instance, although Sweden's approach of retaining its existing arrangements has the consequence of preserving the safeguards that overlap with the Directive, legal certainty may be called into question by the fact that some concepts that are key to the Return Directive (such as illegal stay) are not sufficiently defined in national law. Greece is one of the most prominent examples of bypassing the Directive. In Greek law, the transposition of the Directive into national law and shaping the procedure for return decision-making was mainly completed through Law 3907/2011.[99] The content of this regulation is largely in line with the Directive. However, Greek law also has a separate law on administrative expulsion,[100] which regulates expulsion procedures that fall outside the requirements of the Directive. This law covers the procedure for persons who need to be removed from the country on grounds of public order, national

[99] Greece Ministry of Citizen Protection, "Law no. 3907/2011 G.G. A-7/26.01.2011 - Establishment of Asylum Service and Service of first reception", Available at: https://migrant-integration.ec.europa.eu/library-document/law-no-39072011-gg-726012011-establishment-asylum-service-and-service-first_en (Accessed 8 March 2024).

[100] Greece, "Law no 3386/05 on the Entry, Residence and Social Integration of Third-country Nationals in the Hellenic Territory", Available at: https://migrant-integration.ec.europa.eu/library-document/law-no-338605-entry-residence-and-social-integration-third-country-nationals_en (Accessed 8 March 2024).

security and public safety. These are mostly persons registered on the List of Undesirable Third Country Nationals. However, as the Greece Country Report points out, the Greek authorities (the Greek police, who are responsible for the operation of this procedure) may include in this list persons who have entered the country illegally or who have remained illegally, although the regulations in the national law require the existence of objective signs to establish a concrete connection between the threat and the person. The Country Report of Greece reveals that the police have the tendency to register TCNs on the list indiscriminately based on the fact that, at some point, they entered Greece irregularly from a non-legislated point of entry and resided illegally.[101] In this case, TCNs who should have been subject to the Directive's requirements may be channelled to a different procedure. When the said approach is evaluated from the Polish perspective, it can be observed that the Border Guard, whose powers are quite extensive, carries out the return procedures on its own, which creates incompatibilities with the Directive, especially regarding the effectiveness of procedural safeguards. Another prominent issue for Poland is the slow and superficial implementation of ECtHR judgements into domestic law.

On the other hand, a significant example of the inference in Germany and the Netherlands is the fictive/non-entry practice. In the law of both countries, a certain perimeter of borders is fictively recognised as a non-entry area. This avoids the necessity of applying both the requirements of the Return Directive and the Dublin system. Article 2((2)(a) of the Return Directive allows MSs to not apply the Directive in those cases.

5.2.1. Procedural Aspects of the Return Process

In all five countries, the decision to return is primarily an administrative action unless a court issues the decision for a criminal case, such as in Swedish law (Swedish Aliens Act, Chapter 8 a). In most countries, more than one administrative agency may be responsible for the return process. In Greece, the Greece Asylum Service (GAS), the Ministry of Migration and Asylum (MMA) and the Greek police; in the Netherlands, the foreigners' police, IND, Sea Port Police (ZHP) or Royal Military Police (Kmar); in Sweden (apart from the criminal cases), the Migration Agency and the Police Authority; in Germany, BAMF or the Foreigners' Authority are the administrative agents involved in the decision of the return process. The common feature in countries where the police are effective in the process is that the jurisdiction of the police is related to the protection of security and public order. The police are generally effective in all countries at the stage of apprehension and removal. However, the authority of the police to decide on return and the limits of its jurisdiction are clearer in some countries and more ambiguous in others. For example, in Swedish law, the powers of the police are defined by law and framed relatively clearly.

Similarly, in the Netherlands, there are clear limitations on the authority of the police, especially at the apprehension stage.[102] In this way, it is understood that the issue of maintaining the balance between freedom and security is aimed to be reflected in the legal regulations. However, in Greece and Poland, it is observed that the spheres of influence and

[101] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., Ibid., p. 49.
[102] Ebrahim, S. & Strik, T., Ibid., p. 25.

powers of administrative agents associated with security (Hellenic Police in Greece and Border Guard in Poland) are relatively more flexible and uncertain. For example, in Greece, all return decisions other than those based on the refusal or (implicit) withdrawal of an application for international protection or the refusal or revocation of a residence permit or renewal application are under the jurisdiction of the police.[103] In addition, the fact that two different laws regarding forced return, namely Law 3386/2005 and Law 3907/2011, co-exist in Greek law creates confusion about procedural certainty and questions the consistency with the Return Directive.[104] Hence, "administrative deportation" practised under Law 3386/2005, where the police are designated as the decision-making authority, gives the impression that legal certainty is blurred and that the calibre of the freedom and security, which is expected to be in balance, has shifted overwhelmingly to the security side. Similarly, in Poland, the balance of the legal framework in the return procedure has shifted in favour of security. Due to amendments in the Act of Foreigners in Poland, since 2023, the Border Guard is the sole body that deals comprehensively with return proceedings.[105]

5.2.2. Scope of the Return Decisions

Regarding the scope of return decisions, three issues stand out in comparison. The first is "illegal stay", which constitutes the grounds for the return decision under the Directive; the second is the procedure to be applied in border cases; and the third is the situation of illegally staying TCNs who are granted autonomous authorisation for the right to stay.

As required by Articles 2(1) and 3(2) of the Return Directive, in all GAPs countries, the scope of the decision to return is linked to illegal stay. However, the content of the term "illegal stay" in national laws is not uniform in terms of clarity. Some countries have more precise definitions, while others' are more general. While Greek law provides a rather general definition, Polish law and Swedish law do not define this term. Dutch law, on the other hand, defines this concept comparatively more clearly by referring to both the situations that fall within the context of the term (i.e., situations where a person does not meet the conditions of entry or other conditions for entry, stay or residence as set out in Article 5 of the Regulation (EU) 2016/399 (Schengen Borders Code)), and situations that are not covered by this term (such as obstacles to return or a pending application for a residence permit).[106] The fact that the content of the term is not sufficiently clarified in some national laws, or, as in Swedish law, that its content is determined through the definition of the opposite term (legal stay),[107] risks creating uncertainty as to whether certain situations fall within this scope. For instance, as stated in the Polish Country Report, although not explicitly defined, the illegal (irregular) stay is considered a situation in which a foreigner does not have a document entitling her/him to a legal stay in the country's territory as well as entering the territory without proper documents.[108] The Country Report highlights that there is a discrepancy in the interpretation of how the position of migrants pushed to Poland by Belarusian forces should be considered, especially regarding the principle of non-refoulement in the absence of either effective

[103] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., Ibid., pp. 5, 20.
[104] Ibid., pp. 23, 46.
[105] Trylińska, A., Sieniow, T., Pachocka, M., Krępa, M. and Wach, D., Ibid., pp. 5, 36, 55.
[106] Ebrahim, S. & Strik, T., Ibid., p. 21, 22.
[107] Thorburn Stern, R. & Shakra, M., Ibid., p. 18.
[108] Trylińska, A., Sieniow, T., Pachocka, M., Krępa, M. and Wach, D., Ibid., p. 24.

procedural safeguards (especially for border cases) or a precise definition of the term illegal stay.

Similarly, the Swedish Country Report highlights the issue of the absence of a clear definition of what constitutes an illegal (irregular) stay, coupled with the lack of a specific provision that enables individuals to legally stay in Sweden while awaiting a decision on their application for a residence permit. This situation puts the migrants in a precarious position, making it difficult for them to access fundamental rights such as healthcare.[109] In short, the lack of clarity around legal status not only carries the risk of blurting the scope of the return decisions but also makes the situation of the migrants unstable, leading to difficulties in accessing basic rights.

The second prominent issue regarding the scope of the return decisions in line with the Return Directive is cases of irregular border crossings by TCNs and TCNs subject to return as a criminal law sanction. As regulated under Article 2(2)(a,b) of the Return Directive, MSs have the discretion to exclude these two situations from the implementation sphere of the Directive in their national laws. Germany,[110] the Netherlands,[111] and Greece[112] do not apply the Directive in these situations, whereas Sweden generally does not use the exemptions provided therein [Article 2(2)(a,b)]. However, there are some exceptions in the Swedish law. For instance, individuals mentioned in Article (2)(2)(a) are not subject to time limits for voluntary return in case of denied entry. Additionally, time limits do not apply to individuals who have been issued a return decision by a court as part of their sentence in a criminal trial [Article (2)(2)(b)].[113] The lack of clarity and inconsistency with the relevant provisions of the Return Directive regarding the border procedures are mostly observed in Greece and Poland, two countries forming the external borders of the EU. In Greek law, border procedures are dealt with under Law 3386/2005. The Greece Country Report states that TCNs irregularly entering Greece at the borders are arrested, detained and an expulsion decision is issued against them in dereliction of the reception and identification process set out in Law 4939/2022, which regulates reception, international protection of third country nationals and stateless persons, and temporary protection in cases of a mass influx of displaced migrants.[114]

Moving from that point, we can also observe that the Greek practice demonstrates discrepancies in terms of consistency with the exemption provided under Article 2(2)(a) of the Return Directive. The said provision of the Directive, inter alia, enables the exemption for cases where the TCN is "apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State". Later, the CJEU clarified the term "in connection with the irregular crossing" and ruled that Article 2(2)(a) of the Directive requires a "direct temporal and spatial link with that

[109] Thorburn Stern, R. & Shakra, M., Ibid., pp. 39, 40.
[110] Mielke K., Mencutek, Z.S., & Wolf, D., Ibid, p. 19.
[111] Ebrahim, S. & Strik, T., Ibid, p. 22.
[112] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., Ibid, p. 28.
[113] Thorburn Stern, R. & Shakra, M., Ibid, p. 23.
[114] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., Ibid, p. 46.

crossing of the border".[115] Moreover, the said provision of the Directive also stipulates that the exemption is enabled for those who "have not subsequently obtained an authorisation or a right to stay in that Member State". In Greek practice, if the TCN applies for international protection and obtains authorisation to stay in the country, their expulsion will be suspended until the examination of their application is completed. When the application is rejected, the expulsion decision will be executed in line with the procedures of Law 3386/2005, which are not covered by the requirements of the Directive. Hence, this procedure raises concerns regarding compatibility with the said article of the Return Directive, which specifies that an exception from the scope of the Directive can only occur if TCNs caught irregularly crossing the border were not subsequently granted the right to remain in the country.[116] Similar concerns are also valid for the implementation of the Polish Law.[117] Both the Greek and Polish country dossiers also demonstrate a lack of clear regulations and transparent practice in terms of conducting the border procedures, indicating the risk of pushbacks and collective expulsion incidents.[118]

At this point, Germany should also be mentioned. The Germany Country Report[119] states that there is a lack of documentation regarding the legality of removals in border procedures and the number of such removals. However, mounting evidence of push-back within the internal Schengen area is also indicated. For instance, at the Austrian border, some individuals have been turned back to Austria without undergoing a regular asylum procedure despite having repeatedly informed German officials (even with the assistance of interpreters) that they intended to seek asylum in Germany.[120] The report also refers to ProAsyl's (2023) conclusion that systematic returns happen without proper border procedures based on statistical peculiarities and various reports.[121]

The third issue regarding the scope of return decisions is the situation of persons who are waiting for the outcome of their application for a legal stay (including renewal) (pursuant to Article 6(5) of the Return Directive) and persons provided with an autonomous right to stay (pursuant to Article 6(4) of the Return Directive). In the first situation, all five countries have similar regulations preventing or suspending the decision to return during the examination

[115] CJEU, Case C-47/15 Affum b Préfet du Pas-de-Calais and Procureur général de la Cour d'appel de Douai, 7 June 2016, para 72; Case C-444/17 Arib, 19 March 2019, para 46.
[116] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., Ibid, p. 46.
[117] Trylińska, A., Sieniow, T., Pachocka, M., Krępa, M. and Wach, D., Ibid, pp. 27-30.
[118] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., Ibid, p. 51; Trylińska, A., Sieniow, T., Pachocka, M., Krępa, M. and Wach, D., Ibid, pp. 27-35.
[119] Mielke K., Mencutek, Z.S., & Wolf, D., Ibid, p. 19.
[120] Bayerischer Flüchtlingsrat, "Belege für systematische Pushbacks nun auch an der deutsch-österreichischen Grenze. NGOs schlagen Alarm. Gemeinsame Pressemitteilung am", 30. Mai 2023, Pushback Alarm Austria, Border Violence Monitoring Network, Bayerischer Flüchtlingsrat. https://fluechtlingsratbayern.de/belege-fuer-systematische-pushbacks-nun-auch-an-der-deutsch-oesterreichischen-grenze/ EN: NGOs sound alarm. Evidence of systematic pushbacks now also at the German-Austrian border. https://borderviolence.eu/app/uploads/ilovepdf_merged-4.pdf
[121] Ibid., p. 20; PRO ASYL, "Rechtswidrige Abweisungen – auch an deutschen Grenzen?", 26 October 2023, Available at: https://www.proasyl.de/news/rechtswidrige-abweisungen-auch-an-deutschen-grenzen/ (Accessed 8 March 2023).

process in line with the Directive. On the other hand, what stands out in the second case is that the implementation of Article 6(4) of the Directive is ensured by permits with content that can be explained as "tolerating stay in the country" (e.g., Duldung/Duldung light, temporary suspension of deportation) in Germany, tolerated or humanitarian stay in Poland) rather than residence permits. Another common point regarding these permits is that it is difficult to establish a uniform and predictable practice due to the flexibility of the discretion of the regulatory authority regarding them.

5.2.3. Voluntary Departure Terms and Entry Bans

Without prejudice to the exceptions provided therein, the Return Directive stipulates the issuance of an appropriate period for voluntary departure. In line with the Directive, all five countries regulate the obligation to provide a voluntary departure term within the return decision and clarify the exceptions in their national laws. The period allocated for voluntary departure varies among the countries, and in all five countries, the period is subjected to extension in special conditions, although the efficacy of individual assessments for the consideration of the duration varies in practice. In Sweden, duration is regulated for expulsion up to two weeks and for deportation up to four weeks;[122] in Poland, this duration is between 8–30 days;[123] in Germany, 7–30 days;[124] in Greece, 7–25 days;[125] and in the Netherlands, 28 days.[126] As stated above, in all countries, these indicated time periods may be extended upon discretion, whereas in the Netherlands, the duration can be extended or shortened up to the administrative discretion based on individual conditions of the case at hand.[127]

In all five countries, the national legal framework also includes exceptions for providing the voluntary departure terms in line with Article 7(4) of the Directive. At this point, one distinctive issue in terms of comparison is related to the clarity of the concepts regarding these exceptions. In this case, Greece stands out. In Greek law, the term "risk of absconding", which is also referred to by the Return Directive as a ground for the exception for issuing a voluntary departure term, is defined in a vague manner and unlike other countries, the national law does not include an exhaustive and indicative list.[128]

Regarding the entry bans, similar legal regulations are observed within the five countries that are mainly in line with the Directive's Article 11, which regulates the matter of entry bans in relation to return decisions. The consistency is seen especially in terms of the duration of entry bans (a maximum of 5 years unless there is a threat to public policy, security or national security) and the dependence on the condition of either the situation falls under the exceptions of providing a voluntary departure term or constituting a threat to public policy or national security. However, it is necessary to point out some points regarding harmonisation with the

[122] Thorburn Stern, R. & Shakra, M., Ibid, p. 28.
[123] Trylińska, A., Sieniow, T., Pachocka, M., Krępa, M. and Wach, D., Ibid, p. 25.
[124] Mielke K., Mencutek, Z.S., & Wolf, D., Ibid, p. 24.
[125] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., Ibid., p. 31.
[126] Ebrahim, S. & Strik, T., Ibid., p. 24.
[127] Ibid.
[128] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., Ibid., pp. 27, 50.

Directive. The first of these concerns the German practice. It is observed that Germany's regulations on entry bans are relatively stricter compared to other countries. For example, entry bans imposed on grounds of public order, national security or public safety can last up to 20 years. Additionally, German national law allows for a temporary re-entry ban for TCNs from a safe country of origin whose asylum applications have been rejected, even if they leave Germany voluntarily.[129]

On the other hand, pursuant to German law, an entry ban is imposed by deportation, which means that it is applied by law in every case of deportation. However, the German Country Report highlights that the consistency of such practice is arguable under Article 3(6) of the Directive, which states that an entry ban can only be imposed via an official or judicial decision and not by a legislator's decision.[130] Moreover, there have been instances in Germany where deportations were carried out without an accompanying entry ban, which was issued only after the person had re-entered Germany. It is necessary to establish whether a deportation can result in an entry ban that is only limited in time after the deportation, as assumed by the German Federal Administrative Court.[131] However, the interpretation of the EU Return Directive [Article 3(6)] does not support this view, as it specifies that the entry ban should 'accompany' the return decision and not follow it.[132]

The second example that raises questions about compliance with the Directive is the Greek practice regarding issuing entry bans for individuals on the List of Undesirable TCNs. Pursuant to Greek law, TCNs in this category are subjected to entry bans automatically as they are channelled to the border deportation or administrative expulsion procedures, which require immediate removal. Although the regulations in the national law require the existence of objective signs to establish a concrete connection between the threat and the person, it is understood that this issue is not complied with in practice. The Country Report of Greece reveals that the police have the tendency to register TCNs on the list based on the fact that, at some point, they entered Greece irregularly from a non-legislated point of entry and resided illegally.[133]

5.3. Procedural Safeguards

In the light of the information provided in the country dossiers, under this heading, the outstanding issues in terms of procedural safeguards are examined under four key areas: effective access to information and legal aid, the effectiveness of administrative and judicial reviews and remedies, effectiveness of guarantees directly related to non-refoulment, and lastly, the situation of persons who cannot be returned. It is important to underline that the ineffectiveness in these areas would have implications not only for the requirements of EU law, in particular the Return Directive, but also, relatedly, for obligations to protect fundamental rights and freedoms, including but not limited to the positive obligations arising out of fundamental rights covered by the non-refoulment principle (e.g., right to life, prohibition of torture), negative obligations arising out of especially the prohibition of torture,

[129] Mielke K., Mencutek, Z.S., & Wolf, D., Ibid, p. 34; BAMF, 2023a, section 3.2, p. 197.
[130] Ibid., p. 33.; Oberhäuser, 2019, p. 12.
[131] Oberhäuser, T., Ibid., p. 14.
[132] Mielke K., Mencutek, Z.S., & Wolf, D., Ibid, p. 33.
[133] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., Ibid., p. 49.

prohibition of collective expulsion, right to private and family life and right to an effective remedy in connection with these rights.

5.3.1. Access to Information and Legal Aid

A comparison of country dossiers shows that Sweden stands out regarding effective access to information and legal aid (including language interpretation services). In Sweden, the provision of documents in a language that the foreigner understands and the use of translators is effectively secured by law. A similar situation is observed in terms of legal aid. The Swedish Aliens Act even provides a broader right to legal representation than the right to legal aid specified by the EU Asylum Procedures Directive. Due to the presumption rule stated in the legislation, a legal counsel may be assigned, free of charge and not subject to means-testing, in almost all cases of expulsion, deportation, and enforcement proceedings involving the detention of a TCN.[134] Free legal aid based on low income is also reported to be available in Greek law upon request.[135]

However, it is difficult to say that effectiveness in these areas has been achieved on a uniform basis in other countries. In Poland, the decision to return is not translated into a language the foreigner understands. In some cases, it is (partially) translated verbally, but this translation is not always effective.[136] In the final stages of the process, it is necessary to send all documents and evidence related to the return case to the Border Guard in the Polish language. If the evidence is in the foreigner's native language, it must be accompanied by a sworn translation paid for by the TCN.[137] It is asserted by the Poland Country Report (p. 40) that TCNs are afraid to sign documents in Polish as they might unknowingly consent to being deported.[138] It is also indicated that they are sometimes asked to sign a declaration waiving their right to appeal. Some TCNs sign a form waiving their right to appeal without understanding the implications, which constitutes a questionable practice in terms of compatibility not only with EU law but also ECtHR case law. A foreigner has the right to review the case file and file motions before a decision is made; however, it is indicated that this right is often restricted in practice.

Moreover, TCNs have the right to a proxy for administrative procedures in Poland, but they must pay for it. Free legal advice is available but may not be effective. Only 80 cases of complaints against return decisions received free legal aid from the Voivodeship Administrative Court in Warsaw during the last four years; however, the number of foreigners obliged to return during this time was 60,000. Due to language and legal complexities, petitioning for free legal aid is difficult without a Polish lawyer.[139] In Germany, on the other hand, it is asserted that for persons subject to the return procedure, the heterogeneity of laws and the complexity of the institutional landscape create a high degree of legal uncertainty.[140] Additionally, discrepancies in accessing information and legal aid are reported as particularly valid for those under detention awaiting deportation.

[134] Thorburn Stern, R. & Shakra, M., Ibid, pp. 33–34.
[135] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., Ibid., p. 36-37.
[136] Trylińska, A., Sieniow, T., Pachocka, M., Krępa, M. and Wach, D., Ibid, p. 44.
[137] Ibid., p. 46.
[138] Ibid., p. 44.
[139] Ibid., p. 46.
[140] Mielke K., Mencutek, Z.S., & Wolf, D., Ibid, p. 42.

5.3.2. Protection from Non-Refoulement

Doubts about the effectiveness of procedural safeguards for the principle of non-refoulement are mainly concentrated in the border countries, namely Greece and Poland. In the border procedures of these countries, procedural safeguards, particularly concerning access to international protection, push-back and collective expulsion, are considered unclear or ineffective. As mentioned earlier, Greek law operates two separate procedures for return, namely return based on a return decision and return based on expulsion, which are regulated in two separate laws without a connection in terms of procedural safeguards. It is also reported that the police tend to include almost all illegal stayers in the second procedure. Against this background, the Greece Country Report notes that the procedural safeguards for the second procedure under Law 3386/2005 are much more limited than for the other procedure.[141] Especially for the border procedure, the compatibility of this situation with the Return Directive becomes questionable. This is because Article 4(4)(a) of the Directive stipulates that in such cases, certain safeguards in the Directive cannot be derogated from.

Additionally, it is reported that NGOs and official actors have accused the Greek authorities of applying the concept of a safe third country in a way that results in the systematic rejection of international protection applications. This is due to the use of pre-formulated, similar, and repeated decisions (template decisions), which raises serious doubts about whether individual assessments of applications are carried out as required by national law and Directive 2013/32/EU on Asylum Procedures.[142] A similar situation applies to Poland. Especially in the context of border procedures, procedural safeguards in the context of access to international protection and the related principle of non-refoulement are not implemented effectively enough, and the Border Guard does not demonstrate effective practice in this regard.[143]

Some points should also be evaluated in German law for protection from the prohibition of refoulement. The first of these is related to “airport procedures”. In this practice, due to the “principle of immediacy”, the application is assessed very quickly while the person concerned stays at the premises within the airport. The German Country Report states that this practice circumvents the non-refoulement requirements of Article 33 of the 1951 Convention relating to the Status of Refugees.[144] The second issue related to Germany is the occurrence of push-back and non-receipt of asylum applications, especially in so-called non-entry areas. Although in such cases, as the Country Report notes, the aim or the consequence is to circumvent the practical execution of the Dublin Regulation,[145] such a practice may also have negative effects in terms of non-refoulement, especially for asylum seekers.

[141] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., Ibid., p. 28.
[142] Ibid., p. 48.
[143] Trylińska, A., Sieniow, T., Pachocka, M., Krępa, M. and Wach, D., Ibid, pp. 27–35.
[144] Mielke K., Mencutek, Z.S., & Wolf, D., Ibid, p. 20.
[145] Ibid., p. 19.

5.3.3. Effectiveness of Administrative and Judicial Reviews and Remedies

An evaluation of the country dossiers reveals that some countries have more effective review procedures than others. For example, in Dutch law, the DT&V, which is responsible for implementing the return decisions, conducts removability checks at various times and consults with the IND on whether the foreign national is still required to leave the Netherlands.[146] If the TCN applies for asylum just before departure, a specialised IND team assesses the presence of new facts or elements. Additionally, there are postponements and temporary permits in case of medical circumstances.[147] Similarly, in Swedish law, the assessment of whether there are impediments to return/removal is done not only during but also after the issuance of the relevant decision. These impediments to enforcement may be related to the risk of non-refoulement, be of a practical nature or a medical nature.[148] However, the Sweden Country Report reveals a discrepancy in terms of legal clarity regarding the practical impediments as these impediments are neither defined in the legislation nor is it clarified what criteria TCNs must meet in order to be considered to have sufficiently participated in the implementation of the decision which in practice sought as a criterion when assessing the impediments of a practical nature.[149]

In Greece and Poland, however, discrepancies are more evident. In Greek practice, a return decision may be incorporated when rejecting an application for international protection, revoking the status of international protection, or discontinuing the examination of a request. However, as stated in the Greece Country Report,[150] when independent Appeals Committees examine such decisions in the second instance, they do not determine whether conditions exist for postponing removal due to a risk of refoulement. Instead, they consider the police the responsible authority for executing the removal. This situation is considered contradictory because it reduces the guarantees of the procedure by transferring relevant competence from Appeals Committees, in which judges participate, to police officials.

Moreover, this goes against the authorities' duty to examine non-refoulement considerations before issuing a removal order, not just before its execution.[151] In Poland, remedies are reported to be ineffective, especially regarding border procedures. It is indicated that according to the data provided by the Border Guard, there were 1010 orders (orders to leave the territory of Poland) issued in the first half of 2023; however, in none of these situations, despite available remedies in law, were the foreigners able to file appeals.[152] Similarly, it is asserted that at the border crossing point with Belarus in Terespol, the claims of asylum seekers were repeatedly ignored, and they were not even handed a standardised form with the refusal of entry decision against which they could file an appeal.[153] In Poland, the Border Guard also serves as an appellate body. Foreigners can submit a claim to the court against the final (second) decision of the Border Guards, but this does not have a suspensive effect, which is

[146] Ebrahim, S. & Strik, T., Ibid., p. 34.
[147] Ibid., p. 34, 35.
[148] Thorburn Stern, R. & Shakra, M., Ibid., p. 40.
[149] Ibid.
[150] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., Ibid., p. 47.
[151] Ibid.
[152] Trylińska, A., Sieniow, T., Pachocka, M., Krępa, M. and Wach, D., Ibid, p. 45.
[153] Ibid.

highlighted in the Poland Country Report as not being consistent with the Return Directive's requirement to be effective.[154]

In Germany, however, ineffectiveness is reported, especially regarding the process of asylum applications. It is stated in the Country Report that the decisions made by Foreigners Authorities and administrative court judges can lead to contradictory results due to considerable leeway in how they assess an applicant's situation and the situation in their country of origin or a safe third country. In 2017, the Federal Constitutional Court (BVerfG) ruled that administrative courts must base their decisions on current knowledge and not just refer to previous decisions and sources. However, the Country Report asserts that due to the lack of binding country-of-origin information and the overburdening of judicial panels, lawyers dealing with asylum law must be up-to-date and bring relevant information to each case's court proceedings.[155] Moreover, it is reported that the decisions concerning asylum and return depend on the competence and attitude of the staff working with the Local Foreigners Authorities.[156]

5.3.4. Situation of Non-Returnable Persons

It is understood that a common problematic issue in all five countries concerning non-returnable persons is uncertainty about the nature of their status and the effectiveness of their access to rights. The German protection system provides a temporary suspension of deportation known as Duldung, which is neither considered a regular status nor an irregular stay. However, this limbo situation puts those affected at a disadvantage when it comes to participating in society and claiming their entitlements.[157] Similarly, in Sweden, non-returnable persons may be issued temporary residence permits, which may create limbo situations.[158]

In the Netherlands, when a TCN has exhausted all legal means to stay in the Netherlands and cannot be removed due to no fault of their own, such as lack of cooperation from the country of return on the issuance of documents, the DT&V could request the IND to grant the TCN on behalf of the Secretary of State a no-fault residence permit.[159] In case of medical circumstances that prevent the removal of the TCN or a family member, or if the TCN is a victim, witness of or has reported human trafficking, the return will be postponed, in some cases followed by the granting of a residence permit based on humanitarian grounds.[160] However, it is indicated in the Netherlands Country Report that the migration authorities seldom grant residence permits in case of unremovable TCNs. Even if TCNs cannot be removed due to no fault of their own, they do not easily receive a so-called "no-fault" residence permit, although the law stipulates that they should be granted residence permits in such circumstances. In the last few

[154] Ibid., pp. 55, 57.
[155] Mielke K., Mencutek, Z.S., & Wolf, D., Ibid, p. 42.
[156] Ibid.
[157] Ibid., p. 42-43.
[158] Thorburn Stern, R. & Shakra, M., Ibid., p. 31, 39-40.
[159] Immigratie en Naturalisatiedienst, "Unaccompanied Minors", IND, March 13, 2023, Available at: https://ind.nl/en/about-us/background-articles/unaccompanied-minors (Accessed 8 March 2024).
[160] Ebrahim, S. & Strik, T., Ibid., pp. 35–36.

years, approximately 20 no-fault residence permits have been issued per year, while the number of applications was three times higher.[161]

In Greece, it is reported that there is no specific humanitarian status for individuals who do not meet the requirements for international protection but are unable to leave the country. This constraint leaves several groups of vulnerable TCNs, particularly those with significant health problems, without adequate protection. As a result, it is anticipated that this situation can lead to a violation of Article 3 of the ECHR.[162]

In Poland, non-returnable persons may be granted a permit for a tolerated stay. The Act on Foreigners also allows irregularly staying TCNs to submit an application for any type of temporary stay. However, it is reported that in most cases, they receive a refusal decision due to irregular stay. Therefore, the mere submission of an application for residence exposes the foreigner to the initiation of proceedings for the obligation to return. [163]

5.4. Detention

This section reflects on selected aspects of the use of detention in the context of return in the countries examined for the purpose of the comparative study. The assessment takes the minimum standards established in EU law, the CoE policy recommendations and ECtHR case law as a starting point.

5.4.1 Detention and Alternative Measures

In all countries studied, detention for removal is primarily an administrative measure regulated by migration law and administrative law at migration law and administrative law on the national level. In Germany, which is a federal state, the legal basis of detention for the purpose of removal is found in national legislation, while the detailed conditions of implementation are regulated by sub-national/state law.

While immigration detention is not considered a punitive measure (EMN Glossary), it could nevertheless be argued that it has a punitive dimension in the sense that it means a deprivation of liberty based on the previous behaviour or the presumed future behaviour of the alien. Imposing detention as a criminal law sanction for not complying with a return decision is, however, contrary to EU law.[164] In most countries, potential behaviour motivating detention would be the risk of absconding, risks to public security and public order, engaging in criminal activities, obstructing the execution of the return decision, or risks to national security. The Netherlands is the one country of the study in which a "risk of absconding" is the only ground allowing for detention in the return process. The other countries have opted for additional

[161] Ministerie van Justitie en Veiligheid, "Wat houdt bemiddeling in het kader van 'buitenschuld' in?," Leg Mij Nou Eens Uit. VreemdelingenVisie, July 6, 2023, Available at: https://www.vreemdelingenvisie.nl/vreemdelingenvisie/2023/07/buiten-schuld-vergunning (Accessed 8 March 2024).

[162] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., Ibid., p. 49.

[163] Trylińska, A., Sieniow, T., Pachocka, M., Krępa, M. and Wach, D., Ibid, pp. 37–38.

[164] See C-329/11, *Achughbabian,* 6 December 2011.

grounds, thereby going beyond the grounds specifically mentioned in Article 15.1 of the Return Directive. In the case of Sweden, the argument for including additional grounds has been that Article 15.1 of the Return Directive is not exhaustive, which may be seen as an indication of how states seek to find alternative uses for detention in addition to those specifically allowed.

Article 15.1 of the Return Directive further stipulates that detention for the purpose of removal should be used as a last resort ("unless other sufficient coercive measures can be applied effectively in a specific case"). The authorities also need to conduct the return procedure with due diligence. Alternative measures, such as daily reporting to the authorities, seizure of travel documents, bail, or electronic surveillance, should, as far as possible, be used instead of detention. While this approach, in theory, applies in all of the countries in the study, all of the country dossiers point to the fact that detention, in practice, often seems to be the default choice. In Greece, it is even stipulated by law that pre-removal detention is the first choice; migrants awaiting removal are to be placed in detention unless the conditions for less coercive alternatives are met.[165] In Poland, the Netherlands and Sweden, the national reports indicate that while detention as the first choice may not be as pronounced a policy as in Greece, it is nevertheless routinely used. This raises questions about the compatibility of detention policies with the demands outlined in ECtHR case law, CoE and CPT Guidelines, and the EU Return Directive for necessity and proportionality of the measure applied. It also raises questions about to what extent a person's vulnerability and individual circumstances are sufficiently taken into account when considering detention as an option, given that detention in those cases is to be avoided as far as possible.

5.4.2. Decisions, Appeals and Duration of Detention

The body issuing the original decision on detention varies between the countries – in some countries, it is the migration or police authorities (Greece, the Netherlands); in other countries, a court (Poland, Germany); and in others, yet again all of the above, depending on the procedural circumstances (Sweden). In all countries, a decision on detention may be appealed. In some countries, time limits apply for appeals: in Poland, a court order on detention may be appealed within seven days from the day of receiving the translation of the court order, while in Germany, the detainee's appeal needs to be submitted within a month. In contrast, there are no time limits for appealing detention decisions in Sweden or the Netherlands — an appeal may be submitted at any point during the time in detention. In addition, a decision on detention in Sweden, Poland, Greece and the Netherlands automatically is subject to judicial review within specific time limits. The purpose of this automatic review differs between countries: in Greece, the review concerns the legality of an extension of detention only, not the detention per se, while in Sweden, it is the decision as such that is reviewed. In several countries, access to legal representation in detention cases is an issue, in particular, if the detainee has no prior legal representative.

The general maximum duration of pre-removal detention is six months in Greece, Poland, the Netherlands and Germany, with the possibility of extension under certain circumstances to a maximum of 18 months. The maximum duration of detention may vary depending on the grounds for detention in the individual case. In some cases, such as Poland, a person may be

[165] Danai Angeli and Dia Anagnostou, "A Shortfall of Rights and Justice: Judicial Review of Immigration Detention in Greece", 2022, European Journal of Legal Studies, May 22, 97–131, p. 105.

held in detention for longer than 18 months under certain circumstances (24 months in total, the additional six months being if they lodge an application for asylum while in detention). In Sweden, the maximum duration of pre-removal detention is two months, which can be extended to 3 months if there are special reasons and, under certain circumstances, to 12 months. These time limits, however, do not apply if the alien has been expelled by a criminal court due to criminal offences, in which case the alien can be detained for much longer than what would otherwise be the case.[166]

5.4.3. Conditions in Detention/Detention Regime

TCNs who are subject to return are usually detained in special facilities (usually known as "detention centres"), which is in line with Article 16.1 of the Return Directive. The CJEU has made clear that detention must take place in special facilities.[167] The Greek Ombudsman, however, notes that a large number of TCNs in the country continue to be held in police stations due to insufficient space in detention facilities. In Sweden, the Migration Agency may decide that an alien taken into detention is placed in a penitentiary, remand centre, or police custody when i) the deportation decision is part of a ruling in a criminal case or ii) certain special circumstances apply. In such a case, the alien must be held separate from other detainees. In some of the countries (e.g., Poland and Greece), TCNs in the return procedure and asylum seekers are detained together.

All of the countries included in the study have been criticised for the conditions in detention facilities, including the lack of space allocated for each detainee, insufficient and lack of access to information, the use of practices such as solitary confinement as a punishment, lack of privacy and lack of meaningful daily activities. Several of the country dossiers note that the conditions in detention centres are very restrictive and do not exist in practice as they differ very much from penitentiary facilities. This once again raises the question about the punitive dimension of detention and the way it may play out in practice in the MSs.

5.4.4. Children in Detention (Accompanied/Unaccompanied)

European law does not prohibit immigration detention of children. The possibilities of putting minors in detention are, however, restricted and surrounded by special safeguards. The ECtHR, in several cases, has emphasised that children under immigration detention, accompanied or not, are regarded as being extremely vulnerable and in need of special attention from the authorities. The CoE encourages states to end immigration detention of children.[168]

The need for special safeguards for children in immigration detention and awareness that this is a measure to be used only as a last resort appears to be recognised in all the countries included in the study. In Germany and the Netherlands, alternative measures must be considered before a decision on detention is made. In the Netherlands, UAMs can only be

[166] Swedish Migration Court of Appeal MIG, 2014:15 and MIG 2022, p. 8.
[167] CJEU, C-473/13; C-514/13, Bero and Bouzalmate (CJEU, 17 July 2014).
[168] CoE, Available at: https://pace.coe.int/en/pages/campaign-detention-children (Accessed 8 March 2024).

detained if there is a weighty interest for the authorities to keep the minor at their disposal. However, this specific safeguard for UAMs does not lead to children not being detained or that the best interests of the child in practice are the primary consideration in the context of detention of children pending removal.[169]

While the maximum time limits for the detention of children were not addressed in all of the country dossiers, it can nevertheless be held with some accuracy that the duration of time a child can spend in immigration detention, in general, is much shorter than would be the case for an adult. The most restrictive rules are found in Sweden, where a child may not be detained for more than 72 hours or, if exceptional grounds apply, for another 72 hours. In all of the countries, UAMs and families with children are to be detained in special facilities accommodating their particular needs. There is also the possibility of detaining one parent in the case of a family with minor children while the other family members remain in a so-called restrictive accommodation centre (the Netherlands) or at liberty (Sweden).

5.4.5. Concluding Reflections

A general reflection is that while, in many cases, the legal framework in theory may live up to the minimum standards identified by monitoring bodies, the situation on the ground may often be quite different. One point of concern is for detention to be considered the default choice rather than a last resort. The extreme example here is Greece, but similar tendencies are also found in other countries. Another concern is that access to safeguards such as legal representation for detainees is limited in some countries, at least in practice. A third point of concern is that the conditions in detention facilities are not always up to standard, and there are many similarities between immigration detention and punitive detention, although they serve completely different purposes. The latter may be seen as an indication of how the idea of irregular migration as something criminal has had a substantive impact on the approach to immigration detention as well as on other parts of the migration process.

[169] CoE Guidelines on Return 2005.

6. Policy Recommendations from the GAPs EU Member Countries

Based on the country dossiers, the main and most important country-based policy recommendations can be summarised as follows:

In **Germany**,[170] the primary focus is improving the legal framework and institutional practices to ensure effective returns while complying with fundamental/human rights. This includes establishing a robust control and monitoring system, an independent institution for monitoring pre-removal and detention, and providing access to legal counselling and long-term funding for state and independent return counselling centres. The emphasis is on maintaining the legitimacy of deportations through transparency and rights compliance.

Greece's recommendations[171] stress the need to clarify legal procedures and improve detention conditions. Key suggestions include disambiguating legal frameworks to ensure the Return Directive's proper implementation, enhancing living conditions and rights for detainees, and considering alternatives to detention, especially for vulnerable groups like children and asylum seekers. The approach suggests a more humane and legally coherent return process.

Poland's suggestions[172] focus on legal reforms and institutional cooperation to make the return process more humane and less restrictive. This includes restoring the suspension effect of the claim to the court against return decisions, introducing state-funded legal assistance, increasing collaboration with Frontex for transparency, and using alternatives to detention. The emphasis is on enhancing legal safeguards and support for returnees, especially children and other vulnerable groups.

Sweden's recommendations address legal gaps and policy inconsistencies that affect the return process.[173] Suggestions include incorporating definitions from the Return Directive into national law, clarifying what constitutes a practical impediment to enforcing return decisions, ensuring that detention practices align with EU law, and addressing the mixed messages in Swedish migration policy that create uncertainty and undermine credibility. The focus is on improving legal clarity, safeguarding rights, and ensuring policy coherence.

The Netherlands is advised to focus on better implementation of the Return Directive and less coercive enforcement measures, emphasising the best interest of the child and the fundamental rights of migrants.[174] Recommendations include practising less coercive enforcement measures, emphasising detention as a last resort, ensuring the protection of children's rights, and considering sustainable structures for successful integration or return. The emphasis is on a humane approach to return that respects migrants' rights and needs.

[170] Mielke K., Mencutek, Z.S., & Wolf, D., Ibid.
[171] Hatziprokopiou, P., Kandylis, G., Komita, K., Koutrolikou, P., Papatzani, E., Tramountanis, A., Ibid.
[172] Trylińska, A., Sieniow, T., Pachocka, M., Krępa, M. and Wach, D., Ibid.
[173] Thorburn Stern, R. & Shakra, M., Ibid.
[174] Ebrahim, S. & Strik, T., Ibid.

Each country's recommendations highlight a blend of improving legal frameworks, enhancing institutional cooperation, safeguarding human rights, and ensuring the humane treatment of returnees. These aspects reflect the complex challenges facing return governance and the need for balanced approaches that respect both national security concerns and the rights of individuals.

From a comparative perspective, the policy recommendations/suggestions for Germany, Greece, Poland, Sweden, and the Netherlands showcase similarities and differences in their approaches to return governance, legal frameworks, institutional frameworks, data management, international cooperation, public communication, and implementation practices.

The main similarities:

- *Emphasis on human rights and legal frameworks:* All countries underscore the importance of aligning return policies with human rights standards and the legal frameworks safeguarding these rights. They advocate for clear legal definitions, transparency, and procedures that comply with fundamental and human rights.
- *Need for data management and transparency:* There is a consensus on the necessity for improved data collection, processing, and publication to inform policy-making and ensure transparency in return operations.
- *Institutional frameworks and international cooperation:* Recommendations across countries highlight the need for enhanced institutional frameworks and international cooperation to manage return processes effectively. This includes cooperation with countries of origin and respecting the values underlying foreign and development policies.
- *Detention as a last resort:* The countries advocate for detention to be used as a last resort, with alternatives to detention to be considered first, especially highlighting the importance of the child's best interests and the need for the humane treatment of detainees.

The main differences:

- *Specific legal and policy recommendations:* While the overarching themes are similar, specific legal and policy recommendations vary. For example, Germany focuses on establishing an independent monitoring institution and addressing data gaps, whereas Greece emphasises the need to disambiguate legal procedures and improve living conditions for detainees.
- *Public debate and integration:* Germany and Sweden address the need for public debate on alternatives to return, such as regularisation and the integration of migrants into society. This reflects a broader view of migration management, including societal integration and public perception.
- *Approach to detention and legal assistance:* Poland and the Netherlands emphasise structural reforms in detention practices and the introduction of state-funded legal assistance for return procedures, focusing on procedural safeguards and support for returnees.
- *Child protection and vulnerable groups:* The Netherlands specifically mentions protecting children's rights and the child's best interest in its national legislation,

indicating a targeted approach towards the most vulnerable groups in the context of return policies.

In summary, while there is a common understanding of the need to adhere to human rights standards, improve data management, enhance institutional frameworks, and use detention judiciously, the specific recommendations reflect each country's unique challenges and priorities in migration management. Differences in the focus areas and specific proposals illustrate the varied approaches to addressing the complexities of return governance within the broader European context.

7. Conclusion

This comparative analysis investigates the legal and policy frameworks surrounding return policies within the EU and the five selected MSs (Germany, Greece, Poland, Sweden, and the Netherlands). This report sheds light on the complexities and divergences that mark the execution of these policies, revealing the nuanced challenges of harmonising return procedures in a landscape shaped by diverse legal, political, and human rights considerations.

The **statistical analysis** sheds light on the critical role of accurate, comprehensive, and harmonised statistical data in shaping, evaluating, and refining return policies to ensure they are both effective and aligned with fundamental human rights standards. The findings highlight a shared recognition across the EU and the selected MSs of the need for improved data collection, processing, and publication. This collective understanding underscores the importance of data as the backbone of evidence-based policy-making, enabling the development of targeted interventions that respect the rights and dignity of migrants. The challenges identified in harmonising data collection practices, such as discrepancies in definitions and reporting standards, underscore the need for concerted efforts to address data gaps and inconsistencies.

The policy framework analysis reveals a gradual evolution of the EU's return policy, characterised by a shift towards more efficient procedures and international cooperation, especially with third countries. The EU has endeavoured to balance the need for effective return procedures with the protection of migrants' fundamental rights, though challenges remain in ensuring humane and dignified returns. The adoption of the EU Return Directive, the establishment of Frontex, and the implementation of the EURAs are pivotal milestones that have shaped the current landscape of return migration management. However, the report also underscores the complexity of harmonising return policies across the EU due to varying legal, social, and political contexts within MSs.

The comparative analysis uncovers diverse policy focuses and implementation strategies among the MSs, influenced by their unique contexts. This diversity, reflecting the EU's complex political landscape, challenges achieving a harmonised approach to return policies. Operational challenges in conducting returns, including the effectiveness of reintegration measures and cooperation with third countries, further complicate the landscape. The analysis underscores the uneven capacity across the EU to ensure dignified, humane, and sustainable returns, reflecting disparities in resources, political will, and geopolitical considerations.

The institutional framework analysis of return policy in the EU is characterised by a multi-layered approach involving various actors, including the EC, the Council of the EU, Frontex, and the EASO, among others. This complex framework is mirrored at the national level, where a blend of governmental and non-governmental entities, alongside specialised agencies, play pivotal roles in the implementation of return policies. The involvement of multiple EU and national actors underscores the collaborative yet intricate nature of managing migration returns. The findings from the country dossiers illustrate diverse approaches to return migration policies, influenced by each country's unique circumstances. While some prioritise strict control and deportations, others emphasise humanitarian considerations and voluntary returns.

The legal framework analysis reveals that the return procedures in the five studied EU MSs constitute a complex landscape influenced by the interaction of national laws with international and EU legal frameworks. While all five countries are bound by common legal standards, such as the principle of non-refoulement and the EU Return Directive, the implementation and impact of these standards vary significantly across the countries. A common trend observed is the tendency to adapt the interpretation of the Directive's requirements to fit national laws rather than strictly aligning national laws with the Directive. While the five selected countries have transposed the Return Directive into their national laws, the extent and clarity of transposition vary, reflecting each state's unique political, social, and legal contexts. This variance underscores the complexity of harmonising return policies across the EU, a challenge exacerbated by differing degrees of adherence to international law and the procedural nuances of the return process in each country.

One notable difference is the degree of adherence to international law, which is affected by whether countries adopt a monist or dualist approach. For example, despite being predominantly monist, Greece and Poland have shown inconsistencies in the direct application of international law. On the other hand, with their relatively open approach to international law, the Netherlands and Sweden have demonstrated a more integrated legal system where national and international laws complement each other.

Procedural aspects of the return process, such as the role of the police and the clarity of return decisions, differ among the countries. In Greece and Poland, the powers of administrative agents associated with security are more flexible and uncertain, leading to confusion and potential shifts in the balance between freedom and security. The scope of return decisions, particularly regarding illegal stay and border cases, lacks uniformity and clarity, creating uncertainty for migrants and challenges in accessing basic rights. The report reflects significant disparities in the approaches to issuing return decisions across the EU, particularly within the selected MSs. The comparative analysis highlights the inconsistent application of procedural safeguards and criteria for non-removability/returnability. The protection offered to vulnerable individuals and those at risk of persecution or harm upon return varies markedly, raising questions about the EU's commitment to human rights and the principle of non-refoulement.
Furthermore, the divergent detention practices among MSs, including reasons for detention, application of the proportionality test, and conditions within detention facilities, are concerning from a human rights perspective. The inconsistencies between the MSs regarding non-removable migrants and the scarce use of the option in the Return Directive [Article 6(4)] to grant a residence permit justify the need for an EU harmonised approach to resolving irregularity by granting a residence right in case of non-culpable obstacles to return. Granting residency would serve the aim of the Directive to terminate irregular stays and elaborate on the call-in recital.

The use of detention as a measure in the return process raises significant concerns. Despite being considered a last resort by the EU Return Directive; detention often appears to be the default choice in practice. Conditions in detention facilities have been criticised, and the treatment of children in detention highlights the need for special safeguards and the importance of considering the best interests of the child.

Briefly, based on the legal framework analysis, the most problematic areas are:

- Legal Uncertainty and Inconsistencies: In some countries, the lack of clear definitions and inconsistencies in the application of the Return Directive and international law create legal uncertainty and undermine legal certainty.
- Procedural Safeguards and Non-Refoulement: Concerns exist about the effectiveness of procedural safeguards and the protection from non-refoulement, particularly in border procedures and for vulnerable groups such as children.
- Detention Practices: The use of detention as a default choice rather than a last resort, limited access to legal representation for detainees, and substandard conditions in detention facilities are significant concerns.
- Effectiveness of Administrative and Judicial Reviews: Discrepancies in the effectiveness of administrative and judicial reviews and remedies, particularly regarding access to legal aid and the implementation of court decisions, are problematic.

In conclusion, the report calls for enhanced cooperation among EU MSs and between the EU and third countries, as well as legal reforms and policy alignment to improve the management of return migrations. It advocates for a balanced approach that respects migrants' rights while effectively managing migration flows. The necessity for clear legal frameworks, accurate and comprehensive statistics, and a commitment to humane and efficient return processes stands out as fundamental to advancing the EU's return migration policies. The ongoing effort to harmonise return policies and practices across the EU underscores the complexity of migration management in a context that seeks to balance security concerns with humanitarian obligations.

In order to navigate the above-mentioned challenges, the need for a multifaceted approach aimed at harmonising return policies within the EU should be emphasised. Strengthening mechanisms for monitoring and enforcing compliance with the EU Return Directive is imperative to align the MSs' practices more closely with established standards. There is a pressing need for greater consistency in procedural safeguards, especially concerning appeals processes and the protection of vulnerable groups. Uniform standards on detention practices, emphasising alternatives to detention and improving conditions in detention facilities, are crucial to upholding international human rights standards.

Moreover, enhancing support for voluntary return programmes, ensuring accessibility and dignity, and implementing effective reintegration measures are vital for sustainable return processes. Improving international cooperation on readmission and reintegration must balance effective returns with respect for returnees' rights.

By addressing these identified gaps and moving towards a more unified and humane approach, the EU and its MSs can better balance migration management objectives with a steadfast commitment to human rights and international law, enhancing the effectiveness, fairness, and humaneness of return practices across the Union.

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About the Authors

Dr N. Ela Gökalp Aras is a senior researcher and the principal investigator (PI) of the GAPs Project at the Swedish Research Institute in Istanbul (SRII), Sweden/Türkiye. She is the co-leader of the WP2 (Legal and Policy Frameworks of Returns in the EU) of the GAPs Project.
Dr Neva Övünç Öztürk is a senior researcher of the GAPs Project and a Law Faculty Member of Ankara University, Sweden/Türkiye. She is the co-leader of the WP2 (Legal and Policy Frameworks of Returns in the EU) of the GAPs Project.
Prof Dr Tineke Strik is a Professor of Citizenship and Migration Law, the chair of Sociology and Migration Law at Radboud University and a member of the European Parliament.
Prof Dr Rebecca Thorburn Stern is a Professor of Public International Law at Uppsala University. She is the co-leader of the WP2 (Legal and Policy Frameworks of Returns in the EU) of the GAPs Project.
Anna Trylińska is a research assistant at the Centre of Migration Research at the University of Warsaw and is an immigration lawyer.
Umutcan Yüksel is a researcher at the Swedish Research Institute in Istanbul (SRII), Sweden/Türkiye.

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Decentring the Study of Migrant Returns and Return Policies

Legal and Policy Infrastructures of Returns in Germany

Country Dossier (WP2)

Authors

Katja Mielke, Zeynep Sahin Mencütek, Daphne Wolf

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List of Abbreviations

AnkER	"Arrival, decision and return" facilities
AsylG	German Asylum Act (*Asylgesetz*)
AufenthG	German Residence Act (*Aufenthaltsgesetz*)
AufenthV	German Residence Ordinance (*Aufenthaltsverordnung*)
BAMF	German Federal Office for Migration and Refugees
BMI	German Federal Ministry of the Interior and Community
BMZ	German Federal Ministry of Economic Cooperation and Development
BICC	Bonn International Centre for Conflict Studies
BVerwG	German Federal Administrative Court (Bundesverwaltungsgericht)
CERC	Canada's Excellence Research Chairs Program
CJEU	Court of Justice of the European Union
EU	European Union
GEAS	Common European Asylum System (*Gemeinsames Europäisches Asylsystem*)
GETZ	Joint centre for countering extremism and terrorism (Gemeinsames Extremismus- und Terrorismusabwehrzentrum)
GFFO	German Federal Foreign Office
GG	German Basic Law (*Grundgesetz*)
GIZ	German International Cooperation
GTAZ	Joint Counter -Terrorism Centre (Gemeinsames Terrorismusabwehrzentrum)
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
MP	Member of the German parliament (Bundestag)
OVG	Higher Administrative Court (Oberverwaltungsgericht)
SBC	Schengen Borders Code
TCNs	Third-country nationals
VG	Administrative Court (Verwaltungsgericht)
ZAB	Central Foreigners Authority (Zentrale Ausländerbehörde)
ZUR	Repatriation support centre (Gemeinsames Zentrum zur Unterstützung der Rückkehr)

Summary

This report focuses on the legislative and institutional frameworks, as well as the procedural infrastructure related to the return of rejected asylum seekers and other unauthorised migrants from Germany between 2015 and 2023. The analysis shows that the political rhetoric of 'closing the deportation gap' and improving returns through increased effectiveness has had important policy consequences since 2015 and has continued under the current coalition government formed in 2021. The so-called return offensive rhetoric has been translated into legal provisions to increase the number and effectiveness of returns as well as a growing emphasis on finalising international migration 'partnership' agreements. Beyond politics of return, the field of return governance in Germany is very dynamic and, at the same time, reveals structural deficiencies, operational shortcomings, heterogeneous practices and internal contradictions. There are clear gaps in at least six areas, including legislative structure, institutional framework, international cooperation, data collection/sharing, implementation and political communication.

In terms of legislative infrastructures, the report shows that Germany adopted the EU Return Directive since 2008, but its implementation at the federal level has been ambivalent. In contrast, the Court of Justice of the European Union (CJEU)'s case-law, which developed in its wake is having greater significance in enhancing protection and is widely used by lawyers and courts at the operational level. The authority and discretionary powers of judges in district and administrative courts, as well as of the street-level bureaucrats working in local migration agencies, have complicated the interpretation of legislation and procedures, as well as their outcomes. It is not uncommon for national rule-of-law-based return policymaking to be contrasted in practice with federal regulations and enforcement practices.

The report also highlights the extent to which Germany's institutional infrastructure dealing with returns is highly complex due to the multi-level governance with discretionary powers of the *Länder (federal states*) and sub-national administrative actors (districts and municipalities) in the federal system. The parallel existence of international, EU, national and state legal frameworks also brings advantages and disadvantages for those affected by and those implementing return policies. In Germany, the 16 states and their subordinate administrative bodies and institutions (e.g., police) are solely responsible for enforcement, and there is a mix of cases where the states themselves are active policymakers, where they directly adopt EU law or where they follow national legal provisions.

In their analysis, the authors have identified some key legal gaps with regard to non-compliance with fundamental/human rights and the EU law:

- Although there are no official figures, there is ample evidence that detentions are mostly unlawful and thus, sometimes not used as a measure of last resort in the case of removal as foreseen in German jurisdiction. It is, therefore, necessary to review the judicial authority of the district courts and examine their independent handling of cases.
- The most significant discrepancy between EU law and national law concerns the monitoring of returns. Germany has neither a law nor provisions for systematic monitoring or the institution of an ombudsperson.
- There is increasing evidence of pushbacks at internal (Schengen) borders. Furthermore, the issuance of a post-deportation entry ban is not in line with EU law, and the fact that the decision is taken by a legislator instead of being reviewed officially or by a judge violates Art. 3.6 of the EU Return Directive (2008).
- The German legal framework for asylum law and reception conditions, which mirrors return legislation, seems to entail a compliance gap with EU law. The German framework is built on the decentralised implementation of EU and national law. In terms of procedures, it remains unclear who exactly is not complying and how.

- German authorities bend the law according to EU provisions, e.g., by preferring to apply the Schengen Borders Code for border controls and *Zurückweisungen* (refusals of entry) instead of the EU Return Directive. However, the successive extension of border controls with the argument of ever different but similarly defined security threats point to ambivalences and contradictions in EU law, which Germany, like other EU states exploits.

Keywords: return, deportation, voluntary departures, governance of returns.

The GAPs Project

GAPs is a Horizon Europe project that aims to conduct a comprehensive multidisciplinary study of the drivers of return policies and the barriers to and enablers of international cooperation on return migration. The overall aim of the project is to examine the disconnects and discrepancies between expectations of return policies and their actual outcomes by decentring the dominant, one-sided understanding of "return policymaking." To this end, GAPs:

- examines the shortcomings of the EU's return governance;
- analyses enablers of and barriers to international cooperation, and
- explores the perspectives of migrants themselves to understand their knowledge, aspirations and experiences with return policies.

GAPs combines its approach with three innovative concepts:

- A focus on return migration infrastructures, which allows the project to analyse governance gaps;
- An analysis of return migration diplomacy to understand how relations between EU member states and with third countries hinder cooperation on return; and
- A trajectory approach, which uses a socio-spatial and temporal lens to understand migrant agency.

GAPs is a three-year interdisciplinary research project (2023–2026), coordinated by Uppsala University and the Bonn International Centre for Conflict Studies (BICC) with 17 partners in 12 countries on four continents. GAPs' fieldwork has been conducted in 12 countries: Sweden, Nigeria, Germany, Morocco, the Netherlands, Afghanistan, Poland, Georgia, Turkey, Tunisia, Greece and Iraq.

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1. Statistical Overview: Returns and Readmissions at the National Level

According to the German Federal Ministry of the Interior and Community (BMI), some 250,749 people were classified as having the obligation to leave Germany at the end of October 2023 (Tagesschau, 2023). Two hundred one thousand eighty-four of these were granted a temporary suspension of deportation/removal[1] (*Duldung*) which means that 49,665 people were potential enforceable returnees (Tagesschau, 2023). According to the same source, the new provisions of the Repatriation package coming into force in 2024 will (only) lead to an estimated 600 additional deportations/ removals per year from 2024 onwards, after Germany had deported around 12,000 people in 2021 and 2022 annually. It is well known that in recent years, Germany has stepped up the voluntary and coerced return of those migrants and asylum seekers from Georgia, North Macedonia, Albania, Moldova and Serbia, whose applications had been rejected. German media, citing statements by the BMI, report that deportations of failed asylum seekers increased by more than a quarter in the first six months of 2023 (Deutsche Welle, 2023). However, as in other European Union (EU) member states, the figures and statements on return rates and their nature are often disputed in Germany.

The full data table on return-related statistics, which is mainly based on the Eurostat database, can be found in **Annex I**. In addition to Eurostat statistics, there is a considerable amount of statistical data on returns available at the national level. However, due to the multiplicity of actors and the federal logic in Germany, the data sets are very complex and heterogenous. As the federal states (*Länder*) pursue their own programmes and implementation practices, they are not obliged to collect data according to the same standards, and consequently, the data is not comparable and cannot be added to provide reliable national figures (Bundesregierung, 2022, p. 137; Rietig & Günnewig, 2020, p. 13). Gaps in national databases are discussed in Section 6.4.

It should be acknowledged that various actors, in particular some political parties, have played an outstanding role in documenting or requesting data on returns through their parliamentary authority. Specifically, members of the party *Die Linke*[2] in the German parliament (*Bundestag)* have used the instruments of parliamentary minor inquiries (*Kleine Anfrage*) and major interpellations (*Große Anfrage*) to obtain data from the executive bodies on migration, asylum and return-related figures, how they are obtained and documented. Accordingly, in this report, the authors extensively consulted parliamentary inquiries from 2015 to 2022 to compile return statistics and allocated budgets. We also checked the websites of the relevant ministries at the federal and state level. Some of the figures presented are included in the relevant sections throughout the report.

An important numerical figure for interpreting return data is the number of asylum applications, which is relatively high in Germany. For example, according to EU sources, 243.835 first-time applications in the European Union, representing 25 per cent of all first-time applications in

[1] Deportation and removal terms are synonymous in the German context.

[2] Due to internal rifts in the party *Die Linke*, it lost its parliamentary group (faction) status in December 2023, and it remains to be seen whether the qualitatively different/ minor parliamentary group status remaining for the current parliamentary term will allow its members of parliament (MPs) to continue with the inquiries. If not, the German public faces a serious risk of a loss of transparency and increasing non-information about migration-related operational, legal and institutional developments in Germany and its embedding in the European migration and asylum/return landscape.

2022, were made in Germany.[3] National data shows slightly higher figures for 2022, as shown in the table below.

Table 1. Asylum applications

Year	# Asylum applications
2015	476.649
2016	745.545
2017	222.683
2018	185.853
2019	165.938
2020	122.170
2021	190.816
2022	244.132

Source: Bundesamt in Zahlen Asyl, Migration und Integration, p. 17. https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/BundesamtinZahlen/bundesamt-in-zahlen-2022.pdf?__blob=publicationFile&v=4. Accessed 02.02.2024.

In general, some of the statistics mentioned in the parliamentary questions are consistent with the Eurostat database (Annex I), while others show changes due to the use of different categories. For example, figures on the approximate number of irregular migrants,[4] are not available in German statistics; however, it is possible to collect figures on illegal entries, persons obliged to leave the country and refusals at the borders, which together can give a rough idea of the proxy of stock of irregular migrants.

Table 2. Illegal entries

Year	#Illegal entries
2015	217.237
2016	111.843
2017	50.154
2018	42.478
2019	40.610
2020	35.435
2021	57.637
2022	91.986

Source: Migrationsbericht 2021, p. 138. https://shorturl.at/gST36

Table 3. Persons obliged to leave the country

Year	#Persons obliged to leave the country
2015	204.414
2016	207.484
2017	228.859
2018	235.957
2019	249.922
2020	281.143
2021	292.672
2022	304.308

Source: Illegale Einreisen im Zeitraum 1. From Januar 2009 to 31. December 2022, p. 8. https://shorturl.at/bdD03

We checked the number of people refused entry at the border from the parliamentary inquiries for each year. However, the numbers of refusals at the border do not correspond to the Eurostat

[3] 'Infographics, Asylum applications in the EU, https://www.consilium.europa.eu/en/infographics/asylum-applications-eu/. Accessed 03.01.2024.
[4] Third country nationals (TNCs) found to be illegally present in the country.

statistics (Annex 1), as the German version also includes refusals of EU citizens. Nevertheless, it provides some proxy figures.

Table 4. TCNs/foreign nationals refused entry at the border (including EU citizens)

Year	Numbers	Sources
2015	8.913	Abschiebungen im Jahr 2015, p. 12. https://dserver.bundestag.de/btd/18/075/1807588.pdf
2016	20.851	Abschiebungen im Jahr 2016, p. 14. https://dserver.bundestag.de/btd/18/111/1811112.pdf
2017	12.370	Abschiebungen im Jahr 2017, p. 15. https://dserver.bundestag.de/btd/19/008/1900800.pdf
2018	12.079	Abschiebungen und Ausreisen im Jahr 2018, p. 15. https://dserver.bundestag.de/btd/19/080/1908021.pdf
2019	13.689	Abschiebungen und Ausreisen im Jahr 2019, p. 15. https://dserver.bundestag.de/btd/19/182/1918201.pdf
2020	19.690	Abschiebungen und Ausreisen 2020, p. 14. https://dserver.bundestag.de/btd/19/270/1927007.pdf
2021	13.183	Abschiebungen und Ausreisen im Jahr 2021, p. 12. https://dserver.bundestag.de/btd/20/008/2000890.pdf
2022	25.538	Berichte über Zurückweisungen von Schutzsuchenden an den Binnengrenzen, p. 3. https://dserver.bundestag.de/btd/20/056/2005674.pdf

Data is also available on sensitive issues such as the return of unaccompanied minors or readmitted citizens.

***Table 5*. Return of unaccompanied minors**

Year	Deportation according to sec. 58 residence act (Abschiebung)	Deportation according to sec. 57 residence act (Zurückschiebung)	Source
2015	0	10	Abschiebungen im Jahr 2015, p. 23. https://dserver.bundestag.de/btd/18/075/1807588.pdf
2016	0	29	Abschiebungen im Jahr 2016, p. 29. https://dserver.bundestag.de/btd/18/111/1811112.pdf
2017	1	66	Abschiebungen und Ausreisen im Jahr 2017, p. 27. https://dserver.bundestag.de/btd/19/008/1900800.pdf
2018	0	56	Abschiebungen und Ausreisen um Jahr 2018, p. 27. https://dserver.bundestag.de/btd/19/080/1908021.pdf
2019	n/a	28	Abschiebungen und Ausreisen im Jahr 2019, p. 17. https://dserver.bundestag.de/btd/19/182/1918201.pdf
2020	n/a	40	Abschiebungen und Ausreisen 2020, p. 17. https://dserver.bundestag.de/btd/19/270/1927007.pdf
2021	n/a	86	Abschiebungen und Ausreisen im Jahr 2021, p. 14. https://dserver.bundestag.de/btd/20/008/2000890.pdf
2022	n/a	120	Abschiebungen und Ausreisen 2022, p. 15. https://dserver.bundestag.de/btd/20/057/2005795.pdf

2. Political Context/Framework

The German political context for return policy in the period 2015 to 2022 is, on the one hand, primarily characterised by continuity despite a change of government in 2021. On the other hand, it is a repetition of the migration policymaking and rhetoric of the first half of the 1990s.[5] The persistent trend is for migration and return policymaking to be grounded in domestic factors, particularly the steady rise of right-wing populist political voices and political groups that rally against immigration. Populist rhetoric portrays immigrants as a burden on the German social welfare system; immigrants are accused of asylum fraud; municipalities and the state are portrayed as victims, and there is a tendency to associate immigrants with security risks, public disorder and criminality. As a result, restrictions, efforts at control, and a focus on return have dominated migration policymaking during the observation period, with more than 35 amendments to asylum and residence laws since 2015.[6] The narrow political focus on rejected asylum seekers, who are considered deportable, is intended to demonstrate steering capacity. In contrast, other steering options remain limited, e.g., for the increasing number of rejected protection seekers who are tolerated by the authorities because they cannot be returned for various reasons (see Section 5.3). During the period 2015 to 2022, there was a significant shift in public perception occurred from the 'welcome culture' (*Willkommenskultur*), which the German public had displayed during what later became known as the 'refugee crisis'—the influx of more than one million migrants in 2015/16—to the de facto 'culture' of return and deportation, the first measures of which have their roots in the same period and continue to this day.[7]

The change of federal government in 2021 after 16 years of various coalitions under the leadership of the Christian (Social) Democrats (CDU/ CSU), to a coalition of Social Democrats (SPD), Greens (Bündnis 90/Grüne) and Liberals (FDP), led to the (*Ampel*-)[8]coalition's claim of a paradigm shift in migration policy. It is based on the idea of comprehensive migration agreements with countries of origin and the recognition that Germany is an immigration country and needs migrant workers. At the same time, a concerted effort for safe and effective returns and faster asylum procedures

[5] Immigrants from countries of the global South in the early 1990s—a new phenomenon after the Cold War, when mainly 'good' dissidents from the East had sought refuge in large numbers in West Germany—were attacked by racist mobs in several German cities. The ruling politicians perceived the situation as a threat to public order and the rule of law, and interpreted the high numbers of immigrants as a reaction to the fundamental right of asylum, which was granted by Article 16 of the German Basic Law (GG). Subsequently, a constitutional amendment was discussed and presented as the only solution, with the so-called asylum compromise—the clarification in a newly added Article 16a that excluded immigrants from so-called safe third countries from the individual right to asylum in Germany. The change in asylum policy had an impact on German and European refugee law in the following years and is seen as a precursor to the concept of safe countries of origin both in Germany and in the European Union, the Dublin Regulations (1997, 2003) and the Airport Procedure (*Flughafenverfahren*), which allows entry refusals in the German national law. Moreover, the asylum compromise was accompanied by the enactment of the Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz*) in 1993, which limited social assistance payments to selected, mostly in-kind, benefits and lowered the subsistence level for protection seekers in comparison to other groups. The public debate in Germany about restrictions on immigration in 2022/23 is very similar, and the political demands of the opposition parties go in the same direction (restrictions and removals).

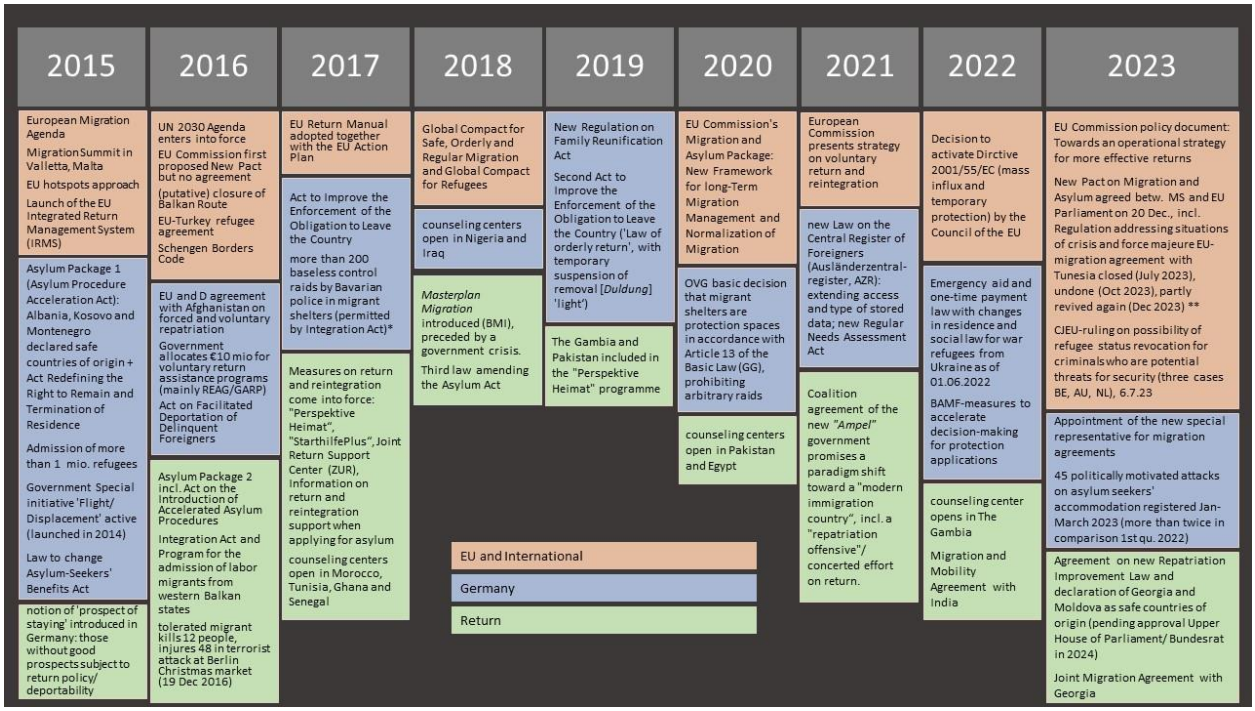
[6] See Hruschka & Rohmann, 2020 and Hruschka & Schrader, 2021, p. 5. For examples, confer to the entries 'Asylum packages 1 (2015), 2 (2016), Integration Act 2016, First and Second Act to improve the enforcement of the obligation to leave the country 2017/ 2019' in the flow chart (Figure 1).

[7] The number of deportations increased from 2015 onwards, with a focus on rejected asylum seekers from the Western Balkans (to Albania, Kosovo, and Montenegro until they were declared 'safe countries of origin', also in 2015).

[8] The new coalition government is widely called '*Ampel*' ('traffic light') because of the colours associated with the coalition parties: red (Social Democrats), yellow (Liberals), green (Greens).

was announced.[9] In 2023, the German government agreed on domestically highly controversial topics in the proposed legislation for a 'New Pact on Migration and Asylum' by the EU Council, which provides for a so-called border procedure (*Grenzverfahren*) at the EU's external borders and a regulation on crisis and force majeure situations in migration and asylum (*Krisenverordnung*). In short, for the policy field of return in migration policy, the announced paradigm shift in 2021 does not bring about any significant changes but rather represents a continuation of the existing de facto repatriation offensive.

Figure 1: Flowchart Political context[10]



[9] At the time of writing (October 2023), these measures are being fleshed out in draft legislation, such as a new law to improve repatriation. In their political rhetoric, the opposition (CDU/ CSU) and even a coalition partner of the government (Liberals, FDP) are careful not to question the basic right to asylum but to claim that the return of undeserving immigrants makes it possible to protect those who are 'really in need', thus calling for all kinds of measures to restrict the freedoms and benefits of protection seekers to make Germany an unattractive destination in line with their assumption that most people come to commit and live from asylum fraud.

[10] See the source for context 2017 (Germany)* "Razzien in Flüchtlingsunterkünften…"(2018); for context 2023 (EU) ** González & Hierro (2023).

3. Relationship Between National Law/ EU Law/ Public International Law

The relationship between international and supranational EU law and national law is governed by Articles 23, 24 and 25 of the German Basic Law (GG). Art. 59 (2) 1 GG states that international treaties requiring consent or participation have the status of federal law in the German legal system. One exception is the European Convention on Human Rights, which technically has the status of national law but is also used by the German Federal Constitutional Court as an instrument of interpretation.[11]

The primacy of EU law is based on Article 24 of the GG; in 1992, Article 23 of the GG was amended for the transfer of sovereign powers to the EU (Gaja, 2018). The German Constitutional Court has referred to and ruled on the primacy of EU law in several judgements, and while it generally accepts the principle, it has also pointed out some limits to the primacy.[12] According to the Court, the primacy of EU law is conditional and ends when fundamental rights and principles of the German GG are violated (Herdegen, 2023, §10.24). However, since the protection of fundamental rights in the EU Charter of Fundamental Rights is more or less equivalent to that in the German GG, this dispute has little practical relevance (Skouris, 2021, EuR 3, 9). The more practical implications of the relationship between EU and German domestic law are the implementation of EU regulations and directives, the secondary EU law and their status in national law. Regarding the transposition of the EU return regime into German national law, the EU Return Directive was implemented in 2011[13], the recast of the Qualification Directive in 2013, the Asylum Procedures Directive and the Receptions Conditions Directive in 2015 (Hoffmeyer-Zlotnik & Stiller, 2023).

Key UN human rights treaties ratified by Germany include [14]

- International Covenant on Civil and Political Rights (ICCPR),
- International Covenant on Economic Social and Cultural Rights (ICESCR),
- International Convention on the Elimination of all Forms of Racial Discrimination (ICERD),
- Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW),
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),
- Convention on the Rights of the Child (CRC),
- International Convention of the Protection of the Rights of all Migrant Workers and Members of their Family (ICMW),
- International Convention for the Protection of all Persons from Enforced Disappearance (CPED),
- Convention on the Rights of Persons with Disabilities (CRPD).

There are also optional protocols to some of these conventions, which offer more extensive protection or complaint procedures to the relevant monitoring body. Germany has also ratified all optional protocols except the one to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Germany ratified all Conventions without reservations, except the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment

[11] See Deutscher Bundestag/ Wissenschaftliche Dienste (WD), 2019, p. 4.
[12] BVerfGE 37, 271 (Solange I); BVerfGE 73, 339 (Solange II); BVerfGE 126, 286 (Lissabon-Urteil); BVerfGE 156, 340 (PSPP-Urteil).
[13] Official Gazette I no. 59 of 22 November 2011, p. 2258.
[14] UN OHCHR, 2023; Deutscher Bundestag/ WD, 2019, p. 6f.

(CAT), where a reservation was made to Art. 3 of the Convention, stating that it would only apply through EU law.[15]

With regard to the status of Public International Law in domestic law, Germany follows the dualist system. Thus, international human rights treaties must be incorporated into German domestic law by a separate act of ratification. The general rules of Public International Law include the norms of customary international law and ius cogens. For these rules to be directly applicable, they must be sufficiently specific and absolute ("self-executing").[16]

Judgements of the European Court of Human Rights are legally binding on Germany under Article 46 of the EU Convention on Human Rights and Article 59 (2) (3) GG, if Germany is a party to the proceedings. In cases in which Germany is not a party, the judgements still have a factual orientation and guidance function (Herdegen, 2023, §3.75). The findings and observations of the monitoring bodies of the UN human rights treaties are not legally binding; however, they serve as guidance and orientation and are used for further developments and decisions (Oette, 2018).

[15] See UN Treaty Collection (n.d.).
[16] Jarass et al., 2022, Art. 25, Rn. 1-5, 14.

4. Institutional Framework and Operational Infrastructure

The German return governance landscape consists of a three-tier governmental hierarchy with policy and operational responsibilities and is flanked by courts and non-state actors at national and sub-national levels while embedded in the international return regime with EU regulations and operational support (e.g., from Frontex). Annex 1 lists the main actors and their competencies and responsibilities. Due to the complexity of the German federal system of governance, at the sub-national level, mainly categories of actors with a specific task/activity profile are included, without mentioning individual authorities in all locations, that is district courts as a generic category are listed, but not all existing district courts in the 16 federal states of Germany.[17]

Return policymaking is the responsibility of the federal government, with the Federal Ministry of the Interior and Community (BMI) taking the lead. It provides the guidelines and legal framework for return policy, negotiates bilateral admission and migration agreements and designs and finances return assistance programmes. The Federal Office for Migration and Refugees (BAMF), a higher federal authority, acts as the operational arm of the BMI. It is a multi-tiered authority with branch offices (*Außenstellen*) in the major migrant reception facilities and other relevant administrative divisions.[18] The BAMF is the agency responsible for deciding on applications for protection (asylum) (see Section 5.3) and is also responsible for legal measures and decisions concerning aliens (§5.1 AsylG). Within this remit, the BAMF administers the entire asylum process before deciding on a protection status or rejection (including Dublin cases). Other actors at the federal level include the Federal Ministry for Economic Cooperation and Development (BMZ), which is mainly involved in financing reintegration and improving livelihood measures in countries of origin (with its implementing organization GIZ responsible for programme implementation), the German Federal Foreign Office (GFFO) and the Federal Police. The latter plays a key role in enforcing returns through removals. In 2023, the inter-ministerial position of a Special Representative for Migration Agreements was established with the office physically located at the BMI.

According to German Basic Law (GG), the implementation of federal policy is subject to the competences and organizational and political preferences of the federal states (*Länder*). Within the federal legal framework, the states enforce the repatriation of persons obliged to leave the country on the basis of different administrative structures and bureaucratic responsibilities within the states. Moreover, states may organize their own bilateral return programmes or

[17] The same applies to return counselling centres, other civil society and advocacy organisations, various types of research institutions, and the so-called Foreigners Authorities (*Ausländerbehörde/-amt*) working at the municipal level. Despite different naming conventions in the federal states (authority vs. office), the authors use the term 'Foreigners Authority' throughout this Dossier for municipal level institutions (in addition to the Central Foreigners Authority [*Zentrale Ausländerbehörde*, ZAB] at district or higher level). See Annex 1 for an overview of authorities involved in migration return governance.

[18] According to §5.3 AsylG (German Asylum Act), the opening of a BAMF branch office is mandatory where a local reception facility accommodates more than 1,000 persons but can also be established—in coordination with the states—in locations with lower numbers and outside of reception centres. In 2023, there were 60 local branch offices of the BAMF. See Annex 2 for further distinctions in the naming of BAMF branch offices; distinction is made between arrival centres, AnkER centres and decision-making centres. This is partly due to the current government's rejection of the AnkER centre concept introduced by the previous government (2017–21) in 2018. The main idea, however, of bundling the competencies of all relevant agencies for the asylum process in one place, remains, albeit reformulated as 'integrated refugee management' (BAMF, 2018).

individual components.[19] This results in a complex set of actors, especially at the third tier of government, where different municipal categories (urban vs rural districts, different types of municipalities) use different administrative structures (e.g. in the case of Foreigners Authorities) and procedures, e.g. regarding the responsibility for removal action, which may be the responsibility of either a state's police or state executive services or the Foreigners Authority (Rietig & Günnewig, 2020).

The local Foreigners Authorities are the main actors with the most executive power in the return process. The approximately 600 offices practically grant or revoke protection status, order expulsion, deportation and removal detention and enforcement, and ensure that the necessary documents (passports) are obtained. The discretionary powers of employees of that third tier of government have been the subject of discussion between advocacy groups in parliamentary inquiries and the government (BAMF and BMI) because of contrasting decisions resulting from the considerable leeway given to decision-makers.[20] Administrative courts play a key role in reviewing rejection decisions and can offer legal remedies; ordinary courts are responsible for issuing detention orders. Decisions are thus highly dependent on the municipality (as the local level) and the capacity and qualifications of the staff in the relevant institutions (court, Foreigners Authority).

Since 2015, the German return governance framework has been expanded to include intermediate coordination structures between the federal and state levels (federal–state interfaces). Inter-ministerial coordination at federal level and between the interior ministries of the states has also increased. As repatriation is the responsibility of the states but is in the interest of the Federation, the BMI has made efforts to support the states administratively (document procurement, migration agreements with countries of origin) and with training. The Repatriation Support Centre (ZUR) is the primary interface for the regular enforcement of returns, while two counter-terrorism exchange platforms (GETZ and GTAZ, see Annex 1) offer advice in the assessment and eventual removal of persons who potentially constitute a threat to internal security.

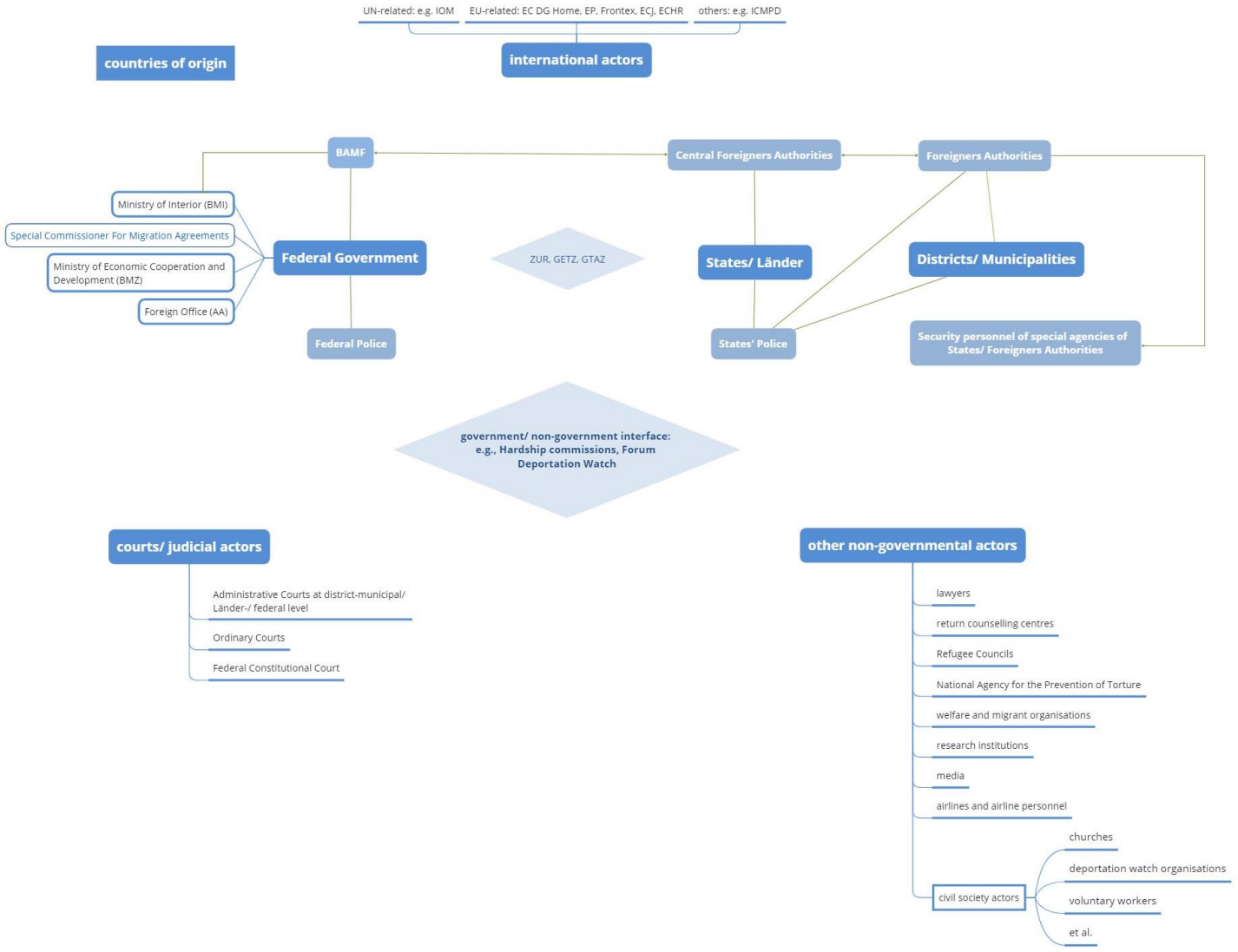
In addition, the importance of the states for policy-making at federal level and the pressure built up 'from below' should also not be underestimated. The above-mentioned federal–state interfaces provide an outlet for pressure and political advocacy by the states on the federal level. The intermediate structures thus serve a two-way vertical function (top-down and bottom-up) and facilitate horizontal exchange among the states, which is likely to facilitate mutual 'learning' about procedures and practices (imitation) that could have a positive or negative impact, depending on the political priorities of those in charge.

The return governance framework is complemented by non-government actors, mainly return counselling centres run by NGOs, which offer free individual and voluntary counselling on asylum procedures independently or based on government support (§12aAG). The Federal Ministry of the Interior's most recent approach to 'integrated refugee management' sees its task fulfilled accomplished in reception facilities (former AnkER-centres and functionally equivalent facilities) where various agencies are located on the same site or in the immediate vicinity: BAMF, Foreigners Authority, welfare associations, application offices of the administrative courts, the Federal Employment Agency as well as other non-governmental counselling and support providers and, at some locations, the state police and, if necessary, the Federal Police (especially in the case of Dublin III transfers).

[19] For example, Bavaria and Hesse follow this approach; even municipalities have decided to grant voluntary return assistance (cf. Rietig & Günnewig, 2020).

[20] Among other factors, this is manifest in own fact-finding, inquiry and interpretation of information about the situation in the applicant's country of origin by the employee of the foreigners authority/ office.

Figure 2: German actor landscape: Migration return governance



5. National Legal Framework/ Return Infrastructure

The two main German laws governing return regulations are a) the Asylum Act (*Asylgesetz*, AsylG) and its amendments (including the recent laws on accelerated asylum procedures and on improving the enforcement of the obligation to leave the country (see Annex I) and b) the Residence Act (*Aufenthaltsgesetz*, AufenthG).[21] In addition, the Basic Law (GG) provides for the right to political asylum in principle (Article 16a GG).[22]

5.1 Definitions and Concepts

Return (*Rückkehr*) is not a legal term in German legislation; however, there are several concepts that denote the procedural variations that return/s may entail or comprise. The most important ones are the following:

- ***Third-country national***: German law uses the term *Ausländer* (foreigner/alien) to refer to third-country nationals. Sometimes, the term *EU-Ausländer* is used to refer to nationals of EU member states.
- ***Asylum***: According to the German Asylum Act (AsylG), the right to asylum can be realised through three forms of protection: the right to asylum, refugee protection, and subsidiary protection. In addition, a national ban on deportation can be issued if the other forms of protection do not apply based on the fact that the return to the destination country would violate the EU Convention on Human Rights or that "a considerable concrete danger[23] to life, limb or freedom exists in that country" (BAMF, 2018b) according to §60.5/ 7 AufenthG.
- ***Refusal of entry at the border (*Zurückweisung)** (§15 AufenthG) refers to the refoulement of attempted unauthorised entry at the border. It is a measure to prevent entry in accordance with international law. If a deportation order has been issued and cannot be enforced immediately, the foreigner can be detained by order of a court to secure his or her deportation (detention pending refoulement deportation: *Zurückweisungshaft*).
- ***Expulsion (*Ausweisung*)*** (§53 AufenthG) refers to an official administrative act (also known as a 'return decision' according to the EU Return Directive, Article 3(4)), which means the termination of the right of residence of foreign nationals in Germany and the commencing of their obligation to leave (*Ausreisepflicht*) according to §50 AufenthG. The persons concerned are requested to leave the territory of the Federal Republic of Germany by a certain date. If they do not comply with this request to leave, they are threatened with deportation. Expulsion is a prerequisite of the return procedure and is carried out by removal. Constitutive for the expulsion is the so-called interest in expulsion (*Ausweisungsinteresse*, §54 AufenthG), which is asserted to a different extent if the foreigner has been convicted of a criminal offence

[21] In addition, the Residence Ordinance (*Aufenthaltsverordnung*, AufenthV) regulates detailed issues relating to entry and residence in Germany, fees and procedural requirements for the issuance and extension of residence titles.

[22] See footnote 1 in Section 2 of this Dossier.

[23] This could be "for health reasons if a return would cause life-threatening or serious disease to become much worse," see BAMF, 2018b. For more information on the different types of deportation bans, see below (Section 5.3, FN 40).

and has been detained, has concealed his or her identity or has committed other illegal acts (cf. §54 AufenthG, 1.1-1.5, 2.1-2.9).[24]

- ***Deportation***[25] ***(*****Abschiebung*****)*** (§58 AufenthG) is defined as the forcible removal of a foreigner from Germany if the foreigner does not have a valid residence title (such as toleration or an approved asylum application) or is no longer allowed to stay in Germany for other reasons. *Abschiebung* refers to the more extensive procedure that sets in when it becomes clear that the foreigner has not left voluntarily within the specified period provided for in the rejection of his/ her application for protection, which means that he/ she will be forcibly deported. It presupposes that the obligation to leave is enforceable and that supervision of the departure appears necessary. It is usually[26] preceded by the issuance of a so-called deportation warning (*Abschiebungsandrohung*), with the setting of a deadline of between seven (if the asylum application is rejected as manifestly unfounded) and 30 days (if the application is rejected outright) for voluntary departure to a specified destination country.[27] Deportation involves the physical transportation of the foreigner from Germany (often with the help of the state and federal police), which is sometimes more narrowly/ technically referred to as removal.
- ***Deportation/ removal order*** **(Abschiebungsanordnung)**
  - *§58a AufenthG*: A deportation order may be issued against a foreigner by a supreme state authority (*oberste Landesbehörde*) on the basis of a fact-based prognosis to avert a particular threat to internal security or a terrorist threat without prior expulsion. The deportation order contains an expulsion order and the relevant order of enforcement; it is, therefore, immediately enforceable by the Federal Police and does not require the prior announcement of a removal/deportration warning (*Abschiebungsandrohung*).
  - §34a AsylG: If a foreigner is to be returned to a safe third country or to a third country responsible for the asylum application of the person seeking protection (Dublin rule), a deportation order is issued once the deportation is enforceable. In these cases, a prior removal warning (*Abschiebungsandrohung*) is not necessary. If the deportation is not enforceable, i.e., if there are grounds for non-enforcement, a removal warning is issued for deportation to the country in question.

  According to a recent Court of Justice of the European Union (CJEU) ruling[28], the non-enforcement of deportation orders under §34a AsylG has to be examined by BAMF alone, which has consequences for the lawfulness of the removal threat. Previously, the clarification of possible grounds for non-enforceability of deportation was divided between BAMF for the applicability of national deportation bans and the Foreigners Authority for the so-called other grounds for non-enforcement (*Vollstreckungshindernisse*). This has led to unlawful removal

[24] A related concept concerning the obligation to leave is used in the case when a foreigner is apprehended immediately after unauthorised entry and subjected to leave because under an enforceable obligation to leave (*vollziehbar ausreisepflichtig)*.

[25] Authorities also speak of 'repatriation' as a synonym for the term deportation. 'Deportation' is the term used for removal in the translation of the German Residence Act (AufenthG). It has the same meaning as 'removal' as used in the EU Return Directive.

[26] A threat of deportation is not considered necessary when other administrative procedures connected to return have already provided the necessary information for the to-be deported person. Cf. §59.1 AufenthG.

[27] Exceptionally a shorter deadline may be set or a deadline waived if necessary according to public interest, cf. for details §59 Art. 1.1-1.2.

[28] CJEU ruling of 15 February 2023, C-484/22: Revocation of the return decision if family ties and the best interest of the children/ minor asylum seekers are violated.

threats for persons with family ties where the best interests of the child have to be taken into account.

- ***Deportation detention***[29] **(Abschiebungshaft)** (§62 AufenthG) is ordered and enforced if there is a risk of absconding, in the case of unauthorised entry or if the deportation warning cannot be carried out immediately (§62.3 AufenthG). While other measures are preferred, and the detention should be as short as possible, it can be ordered for up to six months with a possible two-month extension.[30] Families with children and minors are to be exempted from detention (§62.1 AufenthG). Deportation detention is used for returns to origin countries and Dublin returns.
- ***Pre-removal detention pending departure*** **(Ausreisegewahrsam)** (§62b AufenthG) is the detention of a foreigner for up to ten days on the basis of a court order to ensure the feasibility of deportation under certain conditions (cf. §62b.1) irrespective of the risk of absconding.[31] Detention pending removal can take place in the transit zone of an airport or in a facility near the border where the expulsion will be enforced. In some cases, these are the same detention facilities used for deportation detention (*Abschiebungshaft*).[32]
- ***Removal following unauthorised entry at/across the border into neighbouring countries*** **(Zurückschiebung)** (§57 AufenthG) refers to the forced return of apprehended foreigners who entered Germany without permission (unauthorised). In line with EU regulation 2016/399 (Art. 2.2 [external border]), they are returned (removal) within a short period after their entry into their country of origin or deported back to the EU or Schengen country that is responsible for them.
- ***Temporary suspension of deportation*** **(Duldung)** (§60a-d AufenthG) is based on international law or humanitarian considerations or to safeguard the political interests of Germany. It can be used to prohibit the deportation of foreigners from/ to specific states for a maximum period of three months in cases where deportation is impossible for factual or legal reasons and no residence title is granted while the temporary presence of the person concerned on German territory is tolerated. A foreigner may be granted a temporary suspension if urgent humanitarian or personal reasons or substantial public interests require his or her temporary continued presence on the territory of Germany. There are various reasons for granting temporary suspension status, such as medical needs, unclear identity status, enrolment in vocational training, and work contract (see Section 5.6).

[29] Or *Sicherungshaft*, i.e. preventive detention.

[30] Absolute maximum for detention is 18 months (§62.4 AufenthG), including preceding so-called preparatory detention (§62c.1 AufenthG)—*ergänzende Vorbereitungshaft*—during the preparation of the deportation warning (§34 AsylG) or if the detainee poses a considerable threat to the public/ to domestic security, etc.

[31] The newly agreed repatriation package (adopted in January 2024, to be in effect in first half of 2024) includes another law on improving returns (*Gesetz zur Verbesserung der Rückführung*), which foresees the extension of *Ausreisegewahrsam* (pre-removal detention pending departure) from 10 days to 28 days. See https://www.bundestag.de/dokumente/textarchiv/2024/kw03-de-rueckfuehrung-986284

[32] Noted by migration lawyer Peter Fahlbusch in the podcast "Abschiebungshaft – Kritik an…" (2023).

5.2 Return at the Border

In compliance with the Schengen Borders Code (Art. 23), the German authorities refuse entry at the border to persons who do not fulfil the entry requirements (authorisation, visa, using an official border crossing point, etc.).[33] The so-called border procedure (*Grenzverfahren*) at land borders allows the police to refuse entry (*Zurückweisung*) to any person within a 30 km strip from the border because the person is considered not to have crossed the border yet (§2, Bundespolizeigesetz). This so-called legal figure (*Rechtsfigur*), otherwise known as fiction of non-entry (cf. §13.2.2 AufenthG), is used to circumvent the practical execution of the Dublin Regulation. A person attempting unauthorized entry is then returned to the bordering country.

The Federal Police (*Bundespolizei*) has applied this procedure at the German–Austrian border since 2015 with border controls which continue to this data. New stationary border controls at the Swiss, Polish and Czech borders began in mid-October 2023 (Migrationsbericht der Bundesregierung, 2022) in accordance with Art. 25-28 of the Schengen Borders Code (temporary reintroduction of border controls at national borders).[34] The latest available data shows a total of 25,538 refusals of entry for 2022 (19,142 of which at the land borders) and 12,589 (9,465 of which at the land borders) for the first half of 2023, including at the borders with Poland and the Czech Republic, Austria, Switzerland[35], France, Luxembourg, Belgium, the Netherlands and Denmark (Deutscher Bundestag, 2023i, p. 8).

There is no documentation on whether and how many removals in border procedures are (il)legal. However, there is increasing evidence of (internal Schengen) pushbacks: For example, at the border with Austria, persons have been returned to Austria without a regular asylum procedure being initiated, although they had repeatedly told German officials—even in the presence of interpreters—that they want to apply for asylum in Germany (Bayerischer Flüchtlingsrat, 2023).[36]

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[33] In accordance with Art. 2.2a of the EU Return Directive, Germany does not apply the directive to TCNs and instead subjects them to Art. 13 (on border surveillance) of the Schengen Borders Code. If a TCN is apprehended by the police near the border before reporting to a reception facility, a police station or an office of the Foreigners Authority and before having been issued an 'arrival certificate', the police are obliged—as part of the entry interview—to ask the TCN whether he/ she intends to apply for asylum. If this is the case, the police must refer the protection seeker to the relevant nearby authority (§18.1 AsylG). Upon arrival at the airport, undocumented migrants shall be given the opportunity to lodge an asylum application at the BAMF branch office affiliated with the border control post.

[34] Border controls at internal borders can be reintroduced for a maximum of six months (Art. 25.4 Schengen Borders Code), and are an option of last resort, conditional upon the existence of a serious threat to public policy or internal security in a member state (Art. 25.1 SBC). The continuous prolongation of border controls at the Austrian–German border is thus de facto unlawful but has been passed because of adjustments in the 'threat' description that justifies the extraordinary measure. Moreover, a CJEU ruling on removals at internal borders of 21 September 2023 that declared extended returns at the French Côte d'Azur to be unlawful is de facto irrelevant for Germany because of exceptional bilateral readmission agreements that Germany had already concluded with all neighbouring countries prior to the entry into force of the EU Return Directive in 2009 (Thym, 2023).

[35] Special bilateral legal arrangements with Switzerland dating back to 1961 (e.g., the most recent *Gemeinsamer Aktionsplan zur Vertiefung der grenzpolizeilichen und migrationspolitischen Zusammenarbeit*–joint action plan to strengthen border police and migration policy cooperation, unpublished) allow the Federal Police to carry out border police controls across the Swiss border (so-called *Zone*), during which German legal and administrative regulations, including those of the Residence Act, may apply. However, if asylum seekers who wish to apply for asylum in Germany are found on Swiss territory (*Zone*), the Dublin Regulations apply, and responsibility lies with the Swiss authorities. See Deutscher Bundestag (2023i, p. 21).

[36] The indicated source contains links to testimonies of those affected by pushbacks (defined as 'informal cross-border expulsion without due process of individuals or groups to another country') which the NGO

In 2022, there were also reports about refusals of entry and pushbacks at the Polish border (Deutscher Bundestag, 2022b; Hoffmann & Bachmann, 2022). According to ProAsyl (2023), several statistical peculiarities and reports lead to the conclusion that systematic returns without border procedures are taking place. These include, in particular, the discrepancy between the number of persons who entered Germany without authorisation (22,824 in 2022) and the number of persons who applied for asylum (only 2,771). (At the same time, more than 10,500 arrivals came from Afghanistan, Syria and Turkey.). Further indicators include the occurrence of asylum applications at different borders (e.g., only 17 per cent of those apprehended at the Austrian border had applied for asylum, compared to 50 per cent at the Czech, Polish and Swiss borders) and the increase in refusals of entry into Switzerland from 94 in 2021 to 3,664 in 2022, as well as the doubling of this type of returns to Austria within the same period (ProAsyl, 2023).

In the so-called airport procedure[37] (*Flughafenverfahren,* §18a AsylG), protection seekers arriving from a so-called safe country of origin (§29a) are prevented from entering Germany until the asylum decision has been taken (protection granted), and they are often housed on the airport premises.[38] The decision has to be made within two days according to the 'principle of immediacy'; however, via the legal counselling and appeal option that foresees max. 14 days of legal summary proceedings, the overall stay in the airport premise can last up to 19 days (BAMF, 2023, p. 45). The airport procedure is in fact an instrument used by the Federal Police to circumvent the non-refoulement principle of the 1951 Refugee Convention because without it, "the Federal Police would have to allow any person who has destroyed their passport and applies for asylum to enter Germany" (BAMF, 2019).

Once the border has been crossed by unauthorised entry (Art 2.2 EU 2016/399), the Residence Act (§57a AufenthG) provides for *Zurückschiebung* (removal following unauthorised entry) if a person is apprehended within six months after entry. This applies to Dublin cases and entrants from so-called safe third countries. In 2022, 4.978 people were removed following unauthorised entry at the German land border, 31 at the sea border, and 171 at airports (Deutscher Bundestag, 2023b, p. 14).[39] They can be removed without warning and without granting a period for voluntary return (Hailbronner, 2017, p. 359).

5.3 Regular Procedure When Issuing a Return Decision

Rejected asylum application

During the asylum process in Germany, the Federal Office for Migration and Refugees (BAMF) examines whether the applicant fulfils the required conditions to be granted one of the four types of protection, i.e. political asylum, refugee status, subsidiary protection or national and federal

Pushback Alarm Austria has systematically documented; they are available at the website of the Border Violence Network, cf. https://borderviolence.eu/

[37] The procedures were based on EU Decisions 2015/1523 of 14 September 2015 and 2015/1601 of 22 September 2015, both since expired. Cf. BAMF, 2019.

[38] This is also the case if the inpatient treatment of an illness of the protection seeker prevents temporary housing on an airport premise. The BAMF has set up an airport branch office in Frankfurt and subordinate offices at the airports in Düsseldorf, Hamburg, Berlin and Munich (BAMF, 2023, p. 45).

[39] According to the same source, of the total number of persons removed at land borders and airports (5.149), 349 were minors, of whom 120 were unaccompanied. The Police Crime Statistics (*Polizeikriminalstatistik*, PKS) records cases of unauthorised entry and re-entry after removal. See Bundeskriminalamt, 2023.

deportation bans.[40] If an asylum application is rejected, the obligation to leave Germany arises from the notice of rejection issued by BAMF. Depending on whether the application is rejected outright (*unzulässig*) or is rejected as 'manifestly unfounded' (*offensichtlich unbegründet*), the person concerned is given a deadline to leave the country voluntarily, in the first case within 30 days, in the second within seven days. During this period, the rejected asylum seeker has one week to file an appeal (*Anfechtungsklage*) with legal assistance at the local administrative court (VG). While the appeal has suspensive effect in the case of 'normal rejections' (§75 AsylG), a separate request for suspensive effects must be filed within one week in the case of manifestly unfounded rejections. Once the action and the application for suspension have been filed, the person threatened with deportation cannot be removed until the court has made its decision. A negative court decision results in a new deadline to leave Germany within 30 days of the decision taking effect and must be communicated to the Foreigners Authority.

The notice of rejection also includes a deportation/ removal warning (§34.1 AsylG) if the deadline for departure is not met.[41] The removal warning serves as a precondition for the initiation of the deportation proceedings, including removal, once the deadline has passed without the person concerned leaving the country. Under European law, a removal warning is considered equivalent to a return decision. The return decision is, therefore, an administrative act; it states that a person is staying in Germany irregularly and orders the person to leave the country.[42] The return decision must be issued in writing and contain a statement of reasons as well as information on available legal remedies (*Rechtsbehelfsbelehrung*). Once issued, there is no time limit on the validity of the return decision.

Some indicative figures are as follows. Every year, more than 50 per cent of all rejected asylum applications are challenged before the local administrative courts (VG). In 2021, the figure was 57.2 per cent, compared with 2020, when 73.3 per cent of all rejections were challenged. Of the 106,137 local court decisions in 2021 on BAMF-rejections of first and second asylum applications, 18.6 per cent were granted protection status and 33.1 per cent of appeals were rejected (Migrationsbericht der Bundesregierung, 2022, p. 95). The total duration of the procedure up to

[40] Deportation bans can relate to an origin country to which removals are prohibited, they can cover a certain defined group of people who are persecuted in the country of origin and thus suspend the potential deportation of members of this group, or they can be issued for a certain time of the year (winter deportation ban) for humanitarian reasons and cover all potential deportees from a certain federal state: In 2023, Germany had national deportation bans for Afghanistan and Iran in place, but the latter expired on 31 December 2023 (Bachmann, 2024). Individual federal states introduced deportation bans for Yezidi women and children from Iraq, e.g., Thuringia on 4 January 2024 for three months, and North Rhine-Westphalia on 18 December 2023 for three months with the option of a further three month-extension (see Santos, 2024; Wolf, 2023). In 2023, Berlin (as a city-state) introduced a temporary general deportation ban during the winter months for the second time (after 2022) suspending deportations for two months from 22 December 2023 to 28 February 2024 (Peter, 2023). This unique humanitarian ban excludes, however, criminal offenders who have been sentenced to pay a fine of more than 50 daily rates and potential attackers/ 'persons posing a threat to public safety' (*Gefährder*). Critics argue that a fine of 50 daily rates is often given for petty offences (*„Bagatelldelikte"*) which means that people who are caught fare dodging are categorized as criminals and thus become subject to deportation (Peter, 2023).

[41] The deportation/ removal warning must specify the country to which the person concerned is to be removed, if necessary, and in such a way that the person concerned can also be removed to another state to which he/she is entitled to enter or which is obliged to admit him or her (§ 59.2 AufenthG).

[42] In contrast to the EC Recommendation, the return decision does not contain the information that the person concerned has to leave the Schengen area or the EU to comply with the obligation to leave. See Flüchtlingsrat Thüringen e.V., 2016, p. 2.

the final adjudication, that is including the appeal and the decision by the administrative court, has increased over time (2016 = 8.7 months, 2018 = 17.6 months, 2020 = 25.9 months).[43]

Expiry, withdrawal or revocation of a residence title

If a third-country national (TCN) is obliged to leave the country because his or her residence title has expired, been withdrawn or was lost, the competent Foreigners Authority issues a return decision (§50.1 AufenthG, §59.1 AufenthG in combination with §71.1 AufenthG). In another scenario, the BAMF revokes the recognition of asylum, the granting of refugee status, the granting of subsidiary protection or terminates national deportation bans (§60.5/7 AufenthG) if the conditions for these no longer exist or the criteria are no longer met. The protection status is withdrawn (a) if the persecution situation in the country of origin has changed permanently or is no longer applicable and the persons concerned would no longer be in danger if they were to return, (b) if it was granted on the basis of incorrect information or failure to disclose essential facts, (c) because the foreigner has become a criminal offender or represents a threat to domestic security and his/ her continued presence gives rise to a (serious/ particularly serious) interest in expulsion on the part of the authorities. (§54.1.2/4). The BAMF initiates a revocation assessment upon receipt of an investigation request from the responsible Foreigners Authority or other authorities.[44] The BAMF communicates the result of the revocation examination to the Foreigners Authority and notifies the person whose status has been examined. In the event of revocation or withdrawal, the foreigner can file an appeal against the decision; if successful, he or she can continue to enjoy the residence title 'for other reasons'. Even if no revocation or withdrawal takes place after a review of the protection granted, subsequent attempts at revocation and enforcement are not ruled out.[45]

5.4 Special Cases and Their Relation to the Obligation to Issue a Return Decision

Exceptional situations and interest in expulsion

As an exception for particularly dangerous situations (potential offenders), a removal order pursuant to §58a (AufenthG) contains an expulsion order and the corresponding enforcement order. It can serve as grounds for detention if the removal cannot be enforced immediately (§62.3.1a AufenthG). In the case of a refusal of entry or removal following an unauthorised entry at the border, no return decision is issued. Refusal of entry and removal following an unauthorised entry can be enforced without a preliminary warning or period for voluntary departure and are

[43] According to observers, this increase is mainly due to the high number of poor and flawed asylum decisions issued by the BAMF. Almost one-third of all decisions issued by the BAMF were found to be incorrect and unlawful by the courts following an appeal. Cf. Deutscher Bundestag, 2022a, p. 2.

[44] Since 2018, the protection status beneficiaries have to participate in the examination upon request of the BAMF (see BAMF, 2023).

[45] The number of annual revocation examinations has risen enormously over the period from 2016 to 2022. While their number was 3,170 in 2016, it rose to more than 77,000 in 2017, around 200,000 in 2018 and 2019, respectively, and 188,000 in 2020 (Deutscher Bundestag, 2018, 2021). However, actual revocations were very low in 2020 and 2019, at around 3.4 per cent each year. Critics question the justification for the increase in the number of BAMF staff dealing exclusively with asylum revocation procedures (268 employees in 2018 vs. 797 at the end of 2019 and 482 in 2021). The regular revocation reviews every three to five years are a unique practice in Germany and not common in other European Union member states. The current government has changed its policy to carry out ad hoc revocation reviews instead (Deutscher Bundestag, 2022a).

not covered by the provisions of the EU Return Directive (Hailbronner, 2017, p. 359). This de facto deprives people affected of their right to apply for asylum.

Accelerated asylum procedures and orderly return

Applicants from so-called safe countries of origin, those applying a second time (*Folgeantrag*), those who deceive the authorities by withholding identity information, those who refuse to be fingerprinted and those who pose a potential threat to internal security can be subject to accelerated asylum procedures (§30a AsylG), in which case, a decision is to be made within one week. However, the average duration in 2021 was 3.3 months; the share of accelerated procedures in the total number of decisions was 0.2 per cent (Deutscher Bundestag, 2023e).

Refusal of entry under the notion of 'safe third countries': Removal without issuing a return decision

In the case of refusal of entry or removal following unauthorised entry, no return decision is issued, and no entry ban is imposed. On the basis of administrative agreements and special administrative readmission programmes between the German Federal Ministry of the Interior (BMI), the Greek Ministry of Migration and the Spanish Ministry of the Interior on the refusal of asylum seekers (Deutscher Bundestag, 2023j, p. 34), the Federal Police in 2018 was able to refuse entry at the border to Austria and forcibly return persons to Greece and Spain within 48 hours if they had previously applied for asylum there (Hoffmeyer-Zlotnik, 2022).[46] This practice constitutes a means to avoid official Dublin transfers (comparable with refusals of entry from the territory of Germany's neighbours, cf. Section 5.2 Return at the Border). Between August 2018 and May 2021, 46 persons were returned to Greece and four to Spain. As refusal of entry can only be enforced at borders with mobile/ temporary or stationary border controls, the statistics do not include cases of refusals of entry from the German–Polish border in connection with the humanitarian crisis at the Polish–Belarusian border in 2021/22, as these refusals of entry are illegal. Accordingly, apprehended TCNs were directed to reception facilities close to the border, and police controls focused on search operations to detect potential smuggling activities (Hoffmeyer-Zlotnik, 2022).

Return decisions for Dublin cases from Greece—at the end of 2022, approximately 41,000 persons[47] with a presumed protection status in Greece were residing as asylum seekers in Germany (Deutscher Bundestag, 2023d)—had been postponed in 2020 until April 2022. Court rulings clarified that it was not permissible to return people with refugee status from Germany to Greece due to the miserable housing and survival conditions and the exposure to discrimination and human rights violations. Nevertheless, Germany had sent 10,427 requests for Dublin transfers to Greece, but only one transfer took place (Hoffmeyer-Zlotnik, 2022) during that period, none in 2022 (Deutscher Bundestag, 2023d, p. 36). In 2022, there were 212 transfers from Greece to Germany, including 208 for 'family reasons' (Deutscher Bundestag, 2023d, p. 38). In new decisions on applicants from Greece since April 2022, BAMF reviews the protection status the applicants received in Greece. There are several cases in which applicants were granted subsidiary protection in Germany even though they had been granted refugee status in Greece

[46] After two forced returns were challenged before a Munich court, the Federal Police was obliged to return asylum seekers from Greece in two cases in 2019 and 2021. While further cases were pending, in May 2021, the court ruled in a temporary injunction that the Dublin Regulation had to be applied instead of the procedure foreseen by the Administrative Regulations Agreements, and that the removal could not take place without an examination by BAMF. By 2023, the court had rejected two summary judicial proceedings, causing the BMI to insist on its legal opinion. Cf. Deutscher Bundestag (2023i, p. 26).

[47] In 2021 alone, 29,508 persons applied for protection in Germany while holding a protection status in Greece.

(Deutscher Bundestag, 2023d). In three per cent of the applications reviewed, the cases were rejected (outright).

Dublin III transfers to/ from Poland (4,482 requests by Germany in 2022) are similarly controversial because the Polish authorities legalized and carried out pushbacks at the border with Belarus and detained protection seekers who had entered Poland under inhumane conditions and violations of their human rights (Deutscher Bundestag, 2023d).

5.5 Voluntary Departures

An emphasis on voluntary return is also one of the fundamental principles set out in the EU Return Directive. "Voluntary, assisted return is an integral part of migration policy and migration management in Germany" (Kothe et al., 2023, p. 14). German migration authorities seek ways to facilitate the voluntary departure of rejected asylum seekers and migrants in irregular situations. The German Residence Act gives priority to voluntary departure over deportation. The consensus for this prioritisation is that voluntary departures are low-cost and more humane than forced removals (Olivier-Mensah et al., 2020; Koch et al., 2023). This perspective was also confirmed by ministerial representatives the authors met in an exchange meeting. They underlined that the "focus should be on voluntary return rather than deportation, as the former is less costly, more legitimate and more humanitarian"; measures could be better if more development components could be integrated" (Stakeholder Expert Panel Notes, 12 December 2023).

Germany's voluntary return landscape consists of multiple actors, their networks and variations in practice. Actors involved in voluntary return have discretionary powers and considerable scope for implementation (Grote, 2015). Besides government-assisted repatriation programmes, support for returns is also provided by the states and municipalities, creating multiple pathways for voluntary return but also challenges in coordination (Vollmer & Mencutek, 2023). Some return-related tasks, such as return counselling, are delegated to local or Foreigners Authorities and welfare associations. As a result, their implementation and outcomes vary (Feneberg, 2019). Since March 2017, to enable coordination, the Repatriation Support Centre *(*Gemeinsames Zentrum zur Unterstützung der Rückkehr, ZUR*),* which is part of the BMI, has been aiming to "improve operative coordination of the Federal and Land authorities in the area of voluntary and forced return" (Hoffmeyer-Zlotnik, 2017).

As 'voluntary departure' means compliance with the obligation to return within the time limit set for this purpose in the return decision (European Commission, 2008, p. 6), the question of time limits is critical but also quite technical and case-specific. In law, Germany complies with the EU Return Directive, which states that "a return decision shall provide for an appropriate period for voluntary departure of between seven and thirty days" (Return Directive 2008, Article 7). However, the exact length of the voluntary departure period depends on the decision by the BAMF. If the asylum application is manifestly unfounded, the person concerned must leave the country within seven days (Section 36 subs. 1 AsylG); if the application is rejected for other reasons, the period is 30 days (Section 38 subs. 1 AsylG). However, the Foreigners Authority can decide on the person's a quick departure if it is justified by a threat to the public interest, public safety or law and order. During determined time limits (7-30 days) period, the Foreigners Authorities can impose certain obligations on persons obliged to leave the country to ensure that they actually leave the country (Hoffmeyer-Zlotnik, 2017, p. 5). Even when a removal order under the Dublin procedure is issued, no time limit is set for leaving the country. Depending on the specific circumstances of an individual case, the period for voluntary departure can be extended,

for example in the case of children who needs caring of parent(s), an application to an assistance programme that often takes more than 30 days or appeals by legal representatives against the asylum procedure as well as if there is a suspicion that the person is the victim of human trafficking or illegal employment (Hoffmeyer-Zlotnik, 2017). A general criticism of the legislation and implementation is that the time period is too short to make an informed decision about voluntary departure and to prepare and implement a voluntary departure procedure (Grote, 2015). On the other hand, authorities are concerned about people absconding if longer periods for voluntary departure are granted. In October 2023, the German government presented a repatriation package, approved by the Cabinet, "which includes swifter deportation of criminals" (Bundesregierung, 2023). However, the package did not include an item on voluntary departures.

German return actors have several instruments at their disposal when it comes to voluntary departures. The dissemination of information to raise awareness is where many concrete tools have been put into practice. For example, one focus has been on raising awareness of the legal consequences of forced removal and absconding (e.g. longer re-entry bans and obligation to bear the repatriation costs). Several information channels are introduced to spread the message, such as hotlines or a sophisticated information portal on return, online counselling, a video explaining how voluntary return works, and the distribution of a return information package during the asylum application (Hoffmeyer-Zlotnik, 2017, p. 75).

As suggested in the EU Return Directive (2008, p.2), Germany seeks to provide enhanced return assistance as an incentive. The two main instruments offered by the German authorities to facilitate voluntary departures are counselling and financial assistance in the pre-return phase and reintegration assistance for the post-return phase. As with other return-related issues, there is considerable variation between the federal states in their return counselling and financial assistance programmes for return and reintegration. They include measures on 'in-kind' benefits at the place of return, such as housing assistance and reintegration support services, such as job search assistance or psychosocial services.

Voluntary return assistance programs are not new to the German migration landscape. The REAG programme, which covers travel costs and allowances, was launched in 1979 by the then Federal Ministry for Family Affairs, Youth and Health and has since been implemented by the IOM (Kothe et al., 2023, p. 14). Another programme, GARP, was introduced and financed by the Federal Ministry of the Interior in 1989 as an additional component to provide initial start-up assistance to people returning or moving on. In 2000, when the Federal Ministry of the Interior took over responsibility for both programmes, they were merged into the REAG/GARP programme, which is financed by the federal government and state governments. Different criteria, such as nationality, country of return, financial status or age, determine eligibility for support. StarthilfePlus was developed as a supplementary support programme for migrants who were returning within the framework of REAG/GARP. Since 2017, this BAMF-funded programme has supported the reintegration of people in the countries of return. The programme mainly addresses people who are awaiting a decision on their asylum application or whose application has been rejected. When the programme was developed in 2017, two funding levels were provided, depending on the timing of the return decision (Kothe et al., 2023, p. 15). To simplify the programme, it was further developed in 2019 and consisted of three components between 2019 and 2022, which—unlike the funding levels in 2017 and 2018—were linked to the countries of return (Kothe et al., 2023, p. 16). Since 2023, the StarthilfePlus programme has been continuously developed and monitored on the basis of the needs of returnees, internal evaluation reports and the situation in the countries of origin (Kothe et al., 2023, p. 17).

The current return and reintegration programme aims to assist a wide range of people. According to the official website returningfromgermany.de four categories of non-EU nationals can apply for voluntary return assistance. The categories include "1) those who are currently in the asylum procedure, 2) those whose asylum application has been rejected and are obliged to leave the country, 3) those who are entitled to asylum or have discretionary leave to remain, 4) those who have become victims of human trafficking or forced prostitution."[48] Another category that can apply for assistance is EU nationals who have been victims of human trafficking or forced prostitution.[49] As can be seen from the wide range of categories, assisted return does not only target rejected asylum seekers; it is increasingly embedded in the earlier stages of the asylum procedure and in various categories. However, the Expert Council on Integration and Migration (Sachverständigenrat für Integration und Migration) and ProAsyl highly criticise the approach of offering a special bonus to persuade asylum seekers to withdraw their application a return (Hoffmeyer-Zlotnik, 2017, p. 23). It should be underlined that as of December 2023, returns to Afghanistan, Syria, Libya, Yemen or Ukraine are not supported, while voluntary return to Eritrea and Somalia has to be assessed on a case-by-case basis. [50] When a person decides on voluntary return, they need to apply for REAG/GARP through a counselling centre, independent (e.g. organisations/charities) or governmental counselling centres.

The budgetary costs of return and reintegration programmes are not systematically recorded at the national level in Germany. The federal states run their own funding schemes and are not obliged to share these costs nationally (Oomkens & Kalir, 2020; Rietig & Günnewig, 2020). Furthermore, in some federal states, municipalities run regional AVR programmes, which diffuses clarity on programmes' responsibility and budgetary issues (Oomkens & Kalir, 2020). Some available cost figures on the national level belong to the REAG/GARP and Starthilfe Plus programmes. For example, Rietig & Günnewig note that "in 2017 and 2018, Germany spent around 30 million euros on each of the REAG/GARP and Starthilfe Plus programs" (2020, p. 18). In response to parliamentary questions asked in November 2018, the federal government disclosed that the total financial allocation for the REAG/GARP schemes from 2013 to 2017 (including federal and state funding) was 78,454,955.13 Euro (Oomkens & Kalir, 2020, p. 71).

The German federal authorities pay special attention to return counselling as suggested in the EU Return Directive, on the assumption that counsellors can help migrants to familiarise themselves with the opportunities and challenges upon return to their origin country and with potential support to re-establish their lives. As of 2023, BAMF reports that "more than 1000 state and non-governmental return counselling centres support people interested in returning to make an informed return decision." Despite ongoing efforts in various federal states, structural problems such as fragmented legal frameworks, insufficient resources and coordination problems among related stakeholders in the migrant destination and origin countries hinder the way to high-quality counselling. Also, current practices indicate that some counselling efforts often fail to address migrants' individual needs, receiving communities' complex characteristics and managing expectations of returnees in the process. There is still no consensus on the impact of the different counselling models/techniques (e.g. reintegration scouts, decelerating benefits model, training, motivational interview techniques) used and which are most effective (Mencutek, 2023). The content and quality of return counselling in Germany varies due to the complex and constantly changing return regime. As a result of the diverse counselling landscape, the federal

[48] See https://www.returningfromgermany.de/en/
[49] See https://www.returningfromgermany.de/en/
[50] See https://www.returningfromgermany.de/en/

and state governments have agreed on a standard guideline document (BMI & BAMF, 2023). Research has also shown that the offer of assisted return is not necessarily attractive to the many migrants from countries outside Europe who are obliged to leave the country, such as Iraqis, Afghans or West African migrants. Even if they are partial data, figures and investments on voluntary return in Germany show that investments in voluntary return programmes have increased slightly since 2017 in line with EC recommendations, while the number of returns has not increased significantly (Oomkens & Kalir, 2020).

The biggest challenge for the authorities is to verify whether departure is voluntary or not. A so-called border crossing certificate often verifies the voluntary departure. If this is not confirmed by the certificate or other means (e.g. a ticket), the police can use their search tools to locate and apprehend the person. The person may also be entered into the Schengen Information System. However, it is known that the German authority, the Central Register of Foreigners (Ausländerzentralregister, AZR), does not fully record the number of unassisted voluntary departures (Hoffmeyer-Zlotnik, 2017). According to practitioners, as of late 2023, there has been a better working system for the collection of 'reliable' data by the state authorities (Stakeholder Expert Panel Notes, 12.12.2023). The details and evaluation of all available assisted return and reintegration programmes at the federal, state and municipal level are beyond the scope of this mapping exercise. Actors, practices and materials used for assisted return programmes will be further explored in the GAPs's work package on return infrastructure.

5.6 Forced Return/ Removal/ Exit

Two main categories of forced return/ removal can be distinguished in Germany. These are based on the type of stay and its legal basis (see Section 5.3 above).

On the one hand, **expulsion** (§53 AufenthG) (see Section 5.1 in this report) can be directed against **foreigners whose stay in Germany poses a threat to public order and domestic security**, irrespective of the residence status they enjoy (asylum seeker, refugee status, permanent residence permit, temporary tolerated status, etc.). A supreme state authority (oberste Landesbehörde) can issue a removal/ deportation order ("*Abschiebungsanordnung*" - §58a AufenthG) against a foreigner without a prior expulsion order on the basis of an objective prognosis to avert a particular threat to domestic security or a terrorist threat. The deportation order contains an expulsion order and the relevant order of enforcement; thus, it is immediately enforceable by the Federal Police and does not require prior announcement threatening deportation, i.e., a removal/deportation warning (*Abschiebungsandrohung*).

On the other hand, **rejected asylum seekers** whom BAMF considers not entitled to protection in Germany are subject to **forced return** if they do not leave the country voluntarily within the deadline specified in their removal warning and if they are deportable (§34.1 AsylG), i.e., if the obligation to leave the country can be enforced because there are no circumstances, which would require toleration in Germany (see below), and if it seems necessary to supervise their departure. As a rule, the removal warning is issued together with the rejection notice. A removal/ deportation order (*Abschiebungsanordnung,* §34a AsylG) is issued to a foreigner who is to be returned to a safe third country or for whom a third country is responsible for the asylum procedure, as soon as it is clear that the deportation is enforceable. If this is the case, a preceding removal warning is not necessary. If the deportation is not enforceable, only the removal warning (*Abschiebungsandrohung*) to the country in question will be valid—with the mentioning of a

deadline for departure and a listing of the countries into which deportation of the person is not permissible.

Both categories of removal are not permitted to a country in which the life or freedom of the deportee is threatened on account of their race, religion, nationality, membership of a particular social group or because of their political convictions, exposure to serious harm, persecution, etc. (§60.1-10 AufenthG). A foreigner threatened with deportation to such a state can invoke the prohibition of deportation under the refugee clause (application for refugee status), which is then examined by the BAMF in an asylum procedure (if such a procedure is not already underway at the time the obligation to leave the country is announced).

Remedies against a removal order: Temporary suspension of deportation (Duldung)

According to §60a AufenthG, the supreme state authority (oberste Landesbehörde) can temporarily suspend the deportation of foreigners from certain countries of origin or certain groups of foreigners for a maximum period of three months on grounds of international law, for humanitarian reasons or to safeguard political interests. This is known as temporary suspension of deportation (*Duldung*). It comes into effect when deportation cannot be enforced for legal[51] or other[52] reasons, including those related to the situation in the country of origin or transit, which is responsible for the protection seeker's asylum procedure and when, at the same time, the person does not qualify for any type of residence title (*Aufenthaltserlaubnis*) (§60a.2 AufenthG). What has remained constant in recent years is that about four out of five people who would be obliged to leave Germany by a BAMF decision have received a temporary suspension of deportation (*Duldung)*, which means that they do not have a residence title but cannot be forced to leave as long as the reasons for the suspension remain unchanged. The suspension of deportation does not affect the obligation to leave the country (§60a.3 AufenthG). The suspension of deportation is documented by written notice (§60a.4 AufenthG), and the responsible Foreigners Authority can revoke a temporary suspension at any time and revoke or extend it at the latest before the end of a suspension period. The suspension will be revoked if the reasons preventing deportation no longer apply. If this is the case, the person will be deported

[51] This may be the case if a suspension becomes necessary because the public prosecutor's office or the criminal court deem a person's temporary presence in Germany to be appropriate for criminal proceedings relating to a crime. In addition, the person cannot be deported for seven days after a failed deportation attempt or border removal and the non-application of deportation detention (§60a.2a AufenthG). A legal suspension is also necessary if the country of origin is unwilling to cooperate and readmit the person.

[52] A foreigner may also be granted a suspension if urgent humanitarian or personal reasons or substantial public interests require their temporary continued presence in the federal territory, such as the notarisation of the acknwledgement of paternity, etc., for the duration of the court proceedings. Likewise, the deportation of a minor's parents and siblings with residence status according to §25a.1 AufenthG, who live as a family with the former is to be suspended (§60a.2b AufenthG). Moreover, if the deportee has medical proof that a deportation would deteriorate their state of health significantly or if the deportee is pregnant, the removal is to be suspended (§60a.2c-d). Pregnant migrant women whose status is unclear can apply for *Schwangerschaftsduldung* (temporary suspension of deportation on the grounds of pregnancy), e.g., in Berlin at the Foreigners' Authority three months before the expected birth, and suspension can last until three months after (cf. Suerbaum, 2021). If the child is born to a father of German nationality, the child can be granted German nationality, and the custodial mother is entitled to reside in Germany. The conditions for suspending deportation due to health concerns were made more restrictive by the 2017 Act to Improve the Enforcement of the Obligation to Leave the Country.

immediately upon expiry of the suspension of deportation without further warning or setting a deadline unless the suspension is renewed (§60a.5 AufenthG).[53]

Often, a suspension is extended over several years, resulting in a series of renewals (*Kettenduldung*). Since 2020, more extended periods of suspension have been granted to those who are in vocational training (max. three years) (*Ausbildungsduldung*, §60c AufenthG) or are employed (two and a half years) (*Beschäftigungsduldung*, §60d AufenthG).[54] A newly introduced type of suspension is the so-called '*Duldung*-light' for persons whose identity is not verified (§60b AufenthG), that is for those protection seekers who do not actively cooperate in clarifying their identity and do not present a personal identification document such as a passport that can be used as proof of identity.[55]

The temporary suspension is discussed critically among academics. It denotes a non-status for very heterogeneous groups of people without regularising their presence in Germany, and, according to Schütze (2022), the interpretation of temporary suspension as a durable solution for non-deported migrants without international protection does not hold. Instead, restrictions outweigh the rights associated with the (non-)status of temporary suspension (Schütze, 2022, p. 426). In recent years, the rights of tolerated persons have been increasingly differentiated by successive new legal regulations. Newly introduced classification distinctions between deserving tolerated persons, those who are permanently excluded because their identity is unclear, and those who are undesirable because they come from so-called safe countries of origin have problematic consequences for those affected (see Nachtigall, 2020, p. 276ff). In particular, limbo situations ('the politics of endless temporariness') violate the human dignity of those concerned (Schütze, 2022, p. 423). Moreover, temporary suspension has increasingly been linked to security policy, as Schütze (2022, p. 421) notes, "In the debates, disenfranchisement of persons with a Duldung was often justified by a criminalisation discourse", fuelling the political discourse on 'persons posing a threat to public safety', so-called *Gefährder* (Schütze, 2022, p. 422).

Operational enforcement of removal and modes of transport

In most cases, the state police authorities support the Foreigners Authorities in actual removal measures; in some cases, special state agencies (Lower Saxony) or the Foreigners Authority itself (Hamburg, Schleswig Holstein) organise and carry out the transport of the deportees to the German border or airport. At airports, the Federal Police take over. There are two types of removal

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[53] If deportation has been suspended for more than one year, the deportation provided for by revocation must be announced at least one month in advance; the announcement must be repeated if the suspension has been renewed for more than one year (§60a AufenthG).

[54] According to Peitz (2023, p. 4), the 2023 Law on further skilled labour immigration (*Gesetz zur Weiterentwicklung der Fachkräfteeinwanderung*) allows for *Ausbildungsduldung* resulting in a residence permit according to §16g AufenthG.

[55] Cf. Second Act to Improve the Enforcement of the Obligation to Leave the Country ('Orderly Return Law') (*Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht* [*Geordnete Rückkehr-Gesetz*], 2019). Persons with the "Duldung light" status are subject to the condition of having a fixed place of residence (*Wohnsitzauflage*). Of the 136,542 asylum applications submitted in 2022, 50.6 per cent were of unclear identity/ without identity papers (Deutscher Bundestag, 2023f). New legal provisions (2017 Act to Improve the Enforcement of the Obligation to Leave the Country - G*esetz zur besseren Durchsetzung der Ausreisepflicht*), which allow a search on applicants' data carriers (mobile phones, clouds, etc.) for the purpose of identity clarification, have not proved effective in clarifying identity, according to a parliamentary request (Deutscher Bundestag, 2023f), as, for instance, 69.9 per cent of the 4,278 approved data carrier checks and 3,726 results did not yield usable results, in 27 per cent of cases, the identity was confirmed, in 3.1 per cent of cases (117) the identity was proven to be false.

by air: accompanied by Federal Police[56] or airline security personnel or unaccompanied. In both scenarios, it depends on the deportees' ability to make the flight attendants aware of his/ her unwillingness to be deported to prevent the execution of the removal.[57]

The operational dimension of deportations is not fully transparent, raising questions about human rights violations. There are reports of abuse of power by the police/ security personnel involved (Rietig & Günnewig, 2020), including police violence, family separation, shackling and forced medication (Deutscher Bundestag, 2023h, p. 1).[58] While it is legal to restrain deportees with so-called aids of physical violence (handcuffs, shackles, steel manacles and body cuffs) in cases of resistance, a recent analysis found that deportations to certain destination countries (Senegal, Algeria, Ethiopia) more often, even frequently used aids of physical violence (Deutscher Bundestag, 2023b). In 2022, however, the overall use of aids of physical violence documented by the authorities in charge amounted to six per cent of all deportations[59]; for the period between 2015 and 2019, research found a huge increase in the use of violence, from 130 to almost 1,800 cases (Rietig & Günnewig, 2020). Return operations are carried out by scheduled or chartered flights, with the latter option being used for an increasing number of collective deportations in recent years[60], sometimes in cooperation with other countries. In 2021, Frontex financed 98.8 per cent of these deportations (5,394 out of 5,462 removals). Mini-charter flights for up to four deportees have become common since 2017, in particular for deportations to Turkey and for Dublin deportations.[61] The use of the scheduled flights for deportations is based on bilateral agreements between the Federal Police (Central Bureau) and several airlines.[62] Aircraft captains

[56] Federal police officers receive special training in accompanying deportees leaving the country by air. In 2022, 9,118 officers of the federal or state police or other authorities accompanied 4,620 deportees (of which, 8,721 Federal Police officers accompanied 4,406 deportees) in the framework of deportations (Deutscher Bundestag, 2023b). For a comparison, the number of deportations accompanied by airline security amounted to 1,637; the number of unaccompanied deportations amounted to 6,348.

[57] In such cases, the pilot as the authority ultimately responsible for the flight, refuses to take the deportee/s on the grounds that a deportee could compromise flight safety, resulting in the cancellation of the deportation on that day. For example, in 2017, pilots refused to take deportees on their flights in more than 200 cases (Leubecher, 2017). In 2018, 506 deportations failed due to pilot refusals (Litschko, 2019). While human rights advocacy groups praise the moral courage of the pilots, the Federal Police contests the pilots' decisions, arguing that in those cases where Federal Police officers accompany deportees, they ensure flight safety. The Federal Police also argues that the fixation of resistant deportees with shackles for immobilisation is done for flight safety (cf. Leubecher, 2017).

[58] The Council of Europe's Committee for the Prevention of Torture published a critical report by its delegation that accompanied a deportation flight from Munich to Kabul in 2019, see CPT, 2019. Further, the portal "Abschiebungsreporting NRW" project documents disproportionate deportations since 2021 for the State of North Rhine-Westphalia. See https://www.abschiebungsreporting.de

[59] In particular, a high incidence of the use of restraints has also been recorded in deportations to Nigeria, Afghanistan, and Ghana (Deutscher Bundestag, 2023b). Aids of physical violence were used in 716 deportation cases in 2021 (Deutscher Bundestag, 2023b) and in 800 cases in 2022 (Deutscher Bundestag, 2023h, p. 2).

[60] In 2021, collective/ group deportations in chartered flights accounted for 46 per cent of all deportations (2020: 37 per cent, 2019: 27 per cent). See Deutscher Bundestag, 2023b.

[61] For details see Deutscher Bundestag, 2023b. For 2021, 23 group deportations in mini-charter flights are documented; in 2022, 91 persons were deported via 24 charter flights, of which Frontex led one operation at a cost of 20,875 EUR; Frontex may have been involved in other operations as well.

[62] Since 2019, the German government has classified information on which airlines are used for deportations fearing public criticism and the subsequent withdrawal of airlines from transport contracts due to public pressure (Deutscher Bundestag. 2023b). Between 2017 and 2019, the German airline Lufthansa was the number one deportation carrier (Deutscher Bundestag, 2019). See information on charter deportation carriers for 2020 on these websites: https://noborderassembly.blackblogs.org/abschiebe-alarm/ and for 2021: https://deportationalarm.com/

have the right to refuse to carry deportees if they fear consequences for travel safety during the flight; however, the number of cancelled flights related to this right has remained very low.

Forced return monitoring procedures

While the EU Return Directive (Article 8(6)) obliges member states to establish "an effective system for monitoring returns", the German government claims to already have such a system in place with the judicial appeal system (courts), administrative checks and balances (Rietig & Günnewig, 2020, p. 42), as well as selective monitoring of deportation at airports by NGOs[63] and the National Agency for the prevention of torture (Nationale Stelle zur Verhütung von Folter).[64] The existing mechanisms do not fully comply with the standards of the EU Agency for Fundamental Rights (FRA); Germany has no return monitoring law and no systematic independent oversight over the entire deportation process[65] established (FRA, 2022). In the case of deportation flights organised by Frontex, the border agency's 'forced return monitors' are present throughout the process. The rights of deportees are limited to lodging a complaint with Frontex; however, Frontex is responsible for assessing the complaint's legitimacy.[66] An ombudsman institution does not yet exist in the German return system. The problems with monitoring and transparency raise questions about possible human rights violations in practice.

5.7 Return of unaccompanied minors

According to §58.1a AufenthG, before deporting an unaccompanied minor[67] (UAM), the returning authority must ensure that they are handed over to a family member, a person entitled to personal care or a suitable reception facility in the country of return. If these conditions cannot be met, removal is not legally possible and a suspension of removal must be granted. Nor can a removal warning and deportation order be issued if the examination has shown that there is no possibility for the UAM to be accepted in the country of origin or a safe third country.[68] Only in exceptional circumstances can a UAM be kept in deportation detention (§62 AufenthG), in which case compliance with Article 17 of the EUReturn Directive (2008) concerning age-specific requirements has to be observed.

In 2022, around 120 unaccompanied minors were removed at the border crossing following unauthorised entry (*Zurückschiebung*) (Deutscher Bundestag, 2023b, p. 15) while in the same year, of a total of 7,277 unaccompanied minors apprehended at German borders, 1,945 were

[63] In Germany, there are currently independent deportation observers and mixed forums at the following airports: Berlin, Düsseldorf, Cologne/ Bonn, Hamburg, Frankfurt and Leipzig/ Halle. The Berlin 'Forum' monitoring deportation includes members of the Federal Police, federal and state authorities involved in deportation procedures, churches, welfare associations, UNHCR, Amnesty International and ProAsyl. See Caritas, 2023.

[64] Together with the Joint Commission of the States (*Länder*), it was designated the OP-CAT/ UN Treaty Against Torture's National Preventive Mechanism. While the federal body deals with federal institutions, the states' commission deals with states' authorities. See the website of the UN National Preventive Mechanisms, Subcommittee on Prevention of Torture: https://www.ohchr.org/en/treaty-bodies/spt/national-preventive-mechanisms

[65] There is no monitoring at the pick-up of deportees from the shelters and during the flight.

[66] For further details, e.g., voluntary commitments of Federal Police and Frontex officers, see Rietig & Günnewig (2020, p. 43).

[67] In the German asylum procedure, children and young people under the age of 18 are considered minors.

[68] The German principle is '*Keine Abschiebungsandrohung ohne konkret-individuelle Aufnahmemöglichkeit*' ('No deportation warning without concrete, individualised possibility of admission'.

refused entry (*Zurückweisung*)[69], and 4,857 were handed over to the youth welfare office (*Jugendamt*) in accordance with §§42a to §42 SGB VIII (German Social Code Book 8/ *Achtes Buch Sozialgesetzbuch*) (Deutscher Bundestag, 2023i, pp. 13-16). Of the asylum applications submitted by unaccompanied minors in 2021-22, 269 were rejected in 2021, and 220 in 2022 (incl. removal warnings to countries of origin, such as Afghanistan in 2021:106, 2022: 4). In the case of forced return, unaccompanied minors may be granted reception assistance (meeting the minor at the gate, assisting them during entry controls and handing them over to the person authorised to meet them according to IOM (2018, p. 8). The authors were unable to identify other specific German provisions.

Unaccompanied minors in Germany are usually granted a suspension of deportation; as asylum seekers under the age of 18, they do not have the ability to act within the asylum procedure. Until adulthood, they are assigned a legal guardian who can submit an asylum application on their behalf in writing to BAMF. According to the 2017 Act to Improve the Enforcement to Leave the Country, the youth welfare office is to immediately submit an asylum application for the child/ young person immediately in cases where it can be assumed that international protection is required (§1.1.2 AsylG).[70] If asylum is not applied for before the minor reaches the age of 18, they lose protection from deportation on their 18th birthday, including all associated rights/ entitlements (Suerbaum, 2021, p. 29). The prospect of remaining in the country after reaching the age of majority determines the person's integration and protection options. For example, if an unaccompanied minor has been residing in Germany for at least six years without interruption on a tolerated or permitted basis or with a residence permit for humanitarian reasons and if it seems certain that they will be able to integrate, they may be granted a residence permit for humanitarian reasons in accordance with §23.1.1 AufenthG (§104a AufenthG). The person is also entitled to a temporary suspension of removal if they are enrolled in vocational training and a residence permit if employed.

According to EU law (Procedures Directive 2013/32/EU), a guardian should be appointed for the asylum process to comply with the requirements to consider the best interests of the unaccompanied minor. Unaccompanied minors above the age of five and up to the age of 13 can be heard; it should be clarified with the guardian whether s/he considers a formal hearing useful and possible. Alternatively, a written statement from the guardian may replace a hearing in an asylum procedure. From the age of 14, minors must be heard, but a hearing can be waived if the asylum application is accepted.

[69] It remains unclear to what extent unauthorised entries are counted more than once, as no personal data is obtained from those who are refused entry at the border (*Zurückweisungen*), see Deutscher Bundestag, 2023i, p. 18. Regarding the fulfilment of the overriding consideration of the best interests of the child, the German government claims that international protection regulations are fully taken into account. For example, the competent authorities of the country of destination must be informed in good time; the border authority ensures that the minor is handed over to a family member, a nominated guardian or a suitable reception centre, see Deutscher Bundestag, 2023j, p. 7.

[70] The youth welfare office is entitled and obliged to carry out all legal acts necessary for the welfare of the child or young person. BAMF employs trained special representatives for UAM hearings and is committed to safeguarding the best interests of the child at every step of the asylum procedure. Long-term limbo situations are to be avoided in the best interest of the child, according to government sources. However, the duration of an asylum procedure until a decision is made is considered to be very long and causes major stress (BMFSFJ, 2023, pp. 103, 105).

5.8 Entry bans

Delayed voluntary departures and forced removals/ deportations are subject to a re-entry ban of a maximum of five[71] or, in exceptional cases, ten or twenty[72] years, depending on individual circumstances (§11.1./7 AufenthG and §34/34a/35 AsylG). According to §11.1 AufenthG, an entry ban arises by deportation, i.e. by law in each case of deportation (*Abschiebung*). This contradicts Section. 3.6 of the EU Return Directive (2008), according to which an entry ban is an "official or judicial decision", not a decision of a legislator (Oberhäuser, 2019, p. 12). Moreover, according to §11.7 AufenthG, TCNs from a safe country of origin whose asylum application has been rejected can be subject to a temporary re-entry ban even if they leave Germany voluntarily (BAMF, 2023a, section 3.2, p. 197).[73] The ban and the time frame have been decided and enforced by the Foreigners Authorities since 2019 (before the BAMF Federal office). In the case of the first order, the duration of the ban does not exceed one year. In the case of a second or subsequent unsuccessful application, the duration of the ban after deportation can be up to three years. Once in force, the ban is entered into the national police information system (INPOL), the Central Register of Foreigners (Ausländerzentralregister, AZR), and the Schengen Information System (SIS). According to BAMF (2018a), "As a matter of principle, the ban on entry and residence does not apply only to Germany, but in fact to the entire Schengen area, so that it is also entered in the Schengen Information System (SIS). This means that individuals can be prevented from entering the Schengen area. No entry, therefore, needs to be made in individuals' passports."

Re-entry bans with a duration of less than 20 years can be revoked or shortened on a case-by-case basis. Violations of a re-entry ban (both breach and attempted breach) is a criminal offence, punishable by up to three years of imprisonment or a fine. Entry bans are not issued without return decisions, that is, in the case of refusal or removal following unauthorised entry at the border (Hoffmeyer-Zlotnik, 2017).

There are several cases in Germany where deportations were not accompanied by an entry ban and were only issued after a person had re-entered Germany. It needs to be clarified whether a deportation can lead to an entry ban if it is only limited in time after the deportation, as the German Federal Administrative Court assumes (Oberhäuser, 2019, p. 14). The EU Return Directive (Art. 3.6) excludes such an interpretation, stating that the entry ban 'accompanies' the return decision and does not follow it.[74] This leads Oberhäuser (2019, p. 15) to conclude that §11.1 AufenthG violates EU law to a considerable extent and that the Federal Administrative Court

[71] In line with and introduced by the EU Return Directive.

[72] The time limit starts from the date of removal and can be up to ten years if the individual has been convicted of a criminal offence or has been found to be a danger to public safety and order. If a person has committed war crimes, crimes against humanity and peace, or poses a terrorist threat, the entry ban is 20 years (see BAMF, 2018a.

[73] Initially provided for in with the 2015 German Act Redefining the Right to Remain and Termination of Residence (*Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung*) and concretised in the 2019 Second Act to Improve the Enforcement of the Obligation to Leave the Country (*2. Gesetz zur besseren Durchsetzung der Ausreisepflicht*). Accordingly, a re-entry ban can be considered for persons from safe countries of origin whose asylum application has been rejected as "manifestly unfounded" and for persons whose subsequent or second application has been repeatedly rejected as inadmissible (§11.7.1-2 AufenthG). In addition, a ban on entry and residence can be ordered if a person who is obliged to leave the country is at fault for not leaving within the prescribed departure term.

[74] Oberhäuser (2019, p. 14-15) also questions that, if a time limit set after deportation results in an entry ban, whether this would then have to be the 'return decision' according to EU Return Directive Art. 11.1, although 'entry ban' and 'return decision' are different according to EU Return Directive Art. 11.1 and Art. 3.6, and the ordering of an entry ban being not related to the determination of an obligation to return in accordance with Art. 4.3 EU Return Directive.

would be well advised to refer the open questions to the CJEU instead of closing loopholes to the detriment of those affected.

5.9 Procedural safeguards

The deportation decision by BAMF may be confirmed by a court decision.

Legal status of persons during the return procedure

Throughout the asylum procedure, individuals are legally treated as protection/ asylum seekers. Before lodging an asylum application, individuals are considered as irregular migrants; after the asylum application has been rejected, they are obliged to leave the country (rejected asylum seekers). However, if their return is not possible their removal is temporarily suspended (they are '*geduldet*'), but this is not a legal (protection) status.

Review of deportation decisions

Unsuccessful asylum seekers can lodge an appeal against the BAMF's decision to reject their application; however, the appeal must be lodged within a short period of time as a matter of principle.[75] Moreover, an appeal for annulment against a return decision does not automatically have a suspensive effect, but – if the application has been rejected as manifestly unfounded (*offensichtlich unbegründet*) – has to be filed together with a request for suspension.[76] The written notice of rejection contains information on legal remedies (*Rechtsbehelfsbelehrung*) concerning appeals and deadlines. Many NGOs and advocacy groups offer legal advice. Appeals can be lodged against both the removal warning and the rejection of an asylum decision. The court of first instance is the Administrative Court (Verwaltungsgericht, VG) where the person concerned may file an appeal against the negative BAMF decision (§34a.2 AsylG).[77] The VG rejects or confirms the BAMF decision; in the first case, it can oblige the BAMF to grant protection. If an appeal to the Higher Administrative Court (Oberverwaltungsgericht, OVG), on points of fact and law (*Berufung*) is sought, this is only possible if the OVG allows it upon application by the asylum applicant or the BAMF (§78.2-3 AsylG). The case is completely re-evaluated by the OVG, and legal representatives are required for all parties (§67.4-1 of the Code of Administrative Court Procedure/ Verwaltungsgerichtsordnung). The Federal Administrative Court (Bundesverwaltungsgericht – BverwG) is the third instance (appeal on points of law only, *Revision*) and is involved if a factual or legal issue of fundamental importance is at stake and requires clarification, if a judgement deviates from a supreme court ruling or if procedural errors have occurred in the second instance at the OVG. With a recent reform of the Federal Administrative Court, which entered into force on 1 January 2024, it is now also entitled to review facts, not just law. Rulings of the Federal Administrative Court cannot be appealed against in German administrative jurisdiction (§132.1-2/ §132 of the Code of Administrative Court Procedure). The CJEU in Luxembourg may be called upon by the lower administrative courts during ongoing proceedings to give a preliminary ruling in cases of doubt under Community Law (Treaty on the Functioning of the EU, Article 267). In the framework of the Federal Constitutional Court Act (Bundesverfassungsgerichtsgesetz – BVerfGG -§90ff), constitutional complaints can be

[75] A court action against a rejection of an asylum application has to be lodged within two weeks; if the application was rejected as manifestly unfounded, the deadline is one week (§74.1, §36.3 AsylG).

[76] Filing a suit against a removal warning for other reasons, e.g., because a residence title has expired, does also not have a suspensive effect in most States (*Länder*).

[77] It is not absolutely necessary for the litigant to have an attorney in the first instance court (Code of Administrative Court Procedure, *Verwaltungsgerichtsordnung*).

lodged with the Federal Constitutional Court of Germany if fundamental rights to asylum are affected. In addition, if all else fails, an application can be made to the European Court of Human Rights in Strasbourg if it is considered that a state measure or decision (of BAMF, VG, OVG, etc.) has violated the applicant's human rights (EU Convention on Human Rights Art. 34ff).

From a practitioner/ lawyer's perspective, invoking EU law in court cases is seen as an effective strategy to ensure that courts rule in favour of procedural safeguards.

Provisions regulating or facilitating the regularisation of non-returnable people

The temporary suspension of removal/deportation (*Duldung*) applies here (cf. Section 5.6: Temporary suspension of deportation). Obstacles to removal/ deportation arising from the situation in the country of destination are examined by the BAMF (§24.2 AsylG), including whether a removal to this country would violate the non-refoulement clause of the Geneva Convention or the rights under the EU Convention on Human Rights (§60.5 AufenthG). While the suspended foreigner is still obliged to leave the country, the Foreigners Authorities can issue a temporary residence permit after 18 months if the preconditions for deportability are unlikely to change in the near future and are not the foreigner's fault. Persons who have been found to be ineligible for deportation (*Abschiebeverbot*) in accordance with §60.5/7 AufenthG (danger to life and limb, deprivation of fundamental rights) should be granted a residence permit (§25.3 AufenthG) for at least one year (§26.1 sentence 4, AufenthG). For those whose removal has been suspended, such as minors or young adults with good integration perspectives (§25a-b AufenthG), there are several possibilities to legalise their stay in Germany, including the temporary suspension for the purpose of training (*Ausbildungsduldung*).

Vulnerabilities of certain groups addressed in law and policymaking on return

There is no legal definition of 'vulnerability' in the context of return. The Residence Act (AufenthG) contains safeguards for the deportation of unaccompanied minors (see Section 5.7 above) and detention criteria for other vulnerable persons. The federal states have so-called hardship commissions (Härtefallkommissionen), which can apply to the supreme land authority for a temporary residence permit in specific cases (§23a.1 AufenthG) on humanitarian and political grounds. Moreover, German law contains specific provisions on the forced return of minors and families of victims of human trafficking, as well as on removal bans on medical grounds (see 4.6 above).

5.10 Detention

The federal states are in charge of enforcing returns. Pre-removal detention is an administrative measure with a punitive dimension (Oomkens & Kalir, 2020, p. 37).[78] Detention decisions are subject to a judicial order by the district courts (Amtsgerichte, first instance of ordinary jurisdiction).[79] German residence law provides for several types of detention in the context of

[78] E.g., clearly, the detention for cooperation, see below.

[79] Droste & Nitschke (2022) use the case of ten deportees as an example to show how the *Amtsgerichte* (courts of ordinary jurisdiction, cf. Annex 1) generally follow the proposal of the Foreigners Authority ordering the detention, and thus 'adopt(ing) the perspective of the latter' (p. 146). The hearing is very short, and the detainee is usually not asked to explain him/herself and to contribute facts on the basis of which the decision for or against detention is made; instead, according to Droste & Nitschke's research, the decision seems to be 'pre-determined'. The apparent lack of serious consideration of the asylum seeker's

return[80], namely for (1) cases of unauthorised entry, (2) in cases related to the obligation to leave the country, and (3) in cases of irregular stay (Haberstroh, 2021, pp. 12–13).[81] The legal bases for the different types of what can be summarised below as 'deportation detention' are national regulations; the detailed conditions of implementation are subject to sub-national/state laws on deportation detention and—where not (yet) regulated by law—to the 'house rules' (*Hausordnungen*) of the individual specialised facilities (Droste & Nitschke, 2022, p. 42).

(1) Detention for to unauthorised entry

Detention pending exit from the federal territory (***Zurückweisungshaft***, §15.5 AufenthG): In the case of an attempted unauthorised entry at the border, a person will be refused entry after detection (see Section 5.1 above). If a removal decision has been issued and cannot be enforced immediately, the foreigner can be detained by court order to secure the refusal of entry.

Enforcement of custody awaiting deportation (***Abschiebungshaft***, §62 AufenthG) and removal at/across the border to a neighbouring country after unauthorised entry (***Zurückschiebungshaft***, §57/ §62 AufenthG): To prepare for the removal of apprehended persons within a short period of time after their entry and to deport them to their country of origin or to the EU or Schengen country responsible for them.

The maximum period of detention in connection with unauthorised entry (both types) is 18 months, with an initial period of three, in some cases six months. An extension to a maximum of 12 months may be ordered if the removal cannot be carried out for reasons for which the person concerned is responsible.

(2) Detention in connection to the obligation to leave

Custody to prepare deportation (***Vorbereitungshaft***, §62.2 AufenthG)[82]: Preparation for either deportation on the grounds of expulsion or for the enforcement of a removal order (§58a AufenthG, concerning potential criminal offenders) if a decision regarding expulsion or removal cannot be taken immediately and the deportation would be in danger of failing or would be considerably more difficult without a detention measure. This type of detention is restricted to a limited group of persons who are considered a threat to public safety and order (§58a AufenthG) and should not exceed six weeks.[83]

Supplementary custody to prepare deportation (***ergänzende Vorbereitungshaft***) according to §62.c AufenthG applies when persons are apprehended residing in Germany despite an existing

perspective raises pertinent questions about the role of the courts of ordinary jurisdiction and their judicial independence (see also pp. 156f).

[80] Both, for Dublin transfers or following a return decision. Most federal states do not distinguish between detention in these two contexts (Hoffmeyer-Zlotnik, 2022, p. 130). Until at the time of writing, the fact that a person has applied for asylum, has prevented them from being detained; with the new Repatriation Package, which was adopted in January 2024 and will likely come into force in the first half of 2024, an asylum seeker can be detained during the asylum procedure, that is before the asylum application case is decided.

[81] This section on detention and alternatives to detention is largely based on Haberstroh (2021), see there for further details on all topics related to detention in the context of to return.

[82] This type of detention was created in 2020 with the Act to postpone the census until 2022 and to amend the Residence Act.

[83] In exceptional cases—if the issuance of the return decision is delayed for "special, unforeseeable reasons or if exceptional circumstances for which the foreigners authority is not responsible" render a decision on the return decision "impossible within six weeks" (Bavarian Higher Regional Court [Oberstes Landesgericht/ OLG Bavaria], ruling of 25 November 1993, margin no. 8)—longer periods in the first order or extension are possible.

entry and residence ban (§11.1.2 AufenthG) and without an entry permit (§11.8 AufenthG) or if they pose a significant danger to the life and limb of third parties or important legal interests of domestic security or if another serious interest for expulsion exists. Thus, the requirements for supplementary preparation detention are lower regarding the extent of the danger posed and the maximum detention period. Detention ends with the BAMF decision notification or at least four weeks after the asylum application has been submitted. If the asylum application is rejected as inadmissible (§29.1.4 AsylG) or manifestly unfounded and an application for temporary legal protection is filed, the detention can be extended in each case. If the application is rejected by the VG (administrative court), detention ends no later than one week after the court decision to enable a transition from supplementary preparation detention to detention pending deportation enforcement (cf. 3 below).

(3) Detention in connection with irregular stay/ illegal residence

Precautionary detention (***Sicherungshaft)***, pursuant to §62.3 AufenthG: Initially three, maximum eighteen months[84] detention to secure removal if there is a risk of absconding. This applies to persons who are subject to an enforceable obligation to leave Germany due to unauthorised entry or if a removal order (§58a AufenthG) has been issued, which cannot be enforced immediately. If the removal is unlikely to be carried out within three months for reasons beyond the control of the person concerned, detention is not permitted. In exceptional cases, the authority responsible for the detention application may arrest a TCN and temporarily detain them without a prior court order. However, the foreigner must be brought before a judge immediately for a decision on the precautionary detention order.

Detention for failing to cooperate (***Mitwirkungshaft***, §62.6 AufenthG):[85] If TCNs who are obliged to leave Germany fail to comply with the obligation to cooperate with the authorities (§82.4 AufenthG)—that is to appear in person at identification appointments with the authorities or to undergo a medical examination to determine their fitness to travel—and have been warned about the possibility of detention in the event of non-cooperation, they may be detained for a maximum of 14 days without extension.

Custody to secure departure (***Ausreisegewahrsam***, §62b AufenthG): Detention pending removal to secure deportation regardless of the risk of absconding can be issued by judicial order in cases where a TCN's obligation to leave voluntarily has expired and removal is possible within a period of ten days maximum.[86] This requires that the removal can be enforced within the given time limit, and that the deportee can be expected to try to avoid or obstruct the removal procedure (corresponds to the grounds for detention under §15 (1)(b) EU Return Directive). Custody to secure departure can take place in the transit area of an airport or in an accommodation from which the deportee can leave the country without travelling a significant distance to a border crossing point (§62b.2 AufenthG). According to migration lawyer Peter Fahlbusch, this type of detention is questionable under constitutional law because it is excessive and disproportionate

[84] Usually three months for the first order, but up to six months possible, with a maximum extension of 12 months (§62.4 AufenthG). The maximum total period of detention of 18 months shall include the duration of any previous preparatory detention and/ or detention for cooperation.

[85] This type of detention evolved from the Second Act on the better enforcement of the obligation to leave the country (2019). It implemented §15.1b of the EU Return Directive.

[86] The duration of custody pending departure was extended from a maximum of four days to ten days in 2017 with the Act to improve the enforcement of the obligation to leave the country. With the new Repatriation Package that is due to enter into force in the first half of 2024, the duration of custody pending departure was extended to 28 days.

(see Fahlbusch, 2023). Foreign authorities use custody to secure departure mainly to carry out collective deportations (*Sammelabschiebungen*) by ensuring access to people's detention centres.

Alternatives to detention

The different types of custody awaiting deportation in connection with §62 (*Abschiebungshaft, see sub-sections 2 & 3 in this section on detention*) are de jure only permissible if the purpose of detention cannot be achieved by other (milder) means, that is alternatives to detention. When applying for a detention order, municipal authorities must explain why there are no alternatives to detention (Hoffmeyer-Zlotnik, 2017, p. 39). Haberstroh (2021, p. 21) lists the following alternative measures:[87]

- Obligation to report regularly to the Foreigners Authority or police for residence monitoring (reporting obligation),
- Spatial restriction of residence,
- Obligation to stay in a place or accommodation designated by the Foreigners Authority,
- Night-time restriction/ house arrest at night/ availability order,
- Bail,
- Sureties,
- Electronic surveillance.

Persons who have been subject to alternatives to detention pending deportation ordered by the Foreigners Authorities may – if provided for by state law – lodge an objection within one month of notification and file an appeal against the ordered measures. If the objection is found well-founded, the Foreigners Authority will revoke the measure; if not, an objection decision will be issued, against which the person concerned can appeal with the VG (administrative court) within one month of notification (§§73-74 AufenthG) (Haberstroh, 2021, p. 32).

Rights of detainees

The duration of detention is to be limited as much as possible. In the case of minors, all possible alternatives must be considered together with the youth welfare office before detention is ordered. Thus, minors and families with minors may only be detained in special exceptional cases and only for as long as is appropriate, taking into account the best interests of the child. The special needs of minors (dependent on their age) and other vulnerable persons (unaccompanied minors, disabled, elderly, pregnant, single parents with minor children, persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence) have to be taken into account in accordance with §17 of the EU Return Directive. During deportation detention, detainees have the right to contact legal representatives, family members, competent consular authorities and relevant assistance and support organisations who may also visit the detainees upon request to provide social and psychological support (§62a.2-4). In addition, detainees awaiting deportation must be informed of their rights and obligations and of the rules in the facility. Anecdotal evidence suggests that very restrictive rules are imposed on detainees in pre-removal detention centres (e.g. cf. Hoffmeyer-Zlotnik, 2022, pp. 149-150).

Despite the existence of these rights on paper, the practice of access to rights by detainees reflects a different reality. Often, persons are detained during scheduled meetings with the Foreigners Authority where they come to extend their temporary suspension of deportation (*Duldung)* (Droste & Nitschke, 2022, p. 135). There are still cases, where families with children are detained in deportation detention, which violates the principle of the best interests of the child ("Abschiebungshaft – Kritik an…", 2023); however, usually, a mother is detained while her

[87] For the legal basis underlying these measures see Haberstroh, 2021, pp. 21-23.

children are placed under the supervision of the relevant youth welfare office (*Jugendamt*). Droste & Nitschke (2022, pp. 43-64, 87, 100-104, 211-249) have documented the experiences of detainees in the detention centre of Darmstadt-Eberstadt (Hesse) and Büren (North Rhine-Westphalia), including several rights violations in addition to isolation detention and lack of access to legal representation or even counselling. The lack of information on procedures, the position of detainees and the restriction of their rights and entitlements in detention is a serious shortcoming (p. 94).

Legal remedies against detention

The detainee or their legal representative may appeal against the decision of the district court (Amtsgericht) within one month of the written notification. However, in the absence of a court-appointed defence, it is often difficult for the detainee to contact a lawyer within a reasonable time if they did not have a lawyer's reference prior to detention. The next higher instance is the regional court (OVG), followed by the Federal Court of Justice as the third instance (see Annex 1). Legal representation is not mandatory in the first instance of appeal. The Family Procedure Act (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*, FamFG) provides that the court may appoint a guardian ad litem to represent the interests of the person concerned (§419 FamFG). However, critics point out that the relevant law (FamFG) does not deal with the right of residence at all and that family courts would be largely uninformed. Moreover, the fact that different courts (see Annex 1) are involved in detention decisions contributes to legally unjustified detention rulings—confirming the suspicions of lawyers who document deportation detention cases in their area of expertise that most detentions are unlawful.[88] Indeed, the statistics compiled by migration lawyer Peter Fahlbusch on the detention cases he has been dealing with for 22 years show that about half of his clients have been detained unlawfully, with an average detention period of just under four weeks (Fahlbusch, 2023). This has been a constant (trend) for two decades, and although it is a legal scandal, the official authorities deny the figures, and at the same time, the states claim not to receive data on deportation detention.

In Germany, people on low incomes have the right to free legal assistance (advice), regardless of nationality. Legal assistance in removal cases includes legal counsel and, if necessary, representation; it does not depend on whether a case has a reasonable chance of success. Non-governmental organisations offer free legal advice in matters of residence law before detention while access to legal advice from within detention is theoretically possible but difficult in practice (see above 'rights of detainees).

Facilities of (pre-removal) detention

The authors of this report did not find any evidence of significant privatisation of pre-removal detention despite the fact that the law provides for the separation of pre-removal detainees from ordinary prisoners in specialised detention centres. Since 1 January 2022, there have been a total of 821 places in pre-removal detention centres in twelve states (Hoffmeyer-Zlotnik, 2022, p. 131), 14 specialised deportation detention facilities (*Abschiebehafteinrichtungen*) in the federal states as of 2019, with four more in the planning stage (Droste & Nitschke, 2022, p. 32). Many of these

[88] See the statistical documentation compiled by the lawyer Peter Fahlbusch (2023). Fahlbusch has been documenting his removal detention cases as a lawyer since 2001 and publishes information on the court decisions on a quarterly basis. According to the latest figures, he defended 2,458 people in deportation detention proceedings, (*Abschiebungshaftverfahren*), of whom 52.5 per cent were found to have been detained unlawfully for between one day and several months, with an average period of detention of 25.8 days.

are former prisons (*Justizvollzugsanstalten*) in Germany. The establishment of specialised pre-removal detention centres in all states was a consequence of the 2014 CJEU ruling based on the obligation in Article 16 (1) of the EU Return Directive; with few exceptions, they are managed by the prison authorities under the aegis of a state ministry of justice or state police (Oomkens & Kalir, 2020, p. 34).[89] From the perspective of the states, specialised detention facilities are rather unattractive because of the very high costs involved.[90] There have been calls for better training of staff in these centres (Oomkens & Kalir, 2020, p. 37). Measures to separate detainees pending deportation from ordinary prisoners were temporarily suspended until the end of June 2022 (Second Act to Improve the Enforcement of the Obligation to Leave the Country of 2019) because not enough places were available in these specialised facilties. Potential offenders should also be detainable in penal institutions (§62a.1 AufenthG). If families are detained for pre-removal detention in special deportation detention facilities, they are to be accommodated separately from other pre-removal detainees and shall be able to enjoy privacy (§62a.1 AufenthG).

5.11 Emergency situations

Article 18(1) of the EU Return Directive on emergency situations has been transposed into German law. As mentioned in the previous paragraph, the 2019 Second Act to Improve the Enforcement of the Obligation to Leave the Country temporarily suspended the separation of detainees pending deportation from ordinary prisoners until the end of June 2022 due to a lack of specialised detention facilities. Combined with the claim that there was a lack of capacity to accommodate persons in pre-removal detention, this provided the grounds for invoking an emergency situation for suspension.[91]

5.12 Readmission procedure

Germany has concluded 31 formal bilateral readmission agreements with 30 countries of origin as of January 2023, of which more than 50 per cent are with countries outside the European Union.[92] Critical observers point out that the mere existence of agreements does not imply constructive cooperation in the area of return. Examples include the bilateral readmission agreement between Germany and Morocco in 1998 and the informal EU declaration with Afghanistan in 2016, which is often mistaken for a formal readmission agreement (Rietig & Günnewig, 2020). While the German government sent démarches to 17 uncooperative countries of origin[93] in 2016, the outcome is unclear as cooperation depends on many factors (Deutscher Bundestag, 2023c, p. 8). According to the German government, a country's obligation under international law to take back its citizens is unconditional and not linked to any quid pro quo, such as facilitated labour migration (Deutscher Bundestag, 2023c, p. 14). The current government intends not to make repatriation agreements subject to separate readmission programmes but to

[89] E.g., in Bavaria, the Bavarian State Office for Asylum and Returns (Bayerisches Landesamt für Asyl und Rückführungen) in Munich Airport Hangar 3.

[90] Discussion point during Expert Stakeholder workshop at BICC, 12 December 2023.

[91] In retrospect, it became clear that the claimed lack of capacity was mere rhetoric and that the instrument of pre-removal detention was not used to the extent that existing capacity would have reached its limit. Notes, Expert Stakeholder Workshop, 12 December 2023, Bonn.

[92] Cf. BMI (2023). A second agreement on the readmission of stateless persons was concluded with Romania in 1998.

[93] Besides Asian countries of origin, these included African states Algeria, Benin, Guinea-Bissau, Morocco, Niger, Nigeria, Senegal and Sudan.

include readmission components within the framework of other agreements, so-called comprehensive migration agreements (*ganzheitliche Migrationsabkommen*) (Bundesregierung, 2021). The model for such agreements is the Migration and Mobility Agreement concluded with India in 2022.[94] Germany reportedly signed a Joint Declaration of Intent between the Federal Republic of Germany and the Republic of Iraq on Cooperation in the Field of Migration in May 2023[95], another agreement with Georgia in December 2023 (BMI, 2023a), and agreed a close migration partnership with Morocco in January 2024 (BMI, 2024).

[94] The Agreement is classified, but a parliamentary question shows that the basic components of the bilateral agreement include legal migration, in particular the mobility of skilled workers and academics, and cooperation on returns. To facilitate returns, the agreement provides for the use of charter flights, biometric identification procedures and the observance of certain deadlines (Section 12 of the Agreement) (Deutscher Bundestag, 2023c, p. 13).

[95] See the text of the agreement on the website of the Refugee Council North-Rhine Westphalia: https://www.frnw.de/fileadmin/frnrw/media/downloads/Themen_a-Z/EU-Politik/Joint_Declaration_of_Intent_Migration_Iraq.pdf (accessed 31 January 2024).

6. Gaps

Apart from outlining gaps in the legal, institutional and international cooperation frameworks, the authors have found few other areas of work where gaps are evident and need to be addressed. These are gaps in data, management, policy communication and research, amongst others. It is important to note, however, that some of the gaps identified below are ambivalent in terms of deriving policy recommendations because of ethical-normative concerns (see section 7 on policy suggestions for further elaboration).

6.1 Gaps in the legal framework

Gaps in the legal framework appear at two levels of the return governance regime. First, there are (albeit few) discrepancies between EU law and national law. For the other, national policies and laws coexist with subnational heterogeneous policy implementation and the implementation and making of own policies by states within the federal system. States act independently within their competencies, and some directly transpose EU law. Municipalities even organise and implement voluntary return programmes at the third level of return governance. The impact of national law on the implementation of state return policies is subject to negotiation and varies across the 16 federal states due to different institutional and actor arrangements for policy implementation. The 'outcomes' of these negotiations depend, among other things, on the political orientation of the responsible state government (ruling parties vs. opposition), the strength of civil society pressure groups and whether or not states share an EU border with neighbouring countries. For people who are subject to the return policies as asylum seekers, deportees or tolerated foreigners, the heterogeneity of the laws, and the complexity of the institutional landscape create a high degree of legal uncertainty.

The law is not well accessible because it is neither foreseeable nor easy to understand. Even decisions on asylum applications (or rulings on appeals against rejections) lead to contradictory results, as Foreigners Authorities at the municipal level and administrative court judges have considerable leeway to assess the situation of an applicant according to their understanding of his or her situation and the situation in the country of origin or a so-declared safe third country. The Federal Constitutional Court (BVerfG) ruled in 2017[96] that administrative courts have a general obligation to base their decisions on current knowledge and not merely refer to previous decisions and sources. However, in the absence of binding country-of-origin information[97] and given that the judicial panels of the administrative courts are usually overburdened, the reality is that lawyers dealing with asylum law have to be up to date and bring relevant information to the court proceedings to refer to it in each individual case (Naumann, 2019, p. 306). The administrative leeway is based on the fact that the municipalities, as the third level of government subject to state law, can implement their programmes, e.g. for voluntary return, with municipal regulations varying from location to location (e.g. the towns of Bonn vs Siegburg which are 20 minutes apart). Local Foreigners Authorities depend on the competence and attitude of the staff employed in their asylum and return decision-making (see Sections 5.3, 5.6).

The legal non-status of a temporary suspension of deportation (*Duldung*) in the German protection system occupies a middle ground between regular status and irregular stay[98] to the detriment of the chances of those affected to participate in society and to claim their entitlements.

[96] See: BVerfG, Decision of 27 March 2017, 2 BvR 681/17, asyl.net: M24951.

[97] BAMF issues non-binding country of origin-specific analyses (*Länderanalysen*), see https://www.bamf.de/EN/Behoerde/Informationszentrum/Laenderanalyse/laenderanalyse-node.html

[98] Interestingly, EU statistics count persons with a temporary suspension of the obligation to leave as not obliged to leave, whereas German statistics count them as obliged to leave.

The limbo situation and the exclusionary character of *Duldung* lead to a fiction of temporary residence. At the same time, there is a massive imbalance between the likelihood that the temporary suspension of deportation is lifted and the political rhetoric that emphasises improving the enforceability of returns, which is reflected in the intended increase in the number of people deported from Germany, leading to new acts to improve the enforcement and acceleration of returns. A series of renewals (*Kettenduldung*) is widespread, but so far does not allow the potential for regularisation to be exploited by linking recent new types of temporary suspension, such as suspension for the purpose of training or employment (*Ausbildungs- oder Beschäftigungsduldung*) with long-term naturalisation.

The most significant discrepancy between EU law and national law concerns the monitoring of returns. Here, Germany has neither a law nor provisions for systematic monitoring or the institution of an ombudsman. This is a matter of serious concern, as any deportation or removal procedure runs the risk of violating the human rights of a deportee (cf. Section 5.10 in this Dossier); the accumulating evidence of pushbacks at internal (Schengen) borders is only one indicator. Furthermore, the imposition of a post-deportation entry ban (cf. Section 5.8) is not in line with EU law, and the fact that the decision is taken by a legislator rather than being reviewed officially or by a judge violates Art. 3.6 of the EU Return Directive (2008). As the discussion during the Expert Panel (12 December 2023) showed, it can be argued that the German legal framework for asylum law and reception conditions (the mirror image of return legislation) contains a compliance gap with EU law based on the decentralised implementation of EU- and national law (which has largely adopted EU law, lest the exceptions mentioned above). As a result, it remains unclear who exactly is not complying and how.[99] In other cases, the German authorities bend the law according to EU rules, as shown by the preferential application of the Schengen Borders Code for border controls and *Zurückweisungen* (refusals of entry) and the continuous extension of border controls on the basis of ever different but similarly defined security threats. For example, border controls with Austria have continued since 2015 despite the prescribed maximum duration of six months (Section 5.6).

A more general observation concerns the role of EU law as a reference point for national policymaking and sub-national policy practice (enforcement of legal provisions) at the federal state levels. Accordingly, as standards in EU law fall, generous protection provisions in national law may disappear.[100] For example, it is conceivable that the New Pact on Migration and Asylum will open up more possibilities for restrictions, for instance with regard to access to legal counselling, and that a hearing will no longer be mandatory.[101] This is linked to the EU Commission's shift towards a more restrictive approach to returns despite the EU Parliament's insistence that the emphasis on effectiveness in return policymaking and enforcement must comply with human rights standards.[102]

[99] For this reason, the authors of this report refrain from suggesting enhanced compliance with EU law in section 7.

[100] It is noteworthy, though, that, e.g., the enforcement of the EU Return Directive from 2010 onwards in Germany initially also provided for major improvements in Germany's and States' handling of returns. For example, access of non-governmental organisations to detention facilities became possible and the separation of prisoners and deportees was introduced. Cf. Droste & Nitschke (2022, p. 31).

[101] Outcome of the discussion at Stakeholder Expert Workshop on 12 December 2023 organised by BICC (Bonn).

[102] See the EU Parliament's resolution on the implementation of the EU Return Directive (2008/115/EC) adopted on 17 December 2020 which signaled an attempt to align EU return policy provisions with international standards and to provide guidance for EU MS on how to reconcile legal/ protective safeguards and national return policies that usually focus on restrictive policies (detention of children, automatic entry bans, etc.) and increasing returns. Cf. Majcher (2021).

6.2 Gaps in the institutional framework

Gaps in the institutional framework reflect what has been said about the challenges of multi-level policymaking and implementation. The same tensions inherent in the federal system, i.e., between the federal and sub-national levels with the federal states and different types of municipalities (see Annex 1), exist and manifest themselves in a heterogeneous landscape of institutions and policy implementation actors. The academic literature reviewed for this Dossier confirms that the problem is well known. In Germany, several interface bodies and institutions have been established in recent years to bridge the gaps between the different levels of policymaking and implementation, particularly between the federal and state levels.

Another gap is the involvement of courts of different types of jurisdiction in decisions on deportation detention and their appeals, which are often found to be inconsistent with legal regulations (see Section 5.10 above). The relationship between civil society organisations and the political authorities, particularly the BAMF, is ambivalent. Since 2015, several communication formats have been created, such as annual conferences and workshops, to learn more about each other's perspectives and challenges as stakeholders in the return process. In doing so, both sides seem to engage with each other on the basis of mutual understanding that they are working towards the same goal: to improve and humanise return and asylum policies and their impact on protection seekers. Important instances of CSO participation have been facilitated in the framework of deportation monitoring groups (mixed forums) at German airports (cf. Section 5.6 on forced return deportation monitoring). In the process of law making and -amending, CSO participation is limited, and the time available to prepare positions for consideration in new draft laws is very short.[103] The media often does not seem to play a constructive role but rather helps to distort the public debate in which politicians argue for ever more restrictive approaches and the need to deport more TCNs based on false facts/ problematic data. Besides lacking investigative efforts, journalists and the media also fail to address structural problems and gaps.

6.3 Gaps in international cooperation

International cooperation is mainly discussed in the context of bilateral readmission agreements and soft laws. However, the implications of return policies and their unintended consequences for international cooperation, such as the social and political consequences in countries of origin, are often muted in these discussions. Koch et al. (2023) have recently pointed out why and how return policy needs to be seen in the context of larger international political structures of (non)cooperation, including foreign, development and security policy. Narrow return policies driven by domestic politics, which include the intention to conclude cooperation agreements with the countries whose citizens constitute the largest group of rejected asylum seekers, are unrealistic and often fail because origin countries have little interest in 'taking back' their citizens. If they are willing to engage, German policy often runs the risk of legitimising authoritarian regimes. Moreover, Koch et al. (2023) argue that there is a discrepancy between the foreign policy goal of stabilising fragile states or contexts and the fact that this is undermined by returns. Furthermore, the closure of soft law—informal migration agreements—undermines good governance standards such as democratic accountability and transparency in the other partner states. Another gap is the need for a sober debate on the conditionality of return policies and their implementation in the international arena (Walter-Franke, 2023). However, one interesting development in this field was the appointment of the Special Commissioner for Migration

[103] Point from discussion during Expert Stakeholder Workshop, 12 December 2023, Bonn.

Agreements in Germany by the governing coalition in February 2023. The Commissioner is expected to "provide important new ideas for shaping the external dimensions of migration policy. In doing so, he will closely coordinate with the federal ministries concerned."[104]

6.4 Gaps in databases

It is striking how the legal and institutional complexity seems to prevent a coherent collection of data on returns that could lead to a unified understanding of facts and figures in the German return regime. Data gaps are manifold, and only a few highlights can be mentioned here:

- The Federal Police and the BAMF do not reconcile and compare data on Dublin transfers (Deutscher Bundestag 2023b), i.e., for example, the Federal Police officers count the number of persons actually deported, while the BAMF counts the number of persons who were requested to leave Germany according to the Central Registry of Foreigners (*Ausländerzentralregister*, AZR) (Deutscher Bundestag, 2023g, p. 6);
- There is almost no published data on cooperation with third countries on return/s (cf. Section 5.12);
- There is no sound statistical database on voluntary return (neither assisted nor unassisted) on an annual basis, as the federal states and municipalities partly run their own voluntary return programmes, and there is no obligation to report to a single database according to common standards and criteria;
- The AZR[105] has been of limited use in the past, as it reportedly contains many incorrect data entries that are hardly detected or corrected; others are missing, such as information on actual employment based on permits issued to foreigners with residence titles (Deutscher Bundestag, 2023a, pp. 73f, 77);
- Rejections of asylum are not recorded with regard to the influence of family protection;
- No data is collected on the withdrawal of removal warnings based on BAMF or court decisions (following the CJEU ruling of 14 January 2021 C-441/19);
- Data on deportation (deportation orders, different types of detention and alternatives to detention, as well as the use/ existence of complaint mechanisms in deportation detention procedures) are not systematically collected (Hoffmeyer-Zlotnik, 2017, p. 34). This limits the ability to analyse detention versus alternatives and their respective impacts.

Furthermore, data on returns is difficult to access, and the public, media and politicians cannot rely on a sound database for informed public debate and decision-making.

It is important to note that with the notable exception of the (lack of) data on detention, the argument about gaps in databases here is not that the amount of data available is limited; on the contrary, the above elaborations should have made clear the complexity and heterogeneity of data sets due to the multiple actors and federal logic in Germany. the comparability of documented data across the states and their synthesis for informed national policy discussions remains a

[104] See https://www.bmi.bund.de/EN/ministry/commissioners/specialcommissioner-migration-agreements/specialcommissioner-migration-agreements-node.html. Accessed 06.02.2024.

[105] A new law on the reform of the AZR was adopted in 2021. Upon implementation, the scope of data and access to data for more users shall be realized (Hoffmeyer-Zlotnik, 2022, p. 14), albeit civil society organisations fear data misuse and show concern about data insecurity, while the government is still in the process of finding solutions (Deutscher Bundestag, 2023a, p. 74).

distant dream at least for two reasons: 1) the multiple rules and regulations for data collection and standards for datasets in the federal states and reporting by federal authorities (e.g. Federal Police); 2) strong legal concerns about the protection of personal data and provisions limiting the use of data to the original purpose for which they were collected,

In recent years, various actors have played a prominent role in documenting or requesting data on returns through their parliamentary authority. For example, deputies of the parliamentary faction *Die Linke*[106] have used the inquiry instruments of *Kleine Anfrage (*minor inquiry) and *Große Anfrage* (major interpellation) in the *Bundestag* to obtain data from the executive bodies on migration, asylum and return-related figures, their collection and documentation processes, etc., and thus to regularly scrutinise transparency in these areas. Equally important are the efforts of lawyers and NGOs, such as the association 'Hilfe für Menschen in Abschiebehaft in Büren' (support for people in deportation custody in Büren), mentioned above.

6.5 Gaps in implementation

The identified shortcomings in the legal and institutional framework reveal further 'management' gaps in the operational implementation and enforcement of return policies. The ambivalence resulting from the decentralised implementation of EU-, international and federal law by multiple actors and institutions was highlighted as having either positive or negative effects on migrants/ returnees in different situations. Internal contradictions between what is presented as a solution to the politically defined problem of the deportation gap and the applied solutions perpetuate the antagonistic discourse with an emphasis on increasing the effectiveness of returns. Meanwhile the operational focus is kept on (re-introducing) border controls to apprehend migrants at or near the border, partly to avoid the initiation of asylum applications and official Dublin transfers. This is in stark contrast to the official discourse on the rule of law-based return policymaking pursued by the BMI. Moreover, the national rule of law narrative is in practice contrasted with subnational regulations and enforcement practices.

A related tangible tension ('conflict of interest') lies in the relationship between the domestic policy fields of integration, returns and internal security. A strategic approach with a long-term perspective that considers alternatives to return (e.g., regularisation) on the foundation of evidence-based analysis is lacking in national and sub-national return policymaking. Furthermore, a cost-benefit analysis (Koch et al., 2023) and comprehensive evaluations (e.g., of the voluntary return programmes) have not yet been carried out.

There is a lack of uniform and binding quality standards for return counselling. The limited funding available hinders the establishment of mandatory training for counsellors in governmental and independent return counselling centres. Moreover, funding for legal counselling is reportedly decreasing.

[106] Due to internal rifts in the party *Die Linke* (a democratic socialist political party in Germany), it lost its parliamentary group (faction) status in December 2023, and it remains to be seen whether the qualitatively different/ smaller parliamentary group status for the current legislative period will allow its members of parliament to continue with the requests. If not, the German public faces a serious risk of a loss of transparency and increasing non-information about migration-related operational, legal and institutional developments in Germany and its embedding in the European migration and asylum/ return landscape.

6.6 Gaps in political communication

The narrative of a deportation deficit has haunted German politics since 2015; it arises from the perceived discrepancy between rejected asylum seekers who are, theoretically, obliged to leave, and their continued stay in Germany due to the mostly ongoing 'temporary' suspension of deportation to the country of origin or a third country. The public debate is not based on factual information and solid databases. Rather, it is driven by opinions and distorted impressions based on incomplete data and their uptake in the media.

The distorted public debate is influenced by:

a) The discrepancy between the discourses and the practical handling of protection. While the discourse is symbolic and generates pressure for highly restrictive return policies, the practical treatment of asylum seekers—partly conditioned by legal and bureaucratic requirements that hinder the smooth implementation of restrictive policies and the heterogeneous, decentralised implementation of EU and national legal frameworks—is in their favour. Appeals to the courts and years-long court cases, for example, give tolerated persons time to 'integrate' and to demonstrate documented integration success, which in the long run help their case for acceptance.

b) A gap in the type of return emphasised in the public debate. The media hardly ever report on voluntary return and its significance in the overall field of migration policy. There is a noticeable contrast between the over-emphasis on deportation on the one hand and voluntary returns on the other. However, the number of voluntary returns is much higher than the small number of rejected asylum seekers who are forcibly returned. As voluntary (assisted) returns seem to be much more important for the effectiveness of returns than forced returns, that is deportations, the focus in the public debate is misleading.

   At the same time, within the overall framework of (forced) migration, asylum and integration policies, critical observers question whether forced returns are the main problem in these areas—as successive legal restrictions and political and media discourse seem to suggest—given that of the total of 300,000 persons obliged to leave Germany according to the AZR, more than 250,000 are tolerated (having *Duldung* status), and between 30,000 and 50,000 are to be returned (Dublin countries or origin countries).[107] Thus, it can be concluded that the official rhetoric about effective returns is owed to

c) symbolic policymaking—a style of policymaking that distracts from gaps and shortcomings in other policy areas (e.g. not necessarily detrimental municipal and sub-national discretionary powers, over-bureaucratisation of administrations, securitisation, lack of capacity in administrations). This tends to prioritise responding to right-wing pressures by introducing restrictions, criminalising rejected asylum seekers and focusing public rhetoric on deportations, rather than addressing structural gaps and shortcomings in migration-related policy fields, including development and economic/ trade cooperation.

[107] According to the BMI, at the end of October 2023, 250,749 persons were classified as having the obligation to leave Germany and the deportation of 201,084 of whom was temporarily suspended, which means that 49,665 persons were potential enforceable returnees (see Tagesschau, 2023). The same source mentions that the new provisions of the Repatriation package coming into force in 2024 will (only) lead to an estimated 600 additional deportations/ removals per year from 2024 onwards, after Germany had deported around 12,000 people per year in 2021 and 2022.

6.7 Gaps in scholarship

In the case of Germany, there is a gap between the rhetoric of forced return and the academic analysis of procedures,[108] coercive methods and the involvement of actors (Grawert, 2018). The desideratum for research on the German return regime is also reflected in the experience that the authors of this Dossier had to turn to the asylum debate to gather knowledge on policies of forced return and procedures piece-by-piece. As asylum and return scholarship are two sides of the same coin, we see asylum scholarship as a key reference for the analysis of return policies and practices. However, given the multi-faceted differentiation of the asylum system as a multi-level policymaking and implementation container with multiple-actors, it seems valid to establish return scholarship as its sub-field.[109] The discussion in the Expert Panel Workshop highlighted that the study of return is sometimes seen as unethical because it is implicitly assumed that scholars working in this field would not be concerned with the protection, the rights and dignity of individuals categorised as returnees and, more generally, would not be critical of the global political and economic inequalities, international legal and power constellations that underpin the international migration regime. We disagree with these assumptions and argue that return scholarship can make a significant contribution to ensure transparency that can ultimately reveal systemic violations of individuals' dignity and make an authoritative effort to develop alternatives to return.

Thus, while most of the scholarship to date has been confined to analysing the process of the asylum procedure and to address the protection and status of those who wish to have a perspective to remain, there is a desideratum regarding the treatment of those who are deemed ineligible or undeserving of the right to remain and reside in Germany. Moreover, the successive adoption of increasingly restrictive laws in Germany and in the framework of the Common European Asylum System (Gemeinsames Europäisches Asylsystem, GEAS) at the European level confirm, in our view, the need to systematically address (the rightfulness of) these laws, the dimensions of their enforcement and their explicit meaning, also and distinct for returns, as the political aim of increasing return effectiveness underlies legal reforms. Thereby, critical scholarship[110] is tasked to challenge sovereign and government-centric notions such as 'rule of law-based return policies' and the common framing that merely corrective reforms are needed in the asylum and return regime ("to improve deportations in order to make them more 'humane'", Borrelli, 2023, p. 462) while state-induced return practices are assumed to be rightful in principle. Moreover, the gaps in data on returns can only be addressed by a community of scholars who systematically demand transparency and access to different data sets. To date, scholars have been concerned with inadequate access to timely data and the incoherence of the federal and state data collection approaches. On a practical level and as a form of transdisciplinary return research, collected evidence on return mechanisms and practices could help to rationalise the return decision-making processes from the bottom up, thus balancing the current dominant top-down push for efficiency (Feneberg, 2019).

[108] Research on voluntary return (programmes) is more common, e.g., the BAMF research centre conducted the project "Returning with 'Starthilfe Plus'" between 2017 and 2023. Cf. https://bamf.de/SharedDocs/ProjekteReportagen/EN/Forschung/Migration/rueckkehr-starthilfeplus.html

[109] Existing references to deportation scholarship (Leerkes & Van Houte, 2020), voluntary return scholarship and returnee networks show that the body of work on return is quite diverse and could also benefit from systematisation and state-of-the-art-elaborations to define the field and its way forward.

[110] See Lemberg-Pedersen (2022) for an outline of deportation studies.

7. Policy suggestions

The field of return governance in Germany is very dynamic and, at the same time, reveals many gaps: structural deficiencies, operational shortcomings and heterogeneous practices due to the federal system. While it would be logical to present policy proposals by addressing each gap, a close analysis of the gaps revealed that details and practices matter. Also, deriving a broad policy proposal that addresses the identified gap in the institutional framework between different levels of policy and practice will at the same time be too broad to be helpful and will not do justice to the intricacies of the circumstances that condition/ frame and cause the different situations. Furthermore, as alluded to in the introductory paragraph of Section 6, ethical-normative concerns lead the authors to discuss possible policy solutions critically and to refrain from making straightforward suggestions that subscribe to the overall problematic drive for more effective returns at the expense of non-compliance with fundamental/ human rights.

Policy points concerning the legal framework:

- If the German government intends to adhere to deportations as a legitimate instrument of its 'rule of law-based migration policy', a legally defined robust control and monitoring system for transparency is needed to maintain the current focus on effective returns in compliance with fundamental/ human rights and thus legitimacy.
- An independent institution (ombudsman or similar) should be established to monitor pre-removal and detention. Detainees and deportees should have a complaint mechanism in case of human rights violations.
- The definition of public interest, (threats to) internal security and public order should be reviewed and provided with clear legal definitions as the current interpretations are used to legitimise exceptional measures (such as long-term border controls at Schengen borders, unlawful refusals of entry).

Policy points concerning the institutional framework:

- Provide access to a duty lawyer/ public defender/ court-appointed counsel for those subject to detention pending deportation.
- As a rule, provide detainees with information on removal procedures, their position, rights, and entitlements in detention.
- Require district courts (*Amtsgerichte*) to review cases independently of proposals from the Foreigners Authorities and to remedy deficiencies in hearings prior to detention decisions.

Policy points concerning data gaps:

- As far as the protection of personal data allows, the BMI, BAMF, the Federal Police, state administrations and the Repatriation Support Centre (*Gemeinsames Zentrum zur Unterstützung der Rückkehr*, ZUR) should endeavour to regularly collect, process and publish up-to-date, consistent data that is comparable and provides a solid basis for analysis and decision-making. This is particularly relevant for voluntary return, pre-removal detention, alternatives to detention, investigations into the reasons for failed deportations, illegal return of deportees, border protection, and the costs of pre-removal detention and return measures in general.
- The implementation of the reform of the Central Register of Foreigners (AZR) should be used as an opportunity to urge the BAMF to voluntarily and regularly publish available

data at the sub-national level as well as those data sets that have so far been obtained by the instrument of parliamentary questionnaires.

Policy points concerning international cooperation:

- Cooperation with countries of origin or safe third countries should be conducted in a more transparent and strategic manner, taking into account the conditions in the country (political will and benefits) and taking more seriously the values underlying German foreign and development policy (avoidance of double standards).

Policy points concerning management/ implementation:

- A cost-benefit analysis of return versus regularisation or other measures based on factual elaborations (evaluations) could contribute to shifting the focus in practice and public debate from the effectiveness of return to regularisation/ integration, from welfare burden to granting protection and rights, from racial profiling and framing of individuals as a risk to security and public order to reflecting on mechanisms of structural social exclusion present in the German return governance system (criminalisation of rejected asylum seekers and deportation detention).
- Provide legal counselling and long-term funding for state and independent return counselling centres.
- Provide mandatory training for counsellors and long-term funding for state and independent return counselling centres.
- Provide stable funding for court-appointed legal counselling and defence for persons subject to the various forms of deportation detention to reduce the number of unlawful detentions.

Policy point concerning communication/ public debate:

- A discussion on alternatives to return, such as regularisation, should enter the public debate, while different stakeholders are urged to analyse possibilities of regularisation. They should draw on previous regularisation programmes in Germany (e.g., in 1999) and international comparisons (Strban et al., 2018). The contradictory debates on the need for skilled labour immigration versus the deportation gap and more effective returns should be reconciled by exploring laborisation policies (Jonitz & Leerkes, 2022). First tentative steps in this direction have been taken with the instrument of temporary suspension for the purpose of training or work (*Ausbildungsduldung* and *Beschäftigungsduldung),* and the Law on further skilled labour immigration (*Gesetz zur Weiterentwicklung der Fachkräfteeinwanderung*), which came into force in January 2024, promising to link the need for skilled labour immigration and the regularisation of those whose removal has been suspended with the prospect of obtaining a residence permit for selected groups (Peitz, 2023). However, these measures are not very present in the public debate, and various stakeholders (government, states, academics) could step up efforts to change the narrative.
- A critical discussion is also needed on the criteria according to which some are given certain rights and a perspective to stay, while others in need of protection are denied a perspective.

8. Conclusions

This report mapped out the legislative, institutional frameworks and procedural infrastructures related with the return of rejected asylum seekers and other unauthorised migrants from Germany with a focus on the period 2015 to 2023. It also outlined the three-tiered institutional framework to explain how existing structures and newly emerging interfaces lead to a complex landscape of legislations and policies. It explained the procedures for return at the border and from within the national territory, the return of the unaccompanied minors, forced and voluntary return to unpack the return processes. In addition to the special cases concerning the obligation to return, it also discussed entry bans, detention and safeguards to fully understand the procedural infrastructures. Sections 5 and 6 of the report also dealt with Germany's readmission efforts with EU and non-EU countries, including those preceding the implementation of the EU Return Direction from 2009 onwards. Finally, it identified other gaps besides those in the legislative, institutional and international cooperation frameworks, for example in relation to data bases, the management of returns (implementation), political communication, and in scholarship.

As the German institutional framework for returns is highly complex due to multi-level governance with discretionary powers of the federal states and sub-national administrative actors (districts and municipalities) in the federal system, an attempt is being made to create more coherence. Since 2015, the return governance framework has expanded to include intermediate coordination structures between the federal and state levels as well as inter-ministerial coordination at the federal level and between the state ministries of the interior. It remains to be analysed in detail what benefits this type of interactions brings and for whom.

The resulting authority and discretionary powers of judges in district and administrative courts, as well as of the individual 'decision-makers' of the third-level Foreigners Authorities are noteworthy in that they embody a heightened/ ethical responsibility to make well-informed decisions. They can only be challenged in higher administrative courts. It varies from court to court and municipality to municipality how decisions on return are justified at the local levels and how appeals are accepted or rejected. Moreover, the involvement of different types of courts (administrative vs. general jurisdiction) complicates the governance framework.

Taking into account the perspective of returnees, the authors of this report refrain from recommending a stricter harmonisation of policies as the influence of more restrictive EU legislation has lowered the protection standards for returnees/ deportees in Germany in some dimensions, while improving protection in others. Nevertheless, there are clear gaps in at least six areas discussed above (section 6), namely in legal framework, institutional framework, international cooperation, databases, implementation and political communication. The research findings have the potential to fill existing gaps not only in the legal but also in the practical shortcomings of return policy implementation processes. Thus, their analysis and clarification can improve return decision-making, increase transparency and inform the public debate, leading to a more factual discussion on migration and return in Germany.

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Annex 1. Statistics on Returns from Germany based on Eurostat Database

Year	Stock of irregular migrants and/or # TCNs found to be illegally present	# Asylum applications	# TCNs/foreign nationals* refused entry at the border	# TCNs/foreign nationals* ordered to leave Total	# TCNs/foreign nationals* returned following an order to leave (annual data)	# Third country unaccompanied minors returned following an order to leave	# TCNs/foreign nationals* who have left to the territory by citizenship	# TCNs/foreign nationals* returned following an order to leave, by type of return			
								# assisted 'voluntary' return	# assisted forced return	# non-assisted 'voluntary' return	# Total
2015	376.435	476.649	3.670	54.080	53.640	N/A	N/A	N/A	N/A	N/A	N/A
2016	370.555	745.545	3.775	70.005	74.080	N/A	N/A	N/A	N/A	N/A	N/A
2017	156.710	222.683	4.250	97.165	44.960	N/A	N/A	N/A	N/A	N/A	N/A
2018	134.125	185.853	5.175	52.930	29.055	N/A	2134	N/A	N/A	N/A	N/A
2019	133.525	165.938	6.730	47.530	25.140	N/A	N/A	N/A	N/A	N/A	N/A
2020	117.930	122.170	4.210	36.330	12.265	N/A	N/A	N/A	N/A	N/A	5015
2021	120.285	190.816	4.635	31.515	8.195	75	N/A	0	10.785	0	10.785
2022	198.310	244.132	5.970	32.865	7.725	110	N/A	0	13.135	0	13.135
2023		87.777									
Data sources:	eurostat	statistica.com	eurostat	eurostat	eurostat	eurostat	eurostat	eurostat			

Annex 2: List of authorities involved in migration return governance

Authority (En/ DE)[111]	Tier of govt (national-regional-local)	Type of organisation	Area of competence in the fields of return (role briefly explained)
FEDERAL GOVERNMENT (BUND) = 1st tier of government			
Federal Ministry of the Interior and Community (BMI) Bundesministerium des Innern und für Heimat (BMI)[112]	Federal government ministry	National ministry	Migration and refugee policy, asylum and residence law, refugee protection, European harmonisation of asylum and migration issues, nationality and naturalisation matters; return policymaking: drafts legislation at the federal level, takes the lead in negotiating bilateral readmission agreements with countries of origin, designs and finances return assistance programmes (REAG-GARP, Starthilfe Plus)
Federal Government Special Commissioner for Migration Agreements (2023 newly established.) Sonderbevollmächtigter für Migrationsabkommen[113]	Federal institution with supra-ministerial assignment	office assigned to the Federal Ministry of the Interior and Community (BMI)	promote the conclusion and implementation of migration agreements: initiate practical cooperative agreements with key countries of origin, taking into account human rights standards; provide new ideas for shaping the external dimensions of migration policy in close coordination with the federal ministries concerned
Minister of State in the Federal Chancellery/ Commissioner for Migration, Refugees, and Integration Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration[114]	Federal institution	focal point under Chancellery with supra-ministerial assignment	est. 2005, first Commissioner, then Minister of State; compiles and submits a report (Report of the Commissioner for Migration, Refugees and Integration), in line with Section 94 (2) of the Residence Act, to the German Bundestag at least every two years; 2022 calling for faster and more pragmatic asylum procedures
Federal Office for Migration and Refugees (BAMF) Bundesamt für Migration und Flüchtlinge (BAMF)[115]	Higher federal authority (national level) within the portfolio of the Federal Ministry of the Interior (BMI) with - multi-tiered organisational structure, broken down into Directorates-General, Groups and Divisions - decentralised locations, including branch offices (partly known as 'regional offices'), arrival centres and decision-	Federal office under the supervision of BMI	Asylum and Dublin procedures, resettlement and relocation, voluntary returns

[111] Authorities defined and authorised by the law are listed in this column, where the legal significance of return governance actors is not clear, they are listed in the second column, except for the entries concerning BAMF, BMZ and international agencies: here, the second column comprises sub-agencies of the superior/ umbrella authority listed in the line above.

[112] www.bmi.bund.de

[113] https://www.bmi.bund.de/EN/ministry/commissioners/specialcommissioner-migration-agreements/specialcommissioner-migration-agreements-node.html

[114] https://www.integrationsbeauftragte.de/ib-de

[115] https://www.bamf.de/EN/

	making centres at the federal states' level (Bundesländer) and local level - cf. below sub-authorities:		
	AnkER ("arrival, decision and return") facilities (8?) Anker(*Ank*unft, *E*ntscheidung, *R*ückkehr)-Zentren[116]	Subordinated facility of BAMF at the municipal level	est. 2018-20 building on arrival centres; bundle all the functions and responsibilities – from the asylum application and the decision to the allocation to municipalities as well as the initial measures to prepare for the return of asylum applicants – through the presence of all authorities involved in situ, e.g. BMI has branch offices in nine AnkER facilities and eight functionally equivalent facilities
	Branch offices/ Außenstellen (54 [2021]/ 60 [2023], thereof 17 in arrival centres, 8 in AnkER facilities, 1 in authorities centre, 1 being BO and regional office)	Subordinated facility of BAMF at the municipal and district level	Decision-making on asylum applications, carry out asylum procedure (incl. filing of application, interview, decision on more complex cases)
	Decision-making centres Entscheidungszentren	Suboffice of BAMF at municipal/ district level	Decision-making on asylum applications of already interviewed applicants, esp. individuals from unsafe countries of origin such as Syria, Iraq and Eritrea. "The decision-making centres (…) take some of the strain from the arrival centres and branch offices."
	Arrival centres (18) Ankunftszentren	The subordinated facility of BAMF, similar to AnKER centres at the municipal level	"Integrated refugee management": usage of a nationwide core data system by all involved authorities, covering all steps in the asylum procedure, incl. registration in the respective Federal Land, health examination, recording of the personal data, identity check, application, the interview and the Federal Office's decision ('notice) on the asylum application, initial integration measures (e.g., "initial orientation courses"), initial advice on access to the labour market by a local employment agency
Federal Ministry of Economic Cooperation and Development Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (BMZ)[117]	Federal government ministry		finances reintegration programmes („Perspektive Heimat") since 2017; engaged in programming for mitigating living conditions in displacement contexts in the framework of the Special initiative 'Flight/ displacement' of the Federal government
	German International Cooperation Gesellschaft für Internationale Zusammenarbeit (GIZ)[118]	Implementing the organisation of BMZ	implements reintegration programs, esp. "Perspektive Heimat"; builds and operates migration counselling centres; provides reintegration scouts; carries out qualification measures in preparation for reintegration in Germany and in country of origin.

[116] Note: the current coalition government (SPD, the Alliance 90/The Greens and the FDP, in power since late 2021) decided not to continue establishing AnkER centres. Functionally equivalent centres were opened also in the previous government period (until mid-2021).
[117] www.bmz.de
[118] www.giz.de

German Federal Foreign Office (GFFO) Auswärtiges Amt (AA)[119]	Federal government ministry		Compiles situation reports on and supports communication with countries of origin, also issuing of return documents/ IDs; German diplomatic missions may get involved in return examination procedure for unaccompanied minors
Federal Police Bundespolizei[120]	Federal/ national authority	Federal/ national authority	Police surveillance of borders and regions close to borders Support of Federal States in forced returns: responsible for the return and deportation of illegally entering aliens at national borders and airports, accompanies deportations and Dublin transfers, trains law enforcement officers to become air escorts (*Personenbegleiter Luft*), provides administrative assistance in obtaining substitute passports in individual cases
FEDERAL STATES (LAND/ LÄNDER) = 2nd tier of government			
State Ministries of Interior Landesinnenministerium State Ministry of Justice Landesjustizministerium			Issuing legal framework at State-level, e.g. *Länder* Reception Act, and relevant procedures
State Ministries of Social Affairs Landesministerium für Soziales			*Länder* are responsible for the accommodation and care of protection seekers in accordance with the *Länder* Reception Act (*Landesaufnahmegesetz*) on the initial reception procedure (*Erstaufnahmeverfahren*) and the associated implementing ordinances.
State Police/s Landespolizei/ Länderpolizeien	Sub-national *Länder*-jurisdiction	*Länder*-authorities of federal states	Removals: in charge of transporting deportees from the place of pick-up to the airport and handing them over to the federal police
	Bavarian Border Police Bayerische Grenzpolizei		
Central Foreigners Authority Zentrale Ausländerbehörde (ZAB)		Decision-making	

[119] https://www.auswaertiges-amt.de/en
[120] www.bundespolizei.de

Key removal headquarters of a state Zentrale Abschiebestelle (ZAS)	e.g., in Thuringia, called as ZAS; in Baden-Württemberg located in the office (Regierungspräsidium, RP Karlsruhe) of one of the governmental districts (Regierungsbezirk)[121] in that particular state; in Bavaria called Bavarian State Office for Asylum and Repatriation Bayerisches Landesamt für Asyl und Rückführungen (LfAR)	Operational; implements ZAB-decision about return; Superior State Authority	Upon receipt of the personal files of the rejected applicant after the deportation order of the foreigners authority, the ZAS checks the requirements for deportation, obtains identification documents (passport procurement) and, for example, organises the removal operation (flight to the country of origin; for the day of the deportation foreigners authority, state police and federal police are notified regarding the details for implementation) ZAS (where existing) operate on behalf of the local foreigners authorities who are responsible in principle
BUND-LÄNDER INTERFACES (INTERMEDIATE COORDINATING STRUCTURES BETWEEN FEDERAL AND STATES LEVEL)			
Repatriation Support Centre Gemeinsames Zentrum zur Unterstützung der Rückkehr (ZUR)	federal-state cooperation platform under the leadership of the Federal Ministry of the Interior (BMI)	With different sub-sections, e.g., for passport replacement work or for collection and review of quantitative and qualitative return data	est. 2017 to coordinate work of federal and state governments and enhance cooperation between state governments in the area of return (through networking, workshops, and training; representatives of the federal states, the BAMF and the Federal Police perform return-related tasks, such as coordination to improve the utilisation of charter flights or the compilation of data; BMI supports in prioritised repatriation of foreign criminals and foreigners who pose a significant threat to public security (case processing is independent of residence status and comprises entire repatriation process, incl. status-legal questions, identity clarification, passport replacement procurement
	Working group on integrated return management Arbeitsgruppe Integriertes Rückkehrmanagement	at the level of the heads of unit (Referatsleitung) of the responsible ministries of the *Länder* as well as the BMI, BAMF, and the Federal Police	exchange twice a year
AnkER-centres and functionally equivalent (FE) facilities Anker-Zentren und funktional äquivalente Einrichtungen	open reception facilities where various agencies are located in the same premise or its immediate vicinity: BAMF, foreigners authority, welfare associations, application offices of the administrative courts, the Federal Employment Agency, as well as other non-governmental counselling and support actors and, at some locations, the state police, plus federal police on demand (esp. in case of Dublin III-transfers)		Protection seekers – except UAM – are required to remain accommodated in the AnkER/FE facilities until the conclusion of the asylum procedure; those whose applications have been rejected should, if possible, remain in these facilities until they leave the country or are deported; benefits are given in kind as far as possible; although open facilities, the presence of asylum seekers is consistently recorded aim is to optimise the asylum procedure in all phases of the process - from the arrival of the asylum seekers to their distribution to the local authorities or their return - through short distances and direct contact between the local agency representatives on the basis of a model administrative agreement of the federal government outlining the main fields of joint cooperation between the federal and state governments: e.g., responsibilities for accommodation, counselling and support services, identification and the asylum procedure, day structuring measures, return counselling, voluntary return and repatriation.
	Standing Conference of Ministers of the Interior[122] and Senators-Working		elaborated recommendations "to remove legal and actual obstacles pertaining to the return of potential offenders" to the IMK/ Standing Conference in 2018, e.g., amendments to the Residence Act (2019), to initiate a working group to elaborate how potential offenders can be held at prisons, for the reduction of the number of judicial authorities involved in removal orders concerning potential offenders, and for instilling an awareness in

[121] Governmental districts are a subdivision of some of the 16 federal states in Germany.
[122] https://www.innenministerkonferenz.de

	Group 'Challenges related to repatriation of potential offenders' Arbeitsgruppe der Innenministerkonferenz ‚Herausforderungen im Zusammenhang mit der Rückführung von potenziellen Straftätern'		the judiciary of diplomatic assurances in connection with removals regarding compliance with Art. 3 of the European Convention on Human Rights (Prohibition of torture in the country of destination)
Joint centre for countering extremism and terrorism (GETZ) Gemeinsames Terrorismus- und Terrorabwehrzentrum	Multi-agency exchange platform with representatives of BAMF, the Federal Office for the Protection of the Constitution, the Federal Intelligence Service, the Federal Office for the Military Counter-Intelligence Service, the Land Offices for the Protection of the Constitution, the Federal Criminal Police Office, the Federal Police, the European Police Office (EUROPOL), the Federal Public Prosecutor, the Central Customs Authority, the Land Criminal Police Offices, the Federal Office for Economic Affairs and Export Control		BAMF is the point of contact regarding politically motivated crime involving foreign, but not Islamist ideology based on its expertise in residence- and asylum-related issues and its status as a migration authority at federal level
Joint Counter-Terrorism Centre Gemeinsames Terrorismusabwehrzentrum (GTAZ)	Inter-agency platform of information exchange and support, participants include the Federal Office for the Protection of the Constitution (Verfassungsschutz), the Federal Criminal Police Office (Bundeskriminalamt), and the Federal Police (Bundespolizei), BAMF, BMI, and foreigners authorities.	Different working groups, e.g. Risk management, Status, Deradicalisation Working Groups	est. 2004, operates in the field of "monitoring and combating Islamist terrorism", pools the expertise of the German security services, enhances federal/state cooperation for the repatriation of criminals and dangerous persons (who constitute a threat to domestic security); individual case assessments, e.g., to check revocation of protection status and legal actions pending following revocation; Foreigners Authorities and BAMF participate in the 'Status-Related Accompanying Measures' and BAMF in 'Deradicalisation' working group
DISTRICTS, MUNICIPALITIES (KOMMUNEN) = 3rd tier of government			
Foreigners Authorities Ausländerbehörden (ALB, ABH[123]), in some locations Foreigners Offices Ausländeramt (ALA)	rural and urban district-level (Landkreis, kreisfreie Städte in few fed states), larger cities belonging to districts also have their own foreigners authorities (e.g. in Hesse, all cities with a population of 50,000 or more)		Deportation order and enforcement: tasked with enforcing the law on foreigners; residential and passport measures, expulsion decisions/ deportation order: issue return decisions to all categories of third-country nationals
COURTS (GERICHTE)			
Federal Constitutional Court Bundesverfassungsgericht	Federal/ national court	Highest judicial authority	Administrative jurisdiction: constitutional complaints, appeals, revisions relating to the fundamental rights of asylum, e.g., Ruling on AsylbLG 2012

[123] Acronym depending on region in Germany.

Federal Administrative Court Bundesverwaltungsgericht[124]		Third instance court for appeals	*2022: discussion whether BVerwG should issue country guidance notes to support more transparent asylum decision-making of BAMF and courts in future*
Higher administrative courts Oberverwaltungsgerichte (OVG) (called Verwaltungsgerichtshof in few federal states)	Federal	Second instance/ highest court of administrative jurisdiction in German federal states	court of general administrative jurisdiction between the Administrative Court (VG) and the Federal Administrative Court (BVerwG) and usually decides in the second instance, in certain cases also in the first instance.
Administrative Court Verwaltungsgericht (VG)	district-level (Landkreis) and larger independent municipalities	First instance court	decide on the legality of the administrative decision on return and deportation
Federal Court of Justice[125] Bundesgerichtshof	Supreme court of the federal government		court of appeal in administrative law matters against decisions of the higher administrative courts (OVG)
District courts Amtsgerichte	district-level (Landkreis) and larger independent municipalities		Order of detention pending deportation; the scope of the examination by the custodial judge on the existence of the obligation to leave the country and the conditions for return is limited to a formal examination.
NON-GOVERNMENTAL ACTORS (at national and sub-national/ local level)			
Return counsellingcentres Rückkehrberatungsstellen		government-funded or based on independent support	advise on return options and funding programmes, help those wishing to return to apply for funding
refugee councils Flüchtlingsräte[126]	State and municipal level, part of advocacy network 'Working Group for Refugees' by PRO ASYL		state refugee councils are independent representatives of the refugee self-organisations, support groups and solidarity initiatives active in the federal states; see it as the state's task to provide refugees with generous reception, effective protection, sustainable integration and a self-determined future in accordance with their displacement trajectory and humanitarian needs
	other civil society and advocacy organisations (e.g., welfare and migrant organisations)	various, e.g., nationwide working group for refugees PRO ASYL, deportation watch/ monitoring at airports	

[124] Administrative Jurisdiction (marked grey) is to be distinguished from ordinary jurisdiction (blue) in Germany. The administrative courts are responsible for public law disputes of a non-constitutional nature (§ 40.1 Rules of the administrative courts [VwGO]). The administrative jurisdiction is structured in three tiers: Federal Administrative Court, Higher Administrative Courts (called the Administrative Court (VGH) in Baden-Württemberg, Bavaria and Hesse) and the administrative courts. The demarcation to the civil courts of ordinary jurisdiction and to the social jurisdiction is sometimes quite complicated and also controversial.

[125] The ordinary court system of domestic courts in Germany is structured in four tiers: federal court of justice, higher regional courts, regional courts, district courts. Relevant for the issuing of orders of detention pending deportation are the district courts (*Amtsgerichte*).

[126] https://www.fluechtlingsrat.de/

	Lawyers		
	Research institutions (academia, think tanks, foundations, consulting agencies, etc.)	various	
National Agency for the Prevention of Torture Nationale Stelle zur Verhütung von Folter[127]	National institution and *Länder* agencies		independent agency to prevent inhuman conditions and treatment at places of detention; publishes annual report, e.g., 2022[128] with recommendations for standards concerning deportations, pre-removal detention, etc.
	media / social media		distort public debate on returns, rarely highlight structural and operational problems
INTERFACES BETWEEN GOVERNMENTAL AND NON-GOVERNMENTAL ACTORS			
	Hardship commissions in federal states Härtefallkommissionen	varying composition, including representatives of state and church agencies, welfare organisations and State refugee council	examines whether protection seekers who are already under an enforceable obligation to leave Germany, fulfil requirements for being granted residence permit for special humanitarian reasons; can propose granting of residence permit but not enforce; decisive criteria for examination is the degree of integration in Germany and hardship from uprooting the person newly through deportation
	Forum/s Deportation Watch Forum Abschiebebeobachtung	at various German airports, members from Federal police, State authorities, churches, welfare organisations, UNHCR, ai, Pro Asyl	deal with questions and problems in connection with the enforcement of deportations by air, e.g. family separations, communication challenges during deportation detention (de-escalation), lack of packed lunch/ supplies during individual case deportations
	Several institutionalised communication formats (symposia, expert conferences, e.g. for judges)	Dialogtagung etc. between BAMF and NGOs	exchange on challenges and procedural hick-ups and structural problems in the areas of asylum and return
INTERNATIONAL			
UN-related (various)			
	IOM		implements return assistance programs on behalf of countries worldwide
European			
	EC DG Home		drafts proposals for regulations and directives at EU level (e.g., Return Directive); negotiates EU readmission agreements with countries of origin
	EP		legislative function

[127] https://www.nationale-stelle.de/en/the-national-agency.html
[128] Nationale Stelle zur Verhütung von Folter (2023), pp. 25-29.

	Frontex		finances and supports German agencies in the logistical implementation of deportations with charter flights; Frontex return monitors accompany Frontex-organised deportation flights
	European Court of Justice (ECJ)		can be called on by the lower administrative courts of German administrative jurisdiction on asylum procedures whilst proceedings are pending to hand down a 'preliminary ruling' on cases of doubt under Community law
	European Court of Human Rights		application might be lodged based on the consideration that a state measure or decision in the asylum and appeal process has violated the human rights of the applicant as confirmed by the ECHR
	Non-governmental INGOs/ advocacy organisations (various)		
		ICMPD	supports EU MS in strengthening national return monitoring systems and supports Frontex in establishing a pool of return monitors
Countries of origin			identify their nationals and issue passport replacement documents; negotiate readmission agreements or arrangements to take back their nationals (or not); issue landing permits for charter deportation flights

Annex 3: International cooperation

Readmission Agreements with EU countries

State	Signature	Entry into force	Reference
Agreement between Belgium, Germany, France, Italy, Luxembourg, Netherlands and Poland	29.03.1991	01.05.1991	BGBl. II 1993, Nr. 23, S. 1099

Bilateral agreements for the implementation of multilateral readmission agreements

State	Signature	Entry into force	Reference
Poland (Warsaw Protocol on Determination on techn. Conditions)	29.09.1994	29.09.1994	BGBl. II 1994, Nr. 60, S. 3775

Annex 4: Funding return (budget) and related programmes

	Federal Budget Plan[1]	Budget for REAG/GARP[2]			StarthilfePlus[2]			Bund-Länder-Projekt URA[2]		Promotion of voluntary departures to Syria, Yemen, Libya and Eritrea that were not processed via the REAG/GARP programme[2]
	Subsidy for programs to promote voluntary departure in EUR	Budget according to the finance plan in EUR	Of that personnel- and administrative cost in EUR	Invoiced cost in EUR	Budget according to finance plan in EUR	Of that Personnel- and administrative cost in EUR	Invoiced cost in EUR	Federal government's share of invoiced expenditure in euros	Of that Personnel- and administrative cost in Euro	Expenses in EUR
2015	16.327.000,00									
2016	19.520.000,00									
2017	32.783.000,00	18.538.241,00	2.096.643,00	11.585.947,67	17.610.902,12	1.065.379,03	706.350,87	679.044,85	354.272,43	35.713,50
2018	32.707.000,00	21.859.776,53	2.391.179,14	9.462.376,22	32.767.803,30	4.836.347,15	19.933.131,70	264.234,55	249.343,95	517.035,76
2019	34.453.000,00	19.623.269,84	2.733.789,64	13.358.586,81	12.950.262,28	4.449.694,93	12.927.731,21	439.244,11	306.564,70	499.425,49
2020	27.602.000,00	13.993.674,41	2.634.616,17	8.179.064,52	20.436.880,17	4.942.125,52	12.663.434,91	509.588,29	321.915,33	112.191,10
2021	36.089.000,00	10.137.642,25	2.404.133,04	9.553.774,50	18.280.800,89	4.527.936,28	18.280.800,89	519.149,59	333.744,45	102.871,19
2022	39.057.000,00	13.756.658,92	2.552.744,27	ongoing	15.628.319,35	4.941.197,07	ongoing	536.785,86	337.065,14	85.950,72 (until 22 june 2022)
2023	38.100.000,00									

Source #1:
Rechnung über den Haushalt des Einzelplans 06 Bundesministerium des Inneren für das Haushaltsjahr 2015, p. 267.
https://www.bundeshaushalt.de/static/daten/2015/ist/epl06.pdf#page=33
Rechnung über den Haushalt des Einzelplans 06 Bundesministerium des Innern für das Haushaltsjahr 2016, p. 262.
https://www.bundeshaushalt.de/static/daten/2016/ist/epl06.pdf#page=36
Rechnung über den Haushalt des Einzelplans 06 Bundesministerium des Innern für das Haushaltsjahr 2017, p. 279.
https://www.bundeshaushalt.de/static/daten/2017/ist/epl06.pdf#page=37
Rechnung über den Haushalt des Einzelplans 06 Bundesministerium des Innern, für Bau und Heimat für das Haushaltsjahr 2018, pp. 266-267.
https://www.bundeshaushalt.de/static/daten/2018/ist/epl06.pdf#page=40
Rechnung über den Haushalt des Einzelplans 06 Bundesministerium des Innern, für Bau und Heimat für das Haushaltsjahr 2019, p. 278.
https://www.bundeshaushalt.de/static/daten/2019/ist/epl06.pdf#page=42
Rechnung über den Haushalt des Einzelplans 06 Bundesministerium des Innern, für Bau und Heimat für das Haushaltsjahr 2020, p. 291.
https://www.bundeshaushalt.de/static/daten/2020/ist/epl06.pdf#page=43
Rechnung über den Haushalt des Einzelplans 06 Bundesministerium des Innern, für Bau und Heimat für das Haushaltsjahr 2021, p. 307.
https://www.bundeshaushalt.de/static/daten/2021/ist/epl06.pdf#page=43
Rechnung über den Haushalt des Einzelplans 06 Bundesministerium des Innern und für Heimat für das Haushaltsjahr 2022, p. 308.
https://www.bundeshaushalt.de/static/daten/2022/ist/epl06.pdf#page=44
Bundeshaushaltsplan 2022, Einzelplan 06 Bundesministerium des Inneren und für Heimat, p. 54.
https://www.bundeshaushalt.de/static/daten/2022/soll/epl06.pdf
Bundeshaushaltsplan 2023, Einzelplan 06 Bundesministerium des Inneren und für Heimat, p. 55.
https://www.bundeshaushalt.de/static/daten/2023/soll/epl06.pdf

Sources #2:

Deutscher Bundestag, Kosten der Migration, pp. 26-28,
https://dserver.bundestag.de/btd/20/028/2002845.pdfhttps://dserver.bundestag.de/btd/20/028/2002845.pdf

Sources #3:

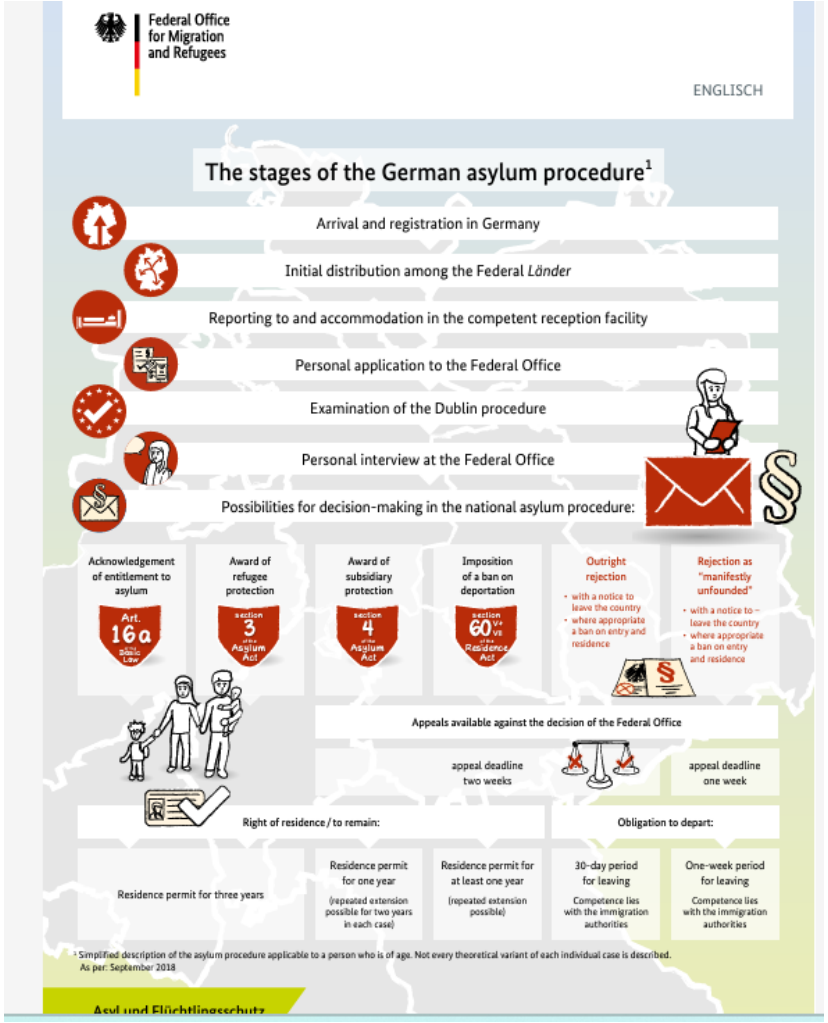
Deutscher Bundestag, Abschiebungen im Jahr 2015, p. 38,
https://dserver.bundestag.de/btd/18/075/1807588.pdf
Deutscher Bundestag, Abschiebungen im Jahr 2016, p. 46, https://dserver.bundestag.de/btd/18/111/1811112.pdf
Deutscher Bundestag, Abschiebungen und Ausreisen im Jahr 2017, p. 49, https://dserver.bundestag.de/btd/19/008/1900800.pdf
Deutscher Bundestag, Abschiebungen und Ausreisen im Jahr 2018, p. 57, https://dserver.bundestag.de/btd/19/080/1908021.pdf
Deutscher Bundestag, Abschiebungen und Ausreisen 2019, p. 37, https://dserver.bundestag.de/btd/19/182/1918201.pdf
Deutscher Bundestag Abschiebungen und Ausreisen 2020, p. 36, https://dserver.bundestag.de/btd/19/270/1927007.pdf
Deutscher Bundestag, Abschiebungen und Ausreisen im Jahr 2021, p. 27,
https://dserver.bundestag.de/btd/20/008/2000890.pdf
Deutscher Bundestag, Abschiebungen und Ausreisen 2022, p. 19, https://dserver.bundestag.de/btd/20/057/2005795.pdf

Annex 5: Legislation mapping

The title of the policy/legislation in English	The title in the original language	Date
Nationality Act	Staatsangehörigkeitsgesetz/StAG	July 22, 1913
Law on Return Assistance	Rückkehrhilfegesetz	November 28, 1983
Germany: Return to 'Safe country of origin'	Art. 16a(2)-(3) Grundgesetz	June 28, 1993
Asylum Seekers' Benefits Act	Asylbewerberleistungsgesetz	November 1, 1993
Central Register of Foreigners Act	Gesetz über das Ausländerzentralregister (AZRG)	September 2, 1994
Act on the General Freedom of Movement for EU Citiztens	Freizügigkeitsgesetz/EU	July 30, 2004
Regulation on the revision of the Asylum Responsibility Determination Regulation	Verordnung zur Neufassung der Asylzuständigkeitsbestimmungsverordnung	April 2, 2008
General administrative Regulation to the Residence Act	Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz (AVwVAufenthG)	October 26, 2009
Law on the Implementation of European Union Residence Directives and the Adaptation of National Legislation and the EU Visa Code	Gesetz zur Umsetzung Aufenthaltsrechtlicher Richtlinien der europäischen Union und zur Anpassung nationaler Rechtsvorschriften und den EU-Visakodex	Nov 22, 2011
Act to Improve the Rights of Persons Entitled to International Protection and Foreign Workers	Gesetz zur Verbesserung der Rechte von international Schutzberechtigten und ausländischen Arbeitnehmern	August 29, 2013
Act to classify further states as safe countries of origin and to facilitate access to the labor market for asylum seekers and tolerated foreigners	Gesetz zur Einstufung weiterer Staaten als sichere Herkunftsstaaten und zur Erleichterung des Arbeitsmarktzugangs für Asylbewerber und geduldete Ausländer	October 31, 2014
Guideline for nationwide return counselling	Leitlinie für eine bundesweites Rückkehrberatung	April 9, 2015
Act on the redefinition of the right to stay and the termination of residence	Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung	July 27, 2015
Asylum Act	AsylG	September 2, 2015 before Asylum Procedure Law which was announced August 1, 1982
Act on the Acceleration of Asylum Procedures (Asylum Package I)	AsylverfahrensbeschleunigungsG	October 20, 2015
Data Sharing Improvement Act	Gesetz zur Verbesserung der Registrierung und des Datenaustausches zu aufenthalts- und asylrechtlichhen Zwecken/Datenaustauschverbesserungsgesetz	February 2, 2016
“Asylum Package II”, incl. Act on the Introduction of Accelerated Asylum Procedures	Gesetz zur Einführung beschleunigter Asylverfahren (Asylpaket II)	March 11, 2016
Act to Facilitate the Expulsion of Aliens with Criminal Records and to Expand the Exclusion of Refugee Recognition in the Case of Asylum Seekers with Criminal Records	Gesetz zur erleichterten Ausweisung von straffälligen Ausländern und zur erweiterten Ausschluss der Flüchtlingsanerkennung bei straffälligen Asylberwerben	March 11, 2016
Integration Act	Integrationsgesetz	July 31, 2016
Act to improve the enforcement of the obligation to leave the country	Gesetz zur besseren Durchsetzung der Ausreisepflicht	July 20, 2017
Law on the extension of the suspension of family reunification with beneficiaries of subsidiary protection	Gesetz zur Verlängerung der Aussetzung des Familiennachzuges zu subsidär Schutzberechtigten	March 8, 2018

Act on the Reorganization of Family Reunification with Beneficiaries of Subsidiary Protection (Family Reunification Reorganization Act)	Gesetz zur Neuregelung des Familiennachzugs zu subsidär Schutzberechtigten (Familiennachzugsneuregelungsgesetz)	July 12, 2018
Third Law amending the Asylum Act	Drittes Gesetz zur Änderung des Asylgesetzes	December 4, 2018
Law on toleration in training and employment	Gesetz über Duldung bei Ausbildung und Beschäftigung	July 8. 2019
Second Data Exchange Improvement Act	Zweites Datenaustauschverbesserungsgesetz (2. DAVG)	August 9, 2019
Second Act to improve the enforcement of the obligation to leave the country ('Law of orderly return', with toleration [Duldung] 'light')	Geordnete-Rückkehr-Gesetz Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht	August 15, 2019
Act to postpone the census until 2022 and to amend the Residence Act	Gesetz zur Verschiebung des Zensus in das Jahr 2022 und zur Änderung des Aufenthaltsgesetzes	December 3, 2020
Asylum Procedure Secretariat Instructions	Dienstanweisung AVS (Asylverfahrenssekretariat)	February 2022
Asylum Instructions	Dienstanweisung Asyl	February 4, 2022
Act on the acceleration of asylum court proceedings and asylum procedures	Gesetz zur Beschleunigung der Asylgerichtsverfahren und Asylverfahren	December 21, 2022
Law on the introduction of an opportunity residence law	Gesetz zur Einführung eines Chancen-Aufenthaltsrechts	December 21, 2022
Dublin Instructions	Dienstanweisung Dublin	February 2023
Law on further skilled labour immigration	Gesetz zur Weiterentwicklung der Fachkräfteeinwanderung	2023
Agreement on new Repatriation Improvement Law	Gesetz zur Verbesserung der Rückführung	2023 (enters into force 2024)

Annex 6. Flow Chart on Asylum Procedure



About the Authors

Dr. Katja Mielke is a Senior Researcher at the Bonn International Center for Conflict Studies, Germany

Dr. Zeynep Sahin Mencutek is a Senior Researcher at the Bonn International Center for Conflict Studies, Germany

Daphne Wolf is a student assistant at the Bonn International Center for Conflict Studies, Germany and student of Law at University of Bonn.

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GAPS

Decentring the Study of Migrant Returns and Return Policies

Legal and Policy Infrastructures of Returns in Greece

Country Dossier (WP2)

Authors:

Panos Hatziprokopiou, George Kandylis, Katerina Komita,

Penny Koutrolikou, Eva Papatzani, Angelo Tramountanis

National Centre for Social Research, EKKE, Athens, Greece
Εθνικό Κέντρο Κοινωνικών Ερευνών

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List of abbreviations

AMIF	Asylum, Migration and Integration Fund
AVRR	Assisted Voluntary Return and Reintegration
CJEU	Court of Justice of the European Union
DRC	Danish Refugee Council
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
GAS	Greek Asylum Service
GCR	Greek Council for Refugees
GNCHR	Greek National Commission for Human Rights
HIAS	Hebrew Immigrant Aid Society
IOM	International Organisation of Migration
JMD	Joint Ministerial Decision
MENA	Middle East and North Africa
MMA	Ministry of Migration and Asylum
MS	Member State
NCCBS	National Coordinating Centre for Border Control and Surveillance
NGO	Non-Governmental Organisation
OCAVRR	Open Centre for Migrants Registered for Assisted Voluntary Return and Reintegration
PD	Presidential Decree
PROKEKA	Pre-Removal Detention Center
RSA	Refugee Support Aegean
TCN	Third Country National
UAM	Unaccompanied Minor
UNHCR	United Nations High Commissioner for Refugees

Summary

Greece has a long history of (formal, informal and irregular) return migration policies and practices that have taken different forms depending on the political and socioeconomic context, including forced returns, deportations, push backs, spontaneous returns, and assisted voluntary returns. Since 2015, a number of developments foregrounded specific return procedures and practices, such as the EU-Turkey Statement and the increasing number of land and sea pushbacks (as reported/evidenced especially after the events in the Greek-Turkish border region of Evros in 2020). More recently, further institutionalisation of returns can be observed with the establishment of the Directorate of Returns and Withdrawals in 2020 and the position of a National Coordinator of Returns in late 2023 within the Ministry of Migration and Asylum (MMA).

The present Country Dossier discusses the legal and institutional framework governing returns in Greece and highlights a number of gaps in terms of legal certainty, consistency and guaranties. The legal framework is characterised by ambiguity, mainly due to preceding legal arrangements on 'administrative expulsion' that remain in force. Particularly, Law 3907/2011 which transposed the Return Directive 2008/115/EC into the Greek legislation and determines the operation of returns, coexists with Law 3386/2005 concerning the administrative expulsions of Third Country Nationals. An additional complexity also arises as regards the multiple national, supranational and international actors involved in returns.

While the responsibility to design and implement migration policy as a whole lies with the MMA, the police authorities also have wide legal competences in return migration governance, especially in what concerns administrative expulsions, return decisions, detention and the management of the detention system. Existing legal safeguards against return, as for example those applying to minors, pregnant women, crime victims etc., are implemented under the proviso that a TCN is not considered dangerous for national security reasons, something which is again decided by the police.

As a result, a number of inconsistencies emerge, including the fact that the respective state administration is often able to bypass the procedures of the Directive and apply the deportation procedures. This is the case, for example, with expulsion decisions issued against TCNs illegally entering Greece at the borders even if the TCNs subsequently apply for international protection and obtain a permit to stay in the country; something that raises issues of compatibility with Article 2 para. (2) (a) of the Return Directive.

Furthermore, the implementation of return, in most of its forms, is usually closely linked to detention as detention is the rule rather than the exception when there is a decision for return or deportation. This becomes evident as administrative detention is used extensively, on the grounds of public order and national security reasons, in some cases solely on the grounds of illegal[1] entry, and despite numerous reports evidencing that the existing detention conditions severely violate detainees' rights and dignity.

Existing legal inconsistencies are accompanied by poor data availability on returns. Data inconsistencies exist among different data categories (e.g. between administrative procedures

[1] Throughout this dossier the term 'illegal/illegality' refers to the official terminology of the Greek legal system. The Greek term in the legislation is *παράνομος* which has the sense of 'violating the law'. Obviously, enough, the term also has political and moral connotations which the authors do not endorse, while being aware that the reproduction of official terminologies almost unavoidably reinforces such nuances.

and actual enforcement of returns), different data sources and different terms used. These observations may partly point to shifts in systems of recording and reporting on data over the years, alongside (in)consistency between statistical and legal categories and (lack of) convergence with EU terminology.

Assisted Voluntary Return and Reintegration program run by IOM provides the ground for a more humane approach to return migration, even if the context in which it operates is one of coercion, as it also addresses migrants who have been issued with a return decision and even detainees. Nevertheless, it remains underfunded if compared to other types of forced removals, a choice that reveals the political priorities of the authorities in current return and – more generally – migration issues.

The GAPs Project

GAPs is a Horizon Europe project that aims to conduct a comprehensive multidisciplinary study on the drivers of return policies and the barriers and enablers of international cooperation on return migration. The overall aim of the project is to examine the disconnects and discrepancies between expectations of return policies and their actual outcomes by de-centring the dominant, one-sided understanding of "return policymaking". To this end, GAPs:

- examine the shortcomings of EU's return governance;
- analyse enablers and barriers to international cooperation, and
- explore the perspectives of migrants themselves to understand their knowledge, aspirations and experiences with return policies.

GAPs combines its decentring approach with three innovative concepts:

- a focus on return migration infrastructures, which allows the project to analyse governance fissures;
- an analysis of return migration diplomacy to understand how relations between EU Member States and with third countries hinder cooperation on return; and
- a trajectory approach that uses a socio-spatial and temporal lens to understand migrant agency.

GAPs is an interdisciplinary 3-year project (2023-2026), co-coordinated by Uppsala University and the Bonn International Centre for Conflict Studies with 17 partners in 12 countries on 4 continents. GAPs' fieldwork has been conducted in 12 countries: Sweden, Nigeria, Germany, Morocco, the Netherlands, Afghanistan, Poland, Georgia, Turkey, Tunisia, Greece and Iraq.

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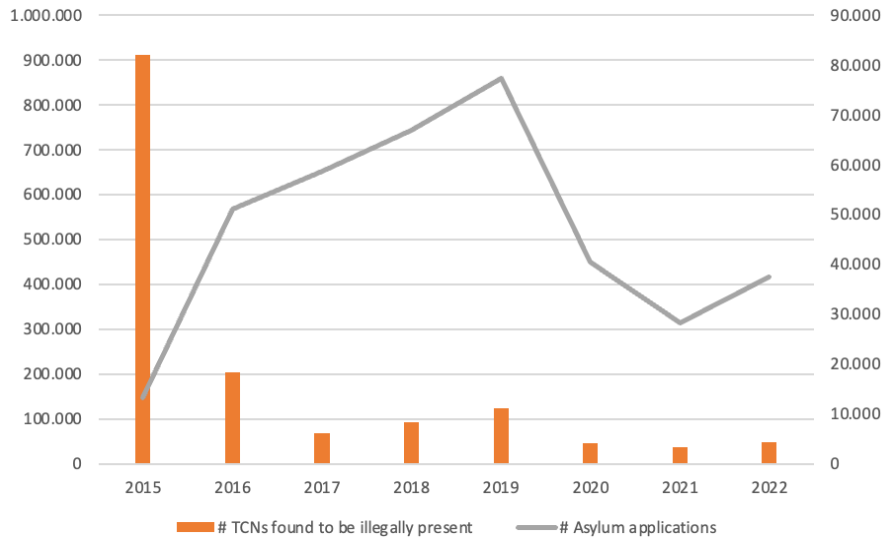
1. Statistical Overview Regarding Returns and Readmissions at the National Level

The full data table is included in the **Annex I**. This introductory section provides a broad overview and description of key data, the implied patterns and trends but also inconsistencies between different data categories and sources. The graph below brings together the first two columns of the Table: data on the 'stock' of irregular migrants (literarily: 'TCNs found to be illegally present in the country' - see orange bar/ left axis, Column B in Table), and data on asylum applications (line/ right axis, Column C), as derived from the Eurostat database. The overall picture for the period 2015-2022 records the rather 'exceptional' pick in the former category over 2015, year of the so-called European migration 'crisis', with significant decreases thereafter (considering also the EU Turkey Joint Statement of March 2016), alongside the growth of asylum applications. Since 2017 annual figures of both categories of data appear to show an almost parallel trend, growing steadily and in parallel between 2017-2018, then dropping significantly in 2020-21 (owing to the covid-19 pandemic and its management, involving subsequent lockdowns and highly enforced border controls), while rising again in 2022[2].

Figure 1.



Source: Eurostat (own elaboration)

Next, the table below presents the numbers of TCNs ordered to leave (Column G in Table). We observe a sharp increase during 2016-19, then decline over 2020-21 before rising again in

[2] The former category is based on data on apprehensions for irregular entry or stay, until 2019 also appearing on the Greek police website (https://www.astynomia.gr/statistikes-epetirides/statistika-stoicheia-2/statistika-stoicheia-paranomis-metanastefsis). Yet this data seemingly counts the number of arrests rather than persons (hence an individual may have been arrested e.g. twice, once for irregular entry, and another time for irregular stay). At the same time, while this data match exactly Eurostat data for the year 2016, and only slightly diverge (1-2 persons/arrests) for the years 2015 and 2017/2018, the difference between the two sources reaches nearly 700 in 2019. After that year, these statistics are not anymore published on the police website, and no possible comparison can be made between other official Greek online sources and Eurostat data. Moreover, data on Asylum applications also differ between Eurostat and Greek sources (Ministry of Migration & Asylum).

2022, following a parallel trend with the data described above. Interestingly, the shares of this category in the numbers 'found to be illegally present' appear to grow from 11.5% in 2015 to more than 60% in 2017-19 and over 80% in 2020 (presumably, four out of five of those arrested for irregular entry or stay received an order to leave); and remain high thereafter. Notwithstanding the fact that data refer to administrative procedures rather than actual persons (and so statistics for different categories in the same year do not really match as implied above, i.e. do not refer to the same population), this is possibly further indicative of more restrictive policies, increased controls, etc., and may include (potential or failed) asylum claimants.

Table 1.

Year	# TCNs ordered to leave	% in TCNs found to be illegally present	# TCNs returned following an order to leave (annual data)	% in the total # of TCNs ordered to leave
2015	104,575	11.5	14,390	13.8
2016	33,790	16.5	19,055	56.4
2017	45,765	67.2	18,060	39.5
2018	58,325	62.5	12,465	21.4
2019	78,880	64.1	9,650	12.2
2020	38,540	81.5	6,950	18.0
2021	28,815	75.8	6,855	23.8
2022	33,500	68.3	6,985	20.9

Source: Eurostat (own calculations)

For a number of reasons, however, a minority only of those receiving such an order do actually leave the country. As also shown on the Table, the share of TCNs returned following an order to leave (Column J) among the total number of those ordered to leave was important in 2016 (>50%) and 2017 (nearly 40%) but remained fairly lower since then (12-24%). An even more nuanced picture emerges when looking at the respective nationalities of those ordered to leave and those actually returned (Appendices 1 & 2 in Data Repository). For instance, the overall weight of Albanian nationals somehow distorts the picture: while they form the largest share of returned TCNs (on average exceeding 50% of the annual totals), they rate an annual average of less than 20% among those ordered to leave. On the other hand, more than 70,350 Syrians were ordered to leave during 2015-2022, yet only 1% were returned following such an order; but of 9,660 Georgians ordered to leave over the same period, nearly three out of four were actually returned. In short, major gaps (disparities) are observed between migrants ordered to leave and actual returns following such an order, but also among different nationalities of migrants and countries of return, which are indicative of variations in the diplomacy, implementation and enforcement of returns.

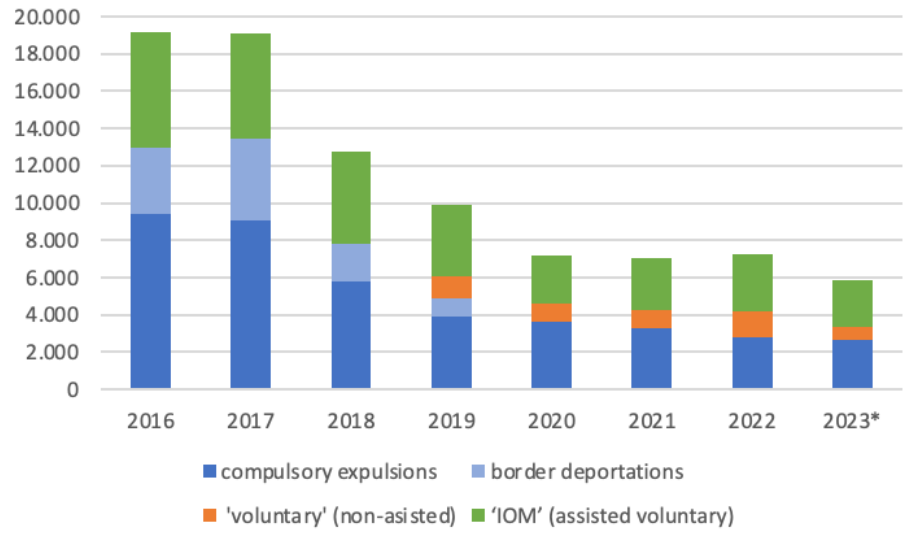
Table 2.

Year	# TCNs returned following an order to leave, by type of return (# Total from Quarterly data)	# TCNs who have left to the territory by citizenship
2015	-	-
2016	-	-
2017	-	-
2018	-	12,488
2019	-	-
2020	-	6,083
2021	6,880	6,875
2022	7,015	-

Source: Eurostat

Moreover, annual Eurostat data on TCNs returned following an order to leave are inconsistent with quarterly data on TCNs returned following an order to leave by type of return (Column P), as shown in the Table above. Disparities are not as large, yet when quarterly data are rounded per year they do not match annual data. Similarly, as also shown in the table, there are variations between these two Eurostat tables and that of TCNs who have left the territory by citizenship (Column L). Lastly, relevant data from official Greek sources also reveal different figures (even though not too far from Eurostat ones above), illustrated in the graph below.

Figure 2.



* 2023 data cover January to November

Source: Greek Ministry of Civil Protection (own elaborations)[3]

[3] Monthly data for 2016-19 are downloaded and elaborated from the government data repository (https://archive.data.gov.gr/dataset/anagkastikes-kai-e8eloysies-apelaseis-mh-nomimwn-metanastwn, also available on the portal for European data: https://data.europa.eu/data/datasets/apelaseis-mh-nomimwn-metanastwn-ana-

Eurodata data also indicate an overall decline in the numbers of returns over that period: from over 19,000 in 2016-17, they dropped to about just above 7000 in 2021-22. Forced returns as a share of the total has also declined, while voluntary returns have increased. The proportion of forced returns was reduced: from 68-70% of total returns in 2016-17, they came to form 47.7% in 2021 and 38.2% in 2022. Between 2016-19, the 'forced' category was broken down into two sub-categories, labelled 'compulsory expulsions' (literally translating the Greek term 'αναγκαστικές απελάσεις') and 'border deportations' ('επαναπροωθήσεις' in Greek, literarily 're-forwardings') – see also section 5.1 in the Dossier on concepts and terms. In the data for years 2019-2020 this category is called 'returns' 'based on the simplified readmission procedure from the northern borders of the country'. Its overall weight within forced returns appears to decrease, from 27.5% in 2016 and 32.8% in 2017 to 25 20.1-21.5% in 2019-20. No such distinction is made thereafter.

'Voluntary' return on the other hand is also depicted in two categories. The most significant is the Assisted Voluntary Return and Reintegration programme (AVRR) implemented by the IOM, which appears to have increased in proportions (e.g. over 40% of total returns in the last couple of years as compared to about 30% in 2016-17, yet the number of beneficiaries in 2022 was about half that in 2016). In 2019 a new category is recorded labelled (non-assisted) 'voluntary' ('οικειοθελής' in Greek), which remains fairly low but is on the rise (from 12% in 2019 to 19/3% in 2022. In 2016 and early 2017 data, this appeared to refer to 'voluntary' returns implemented by the Police; but in the 2019-20 datasets is specified as 'returns in the context of the returns directive (Law 3907/2011, Art. 22) following a return order with a deadline for voluntary departure, holders of a 78α certificate (of non-removal for humanitarian reasons), withdrawal from an asylum claim'.

Finally, as the Greek government consistently denies performing pushbacks or other illegal practices involving the forced/violent removal of foreign nationals from Greek territory, in response to relevant allegations, relevant estimations based on evidence and testimonies are provided by investigations and documentation by journalists and human rights organisations (see point 15 in section 8 of the Dossier).

yphkoothta?locale=en), while 2020-2023 data come from the monthly statistic reports on Ministry of Migration & Asylum's website (https://migration.gov.gr/en/statistika).

2. The Political Context

Greece has a quite long record of (formal, informal and irregular) return migration policies and practices, at least since the massive increase of migrant arrivals in the early 1990s, mainly of people from Balkan and Eastern European countries, and predominantly from Albania. During that decade hundreds of thousands of deportations to Albania were taking place every year, on the fringes of official legal rules[4]. The so-called 'sweep operations' (*epichirisi skoupa),* performed by the police as a means to combat irregular migration and the allegedly associated criminality, enjoyed wide coverage in the national media.

However, from the late 1990s onwards, and in light of the forthcoming 2004 Olympic Games, large-scale regularisation process took place in order to ensure the worker status of previous undocumented migrants[5]. Cheap and precarious migrant labour, especially in constructions, agriculture and domestic services, contributed to the high rates of economic growth of that period. Despite seemingly decreasing, deportations of irregular migrants never ceased to take place, with a number of them constituting land pushbacks. However, accurate official data are lacking[6].

By the mid-2000s, with the enforcement of the Dublin II agreement, the numbers of people trapped in Greece increased, while their living conditions were seriously deteriorating due to the ongoing recession. After the economic collapse in 2010 and in a context of severe recession and austerity, return migration was influenced in two ways. On the one hand, a hard to estimate number of established migrants with various legal statuses started to leave Greece spontaneously, due to restricted employment opportunities. For some of them this meant their repatriation which, at least for those from neighbouring countries (such as Albania or Bulgaria), has often been associated with the adoption of circular migration routes (often associated with seasonal employment in agriculture and tourism). In the same period the International Organisation of Migration (IOM) launched its program for assisted voluntary returns and reintegration (AVRR).

On the other hand, worsening life conditions in the country were exploited to augment racist discourses and discrimination against migrants (employing the 'Greeks versus migrants' tactic). The 2012-2013 conservative government launched an extensive and durable police operation (ironically called Xenios Zeus akin to the ancient God of hospitality) to arrest and deport irregular migrants. What this campaign brought about was not so much an increase of deportation, but a significant increase of the number of racialised people imprisoned in harsh conditions in pre-removal detention centres around Greece, even for periods longer than two years[7]. This specific incarceration and return policy had serious repercussions for newcomers, as the number of people arriving from war-torn and/or poverty-stricken countries continued to rise. During this period, we also witnessed the spatialisation of the EU's deterrence practices

[4] Baldwin-Edwards, M. & Fakiolas, R. (1998) Greece: The contours of a fragmented immigration policy. *South European Society & Politics*, 3(3): 186-204; Maroukis, T. (2008) *Undocumented migration: Counting the uncountable. Data and trends across Europe*. Country report for CLADESTINO project. Available at: [www.eliamep.gr/wp-content/uploads/2017/12/clandestino_report_greece_final_3.pdf]. Accessed: 9/9/2023.

[5] Lazaridis, G. & Poyago-Theotoky, J. (1999) Undocumented migrants in Greece: Issues of regularisation. *International Migration*, 37(4): 715-740.

[6] Kourtovik, I. (2001) Migrants between law and illegality. In Marvaki, A., Parsanoglou, D., & Pavlou, M. (eds.) *Migrants in Greece*. Athens: Ellinika Grammata, pp. 163-198. (In Greek).

[7] Human Rights Watch (HRW) (2012) *Hate on the Streets. Xenophobic Violence in Greece*; HRW (2013) *Unwelcome Guests. Greek Police Abuses of Migrants in Athens*, Athens: Human Rights Watch.

on Greek borders. Already from 2010 Frontex has been present in the country with different operations taking place at the land (Evros) and sea (Aegean) borders.

The 'refugee crisis' of 2015-16, i.e. the large and rapid increase in arrivals of asylum seekers from Syria, Iraq, Afghanistan and other countries of MENA region (Middle East and North Africa), contributed to a short-term alteration of the dominant negative stances, especially since this was considered as a temporary refugee 'inflow' that was directed to other European countries. However, it did not take long before a new return agreement, known as the EU – Turkey Statement was agreed upon in March 2016 aiming to curb the refugee movement. Under this Statement migrants and asylum seekers with unfounded or inadmissible claims would be 'returned' (sic) from Greece to Turkey. While its implementation resulted in the decrease of departures from Turkey, it didn't really reduce the numbers of actual returns that remained very low in comparison with the number of arrivals. At the same time, other EU agreements with Third Countries were paving the way for deportations of specific nationals.

Push-back operations targeting people crossing the Aegean Sea or the Greek-Turkish border region of Evros have been reported in the past[8], but the number of such reports has escalated since 2019[9]. The Greek governments systematically argue that these allegations 'are clearly unfounded' and state officials prefer to talk about entry prevention or effective border guarding[10]. Yet the Greek Ombudsman has identified that pushback operations 'have been the work or have at least involved state agencies and state agents at the levels of operational planning, logistics and perpetrators'[11], while the UN Special Rapporteur on the Human Rights of Migrants argued in 2022 that '[i]n Greece, pushbacks at land and sea borders have become de facto general policy'[12]. According to data submitted to the Greek Parliament by the Minister of Public Order[13], 230.993 third country nationals were prevented from entrance in the 10 first months of 2022. Frontex has also been accused of facilitating or remaining inactive in the face of pushbacks, and it has been the subject of several undergoing investigations[14].

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[8] FIDH, Migreurop, REMDH (2014) *Frontex Greece-Turkey: The borders of denial*, Paris: FIDH; Greek Ombudsman (2023) *Returns of third-country nationals. Special report 2022*. Available at: [https://www.synigoros.gr/en/category/eidikes-ek8eseis/post/special-report-or-return-of-third-country-nationals-2022]. Accessed: 18/11/2023.

[9] Border Violence Monitoring Network (2020) *Annual Torture Report*. Available at: [borderviolence.eu/app/uploads/Annual-Torture-Report-2020-BVMN.pdf]. Accessed: 10/09/2023; United Nations, General Assembly (2022) *Human Rights Violations at International Borders: Trends, Prevention and Accountability: Report of the Special Rapporteur on the Human Rights of Migrants, Felipe González Morales*, A/HRC/50/31, 26 April 2022. Available at: [https://daccess-ods.un.org/tmp/3621627.98643112.html]. Accessed: 19/12/2023.

[10] Hellenic Republic Ministry of Migration and Asylum (2021) Statement by the Minister of Migration & Asylum of Greece Mr. Notis Mitarachi about Alleged 'Pushbacks'. Hellenic Republic Ministry of Migration and Asylum Press Release, July 13, 2021. Available at: [https://migration.gov.gr/statement-by-the-minister-of-migration-asylum-of-greece-mr-notis-mitarachi-about-alleged-pushbacks/]. Accessed: 19/12/2023.

[11] Greek Ombudsman (2023) *Alleged Pushbacks to Turkey of Foreign Nationals Who Had Arrived in Greece Seeking International Protection*. Available at: [https://old.synigoros.gr/resources/060521-pushbacks-interim-report_eng.pdf]. Accessed: 19/12/2023.

[12] United Nations, General Assembly (2022) *Human Rights Violations at International Borders: Trends, Prevention and Accountability: Report of the Special Rapporteur on the Human Rights of Migrants, Felipe González Morales*, A/HRC/50/31, 26 April 2022. Available at: [https://daccess-ods.un.org/tmp/3621627.98643112.html]. Accessed: 19/12/2023.

[13] AIDA-ECRE (2023) Country Report: Access to the territory and push backs. Available at: [https://asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/#_ftnref7]. Accessed: 19/12/2023.

[14] Ibid.

Timeline of return policies in Greece

***Table 3*. Return policies timeline in Greece**

1990s	Early 2000s	Post-2008 debt crisis	Post-2015 'refugee crisis'
Law 1975/1991 is adopted to regulate entry and residence of migrants in Greece and to organise deportation procedures. Large-scale deportations of irregular Albanian migrants without legal process, widely known as 'sweep operations'. Fewer deportations of citizens of other countries.	Deportations decrease (but never cease) after successive regularisation programs, in the context of high rates of economic development supported by cheap migrant labour. A Bilateral Readmission Protocol between Turkey and Greece is signed in 2001. EU readmission agreements between various third countries (incl. Albania, Russia, Ukraine and other Balkan and Eastern European countries). Dublin 2 implementation.	Large numbers of migrants leave Greece voluntarily due to high unemployment, either seeking for opportunities in other countries or returning to their countries of origin – sometimes adopting circular migration routes. RABIT operation Frontex (2010-2011) and operation Shield (2012-2013). Construction of the fence in the Greek-Turkish borders (Region of Evros) starts in 2012. Law 3907/2011 is adopted to transpose the Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals. Massive arrests aiming at identifying and subsequently deporting irregular migrants are held under the 'Xenios Zeus' operation (2012-2013). The Greek Ombudsman launches the Recording Mechanism of Informal Forced Returns in 2014. A system of pre-removal detention centres is established with a Ministerial Decision in 2015, regulating already existing detention facilities. IOM launches Assisted Voluntary Return and	Push-back operations in the Aegean Sea and Evros region are increasingly reported. In 2015 Greece becomes one of the main entry points to Europe for more than 1 million refugees and migrants. Five hotspots are established in the islands of Lesvos, Chios, Samos, Leros and Kos. The EU Turkey statement of 2016 creates ground for returns to Turkey. The following years extensive and substantial amendments of the Greek asylum law took place. Closing of the Balkan Route (2016). In 2016, a distinct Ministry of Migration Policy is established for the first time in Greece. In 2020 thousands of migrants gather at the Greek-Turkish border. After that the patrols are reinforced on the Greek side. Seven successive reforms of the Greek asylum legislation follow the launching of the EU-Turkey Statement (18/03/2016). IOM Greece continues AVRR with repeated programs. Frontex gets deeply engaged in border surveillance. The National Commission for

		Reintegration (AVRR) program in Greece. The Greek Asylum Service (GAS) was established in 2011, and started its operation in 2013.	Human Rights (HCHR), launches the Recording Mechanism of Informal Forced Returns in 2023. In the end of 2023, the position of the National Coordinator for Returns is established in the MMA (Law 5078/2023).

Source: Authors' own elaboration

3. Relationship between National Law/EU Law/Public International Law

The Greek national law consists of the Constitution, which prevails over any other piece of legislation, followed, in order of precedence, by statute law, presidential decrees, and administrative measures (including ministerial decisions, joint ministerial decisions and circulates). The adoption of new rules of statute law and the amendment of existing ones is initiated by the responsible minister, who asks a special legislative committee to draft a bill. After being inspected by intermediate institutions (the General Secretariat to the Government and the State General Accounting Office), the bill is laid before the Parliament, accompanied by an introductory report explaining its objectives and reasoning. Presidential decrees make provisions for the implementation of statute laws and are made by the President of the Republic on a proposal from the responsible minister(s). Specific administrative measures regulate matters of minor or technical character.

As an EU Member State (MS), Greece follows the principle of the primacy of European law, meaning that EU law prevails whenever a conflict between European and national legislation occurs. In this sense, all European legal instruments prevail over all domestic legal instruments apart from the Greek Constitution. The founding treaties of the European Union are at the same level as the Constitution.

As in other member states, EU regulations are binding and directly effective in Greece, while EU directives are incorporated into domestic law by statute, Presidential decree or ministerial decision. Moreover, all relevant EU directives have been transposed into the national law[15].

Greece has signed and ratified almost all UN core international human rights treaties[16], apart from the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)[17].

[15] These include:
1. The Directive 2008/115/EC 'on common standards and procedures in Member States for returning illegally staying third-country nationals'.
2. The Directive 2001/40/EC 'on the mutual recognition of decisions on the removal of third-country nationals'.
3. The Directive 2003/110/EC 'on assistance in cases of transit for the purposes of removal by air'.
4. The Directive 2009/52/EC 'on providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals'.
5. The Directive 2004/82/EC 'on the obligation of carriers to communicate passenger data'.

[16] OHCHR (2014) The Core International Human Rights Treaties. New York – Geneva: United Nations Publication. Available at: [https://digitallibrary.un.org/record/765800]. Accessed: 12/9/2023.

[17] https://www.mfa.gr/en/foreign-policy/global-issues/human-rights.html. Accessed: 12/9/2023; Greece has entered only one reservation on Article 27 of the Convention on the Rights of Persons with Disabilities. This reservation states that: 'The provisions of Article 27(1) of the Convention on the Rights of Persons with Disabilities shall not apply with respect to employment and occupation in the armed and security forces in so far as it relates to a difference of treatment on grounds of disability concerning the service thereto, as provided in Article 8(4) of Law 3304/2005 for the implementation of the principle of equal treatment, adopted pursuant to Articles 3(4) & 4 of the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation'.

It is quite complex to discern whether the Greek legal order can be considered as a monist or a dualist system. The Greek Constitution stipulates that the 'generally recognised rules of international law are part of the Greek legal order'[18]. Nevertheless, the Greek constitution provides that international treaties are incorporated by ratification into Greek legal order and this incorporation is not automatic since it takes place through the adoption of a formal law for each treaty. According to some scholars[19], the Greek Constitution provides for a largely monist approach to international law, which is thus meant to be invocable and applicable before Greek courts. However, Greek judicial practice has not necessarily engaged fully with international law, preferring to rely on constitutional provisions regarding human rights and other 'fundamental' values.

Article 28 of the Constitution stipulates those international conventions, once ratified by an Act of Parliament, become an integral part of domestic Greek law and prevail over any earlier provision, with the exception of the provisions of the Constitution[20]. The settlement of controversies related to the designation of rules of international law as generally acknowledged in accordance with Article 28 belongs to the competency of the Special Highest Court of Greece[21].

The incorporation of international treaties into the Greek legal order takes place through the adoption of a law[22]. Furthermore, the Greek Constitution[23] stipulates that 'Conventions on trade, taxation, economic cooperation and participation in international organisations or unions and all others containing concessions for which, according to other provisions of this Constitution, no provision can be made without a statute or which may burden the Greeks individually, shall not be operative without ratification by a statute voted by the Parliament'.

[18] Greek Constitution (Art. 28, para 1)

[19] Apostolaki, M. & Tzanakopoulos, A. (2019) "Greece". In *Duelling for supremacy: International Law vs National Fundamental Principles,* Cambridge University Press, pp. 106-126; Contiades, X., Papacharalmpous, Ch. & Papastylianos, Ch. (2019) The Constitution of Greece: EU Membership Perspectives. In: A. Albi and S. Bardutzky (eds.) *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, https://doi.org/10.1007/978-94-6265-273-6_14; Rose, M. (2015) Greece and International Law. Available at: [https://ourpolitics.net/greece-international-law/]. Accessed: 21/12/2023.

[20] Art. 28 stipulates that '*The generally recognized rules of international law, as well as international conventions as of the time they are ratified by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity*'. According to the same article, '*Authorities provided by the Constitution may by treaty or agreement be vested in agencies of international organisations, when this serves an important national interest and promotes cooperation with other States. A majority of three-fifths of the total number of Members of Parliament shall be necessary to vote on the law ratifying the treaty or agreement*'. Furthermore, the Greek constitution provides that: '*Greece shall freely proceed by law passed by an absolute majority of the total number of Members of Parliament to limit the exercise of national sovereignty, insofar as this is dictated by an important national interest, does not infringe upon the rights of man and the foundations of democratic government and is effected on the basis of the principles of equality and under the condition of reciprocity*'. Additionally, Art. 2 (para 2) of the Greek Constitution provides that the Greek State adheres to international law.

[21] Greek Constitution (Art 100, para 1)

[22] Greek Constitution (Art 28, para 1)

[23] Greek Constitution (Art. 36, para 2)

As in other EU member states, the judgments of the Court of Justice of the European Union (CJEU) have the force of law in Greece. Its judgments prevail upon national legislation and decisions of national courts that are contrary to the provisions of the EU legislation[24].

Greece ratified the European Convention on Human Rights (ECHR) in 1974 and is obliged to execute ECtHR judgements. The execution is primarily the competence of the Legal Council of the State, which represents the government before the ECtHR[25]. Greece has been repeatedly found to violate the ECHR in various cases that concern migration policy, including 'administrative detention, reception and accommodation conditions, the treatment of migrants by the police and border authorities, the asylum system, the treatment of unaccompanied minors, and human trafficking'[26].

Regarding compliance with the ECtHR judgements concerning migrants, Greece often responded with long delays. Greek authorities tend to take minimal general measures aimed primarily at ending Committee of Ministers supervision rather than strengthening rights protection in the long term and changing entrenched administrative practices[27].

Regarding the Preliminary reference procedure (Art. 267 of the TFEU), in legal proceedings of eminent importance involving the application of the EU law rules, the Greek courts have made use of recourse to the preliminary reference mechanism. However, it is usually the national supreme courts rather than the courts of appeal that initiate the dialogue with CJEU, whereas first instance Greek courts abstain from exploiting this option)[28].

Regarding decisions of UN human rights bodies, Van Alebeek & Nollkaemper argue that according to findings by the Human Rights Committee (HRC), the Greek state acts in contravention of its obligations under the International Covenant on Civil and Political Rights (ICCPR) which seems not to be considered as legally binding, but can be accepted as a basis of liability of the state. The latter may be obliged to pay compensation under the Greek civil law[29].

[24]https://guides.law.columbia.edu/c.php?g=1221803&p=9087306. Accessed 12/9/2023.
[25] Anagnostou, D. (2023) Domestic implementation of European Court of Human Rights' judgments related to immigration in Greece. ELIAMEP Policy Paper No 127. Available at: [https://www.eliamep.gr/wp-content/uploads/2023/02/Policy-brief-127-Anagnostou-final-EN-1.pdf]. Accessed: 15/9/2023.
[26] Ibid, p.3.
[27] https://guides.law.columbia.edu/c.php?g=1221803&p=9087306. Accessed 12/9/2023.
[28] Perrakis, M. (2018) The Activation of the 'Preliminary Reference Procedure' Before the Greek Courts. Available at: [https://www.greeklawdigest.gr/topics/judicial-system/item/320-%CF%84he-activation-of-the-preliminary-reference-procedure-before-th-greek-courts]. Accessed: 20/9/2023.
[29] Van Alebeek, R. & Nollkaemper, A, (2011) The Legal Status of Decisions by Human Rights Treaty Bodies in National Law. Pp. 18-19. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1817532]. Accessed: 20/9/2023.

4. The Institutional Framework/Operational Infrastructure

The institutional framework determining the operation of returns and particularly the actors related to return governance are prescribed basically in Law 3907/2011[30] that transposed the Return Directive 2008/115/EC in the Greek legislation. Concurrently, Law 3386/2005[31] still regulates all the other cases of expulsions of Third Country Nationals (TCNs). Moreover, important changes took place regarding state authorities during the last few years. More specifically, the GAS started its operation in 2013. Three years later, in 2016, a Ministry of Migration Policy was established for the first time in Greece. In 2019 the Ministry was dissolved and merged with the Ministry of Citizen Protection. In January 2020 the Ministry was reinstated as a Ministry of Migration and Asylum (MMA).

In parallel with the establishment of the MMA, with the Presidential Decree (PD) 106/2020[32], the Directorate of Returns and Withdrawals was founded as one of the five Directorates of the GAS[33]. The Directorate consists of three Departments: a) the Department for the coordination of returns from the mainland and of voluntary returns, b) the Department for the coordination of returns from the islands, and c) the Department of recalls and exclusion[34]. Its operational objective, determined by the aforementioned PD is to:

> 'coordinate, monitor and participate in the planning of the management of readmission, return, deportation or relocation procedures, both on national and European Union level, in cooperation with the regional services of the Ministry, the competent Ministries and other stakeholders, the representation of the Ministry in all kinds of conferences, seminars, meetings, technical meetings, working groups or programs and the submission of proposals on the conclusion of bilateral and multilateral agreements and agreements on issues of its competence and assistance to the regional services of the GAS with regard to the procedures for withdrawal, exclusion and review of international protection status'[35].

Moreover, at the end of 2023 a position of a National Coordinator of Returns was established in the MMA[36].

The goal for an integrated and coordinated approach to return (and migration) management, both at the EU and at the Member States' level, is supported through funding from the Asylum, Migration and Integration Fund (AMIF). The state authority responsible for the coordination of the funded actions (including those that aim at developing capacities for

[30] Law 3907/2011 'On the establishment of an Asylum Service and a First Reception Service, transposition into Greek legislation of Directive 2008/115/EC, etc'.
[31] Law 3386/2005 'Entry, residence and social integration of Third Country Nationals on the Greek territory'.
[32] Presidential Decree 106/2020, Art. 26.
[33] The GAS was established under the Law 3907/2011 (then under the Ministry of Citizen Protection) to deal with the examination of international protection applications. Today it pertains to the MMA. Prior to its establishment this was a responsibility of the police authorities.
[34] For a detailed description the full list of each Department's responsibilities, see here: https://migration.gov.gr/en/gas/dioikisi/
[35] Presidential Decree 106/2020 (Art. 31).
[36] Law 5078/2023 (Art. 191) 'On reform of occupational insurance, streamlining of insurance legislation, pension arrangements, appointment and recruitment system of teachers of the Public Employment Service and other provisions'.

effective and sustainable return and reducing incentives for irregular migration[37]) is the General Directorate for the Coordination and Management of Programs on Migration and Internal Affairs[38] of the MMA, with a Special Service of the Directorate responsible for implementation and supervision[39].

In what concerns return procedures, any decision made by competent authorities about a) the rejection of an application for international protection, b) the interruption discontinuation of examination of the application for international application, c) the revocation of international protection status, d) the rejection of an application for granting or renewal of a residence permit, and e) the revocation of a valid residence permit is accompanied by a return decision which is issued by the same authority and is defined as an integral part of the procedure. Particularly, competent authorities for the receipt and processing of applications of TCNs and for granting or renewing a residence permit are the services of the Ministry of Immigration and Asylum and the Foreigners and Immigration Services of the Decentralised Administrations under whose territorial jurisdiction the TCNs fall. Within the international protection procedure, the decision is issued either by the GAS at first instance or by the Appeals Authority at second instance (reporting to the Secretary General of Migration Policy). In all other cases of TCNs residing illegally in Greece the return decisions are issued by the police (Ministry of Citizen Protection), and particularly the competent police Director and, in case of the General police Directorates of Athens and Thessaloniki, the police Director in charge of aliens or a higher officer, appointed by the competent General police Director[40]. The police is also the responsible authority for cases of administrative expulsion which are imposed pursuant to Law 3386/2005.

The removal procedure is implemented by the police authorities[41]. Particularly, it is the Aliens and Border Protection Branch which deals with detention and return issues[42] consisting of: a) the Directorate for the Borders Protection, b) the Directorate of Illegal Immigration (which includes the Department for the Management of Detention and Return Facilities[43], and c) the Directorate of Aliens. Furthermore, the Ministry of Citizen Protection, and more particularly the Department of Analysis and Documentation of the National Coordinating Centre for Border Control and Surveillance (NCCBS)[44] monitors the process of returning migrants, while the Department of International Relations of NCCBS monitors the initiatives of the competent authorities to conclude police cooperation agreements and readmission agreements with the competent authorities of other States and ensure their implementation. Frontex is also a key actor in the field of returns at an operational level providing support to EU MS at all stages of the return process, by organising, coordinating and conducting return

[37] Asylum, Migration and Integration Fund (2021-2027). https://home-affairs.ec.europa.eu/funding/asylum-migration-and-integration-funds/asylum-migration-and-integration-fund-2021-2027_en
[38] https://migration.gov.gr/dg-coordination-management-amif-isf-otherfunds/
[39] https://migration.gov.gr/ma/managing-authority/
[40] Law 3386/2005 (Art. 76)
[41] Law 3907/2011 (Art. 23)
[42] Presidential Decree 178/2014 'Organisation of Greek police Services' (Art. 2). https://www.e-nomothesia.gr/kat-astynomikos-astynomia/idrysi-leitourgia-uperesion/pd-178-2014.html
[43] For the full list of responsibilities of the Department for the Management of Detention and Return Facilities, see the Presidential Decree 178/2014 (Art. 11).
[44] https://www.minocp.gov.gr/ethniko-syntonistiko-kentro-elegchou-kai-epitirisi-synoron-eskees/diarthrosi-eskees/

operations with an enhanced role as determined in the EU Regulation 2019/1896 on the European Border and Coast Guard. Recently (March 2023) the Ministries of Citizen Protection and Immigration and Asylum signed a Memorandum of Understanding[45] with Frontex to support and provide expertise to enhance forced and voluntary returns of irregular migrants as well as reintegration and resettlement actions in their countries of transit and/or origin.

TCNs who are subject to return are detained for the preparation of the removal process in 'Special Facilities', also known as Pre-Departure Detention Centers (PROKEKA). The Special Facilities are established and abolished by a joint decision of the Ministry of Citizen Protection, the Ministry of Immigration and Asylum and the Ministry of Finance and fall under the competence of the Ministry of Citizen Protection and the police. In the facilities, health care and medical treatment services are provided. Non-Governmental Organisations (NGOs) or other national and international actors have the right to visit the Special Facilities[46]. Objections against the detention (procedure for challenging detention) are lodged before the President of the first instance Administrative Court in the region of the place of detention[47].

As regards the assisted voluntary return, the Greek authorities – and particularly the Directorate of Returns and Withdrawals of the MMA – cooperate with the IOM in Greece. IOM has been implementing the Assisted Voluntary Return and Reintegration (AVRR) program since 2010 nationwide, while the Ministry is the donor of the program using AMIF resources. IOM also runs an Open Centre for migrants registered for AVRR (OCAVRR) that provides shelter and other services to returnees.

The return procedure may also involve the engagement of other actors, including civil society actors that mediate to inform the TCN about the return decision[48]; the Ministry of Interior and Decentralisation and E-Government or the territorially competent Aliens and Immigration Service that shall inform the competent police authorities to initiate the return process by removal, within three days from the end of the deadline for voluntary departure[49]; and the significant number of actors that may provide confirmation of the voluntary departure[50]. The role of the Greek Ombudsman is also important, as they hold the formal responsibility of monitoring removal procedures4[51] (aiming at the transparency of administrative action and the protection of the fundamental rights of returnees[52]. The Ombudsman also cooperates with the Fundamental Rights Officer of Frontex who notifies the former of allegations of rights violations in Frontex operations by acts of the MS institutions involved[53].

It should be also mentioned that other actors, not officially defined in the legal framework, have also established mechanisms of returns' monitoring. More particularly, in 2021, the

[45] Ministry of Migration and Asylum (2023). The Ministries of Citizen Protection and Immigration and Asylum sign an agreement with Frontex on the return of irregular migrants. Press Release. https://migration.gov.gr/en/ypografi-symfonias-ton-ypoyrgeion-prostasias-toy-politi-kai-metanasteysis-kai-asyloy-me-ton-frontex-gia-tis-epistrofes-paratypon-metanaston/
[46] Law 3907/2011 (Art. 31).
[47] Law 3386/2005 (Art. 76).
[48] Law 3907/2011 (Art. 31).
[49] Law 3907/2011 (Art. 36).
[50] Law 3907/2011 (Art. 36).
[51] Law 3907 (Art. 23 para 6).
[52] Greek Ombudsman (2023) *Returns of third-country nationals*. Special report 2022. Available at: [https://www.synigoros.gr/en/category/eidikes-ek8eseis/post/special-report-or-return-of-third-country-nationals-2022]. Accessed: 18/11/2023.
[53] Ibid.

National Commission for Human Rights (NCHR), an independent advisory body of the State in matters of promotion and protection of human rights, launched the Recording Mechanism of Informal Forced Returns to monitor, record and report informal forced return incidents of TCN from Greece to other countries[54]. The Mechanism is a synergy between the NCHR and 11 civil society organisations active in the field, offering pro bono services to TCNs, while the UNHCR office in Greece contributes its expertise and technical support, as a co-operating Agency. The need behind the creation of this body was the absence of an official and effective system for recording the reported incidents of informal forced returns, the need to connect the bodies, which until then recorded on their own initiative the incidents of illegal push backs that allegedly took place at the expense of persons who come to their services[55], as well as the fact that pushbacks 'have become de facto general policy' as the UN Special Rapporteur on the Human Rights of Migrants has noted[56].

A list of the authorities involved in the migration return governance defined and authorised by the Law, as described above, is provided in **Annex II**.

[54] https://nchr.gr/en/recording-mechanism.html. Accessed: 18/1/2024
[55] Ibid.
[56] United Nations, General Assembly (2022) *Human Rights Violations at International Borders: Trends, Prevention and Accountability: Report of the Special Rapporteur on the Human Rights of Migrants, Felipe González Morales*, A/HRC/50/31, 26 April 2022. Available at: [https://daccess-ods.un.org/tmp/3621627.98643112.html]. Accessed: 19/12/2023.

5. The National Legal Framework Regarding Return

The Return Directive (2008/115/EC) was transposed in the Greek legal order in 2011[57]. However, the relative legal framework is characterised by complexity and ambiguity, mainly due to the co-existence of the preceding procedure of the 'administrative expulsion' that still remains valid. The latter is regulated by Law 3386/2005 'on entry, residence and social integration of Third Country Nationals on the Greek territory'. In 2021, Law 4825/2021 'on reform of deportation and return procedures of TCN, etc.' introduced amendments in return procedures. One of the basic objectives of this law was to clarify the scope of the two Greek laws (Law 3386/2005 and Law 3907/2011)[58]. Civil society actors strongly criticised the changes brought about by Law 4825/2021 arguing, inter alia, that the ambiguity in the relative legal framework still exists[59] and highlighting legal gaps stemming from changes brought about by the new law in terms of assessment of legal obstacles to return prior to issuing a return decision, resulting in breach of Article 3 ECHR and related standards[60].
Furthermore, in 2014 the European Commission opened an infringement procedure[61] by sending a Letter of Formal Notice to Greece (INFR(2014)2231) stating that the latter has incorrectly transposed certain provisions of the Return Directive[62]. In addition, in 2022 the Commission has sent an additional Letter of Formal Notice to Greece for failing to comply with the EU rules on returns of the illegally staying TCNs[63].

An overview of the legal framework on return policy in Greece is provided in **Annex III** while a diagram of the national return system is presented in **Annex IV**.

[57] Transposition by Law 3907/2011 'on the establishment of an Asylum Service and a First Reception Service, transposition into Greek legislation of Directive 2008/115/EC etc.' (Art. 16-41).
[58] Ministry of Immigration and Asylum (2021) *Draft Law: 'Reform of procedures for deportations and returns etc., Analysis of consequences of regulation'*, p. 2. Available at: [http://www.opengov.gr/immigration/wp-content/uploads/downloads/2021/06/ansynryth.pdf]. Accessed: 9/9/2023.
[59] RSA, GCR, HIAS, DRC (2021). *Observations on the Draft Law Reformation of procedures for deportations and returns of third-country nationals, issues of residence permits and procedures for granting international protection*. Available at: https://shorturl.at/coqTY]. Accessed: 9/9/2023.
[60] Ibid. See also chapter "detention" and chapter "GAPs"
[61] European Commission (29.9.2022). *September Infringements package: key decisions*. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/inf_22_5402]. Accessed:10/1/202
[62] On 20/3/2014 the Greek Legal Counsil of State published the "Opinion 44/2014" according to which ruled in favour of prolonging of the detention of migrants indefinitely and until their deportation becomes feasible, if a decision to deport has already been taken but has not been possible to implement. See more at:
1) [https://www.gcr.gr/en/news/press-releases-announcements/item/352-ep-aoriston-kratisi-mia-eftheia-prosvoli-tou-ethnikoy-evropaikoy-kai-diethnoys-dikaiou;
2) https://www.europarl.europa.eu/doceo/document/O-7-2014-000055_EN.html. Accessed:12/1/2024
[63] European Commission (2022) *September Infringements package: key decisions*. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/inf_22_5402] (accessed: 24/1/2024)

5.1. Definitions and Concepts

Administrative expulsion

There is no specific definition in Greek legislation for this term. According to Mazos 'Administrative expulsion' is the act of an active administrative body, issued according to the special procedure provided for by law, which orders the removal of a TCN from the country'[64] According to Poularakis the administrative expulsion 'is an individual administrative act that aims to remove unwanted TCNs from the national territory for reasons of public or social interest'[65]. As Stavroulaki argues, 'administrative expulsion' is 'the forced departure of a TCN from Greek territory which is ordered by a relevant administrative act'[66]. The administrative expulsion can[67] be imposed by competent police authorities to a TCN under the following conditions (which apply disjunctively)[68]: i) the TCN 'has been irrevocably sentenced to a freedom-depriving sentence of at least one year or s(he) has been irrevocably sentenced (regardless of the penalty) for crimes against the political system or treason, crimes related to drug trafficking, money laundering, international financial crimes, crimes with the use of high technology, currency-related crimes, crimes of resistance[69], child abduction, crimes against sexual freedom and economic exploitation of sexual life, theft, fraud, misappropriation, extortion, usury, violation of the law on intermediaries, forgery, false statement, slander, smuggling, crimes related to weapons, antiquities, smuggling of "illegal migrants"[70] or facilitation of their transport or provision of accommodation for hiding them; ii) the TCN has infringed the provisions of the Immigration Code; iii) the TCN's presence in the Greek territory is considered dangerous for the country's public order or security[71]; iv) the presence of the TCN constitutes a risk to public health, because s(he) suffers from an infectious disease or belongs to groups vulnerable to infectious diseases, in particular due to the public health situation in his/her country of origin or the use of intravenous, illicit substances or prostitution, or resides under conditions that do not meet the elementary rules of hygiene according to health regulations'. Furthermore, it can be imposed to a TCN who has violated the provisions regulating the entry and the residence of TCNs in the Greek Territory.

[64] Mazos. E. (2011) *The administrative expulsions in the Jurisprudence of the Council of State*. Available at: [https://shorturl.at/kmBC8. Accessed: 12/1/2024]
[65] Poularakis, E. (2014) *The temporary judicial protection of the alien from the act of administrative deportation*, p. 27. Nomiki Vivliothiki Publications.
[66] Stavroulaki, E. (2016) *Immigration Law and Citizenship Law,* p.441. Nomiki Vivliothiki Publications.
[67] The exact wording of the law 'administrative deportation of a foreigner is permitted', seems to provide to the administrative authority the discretion to impose it. However, the Council of State ruled in a series of decisions that deportation is mandatory, given that a legal title is required for legal residence (Council of State Decision 3603/1991, 927/1996, 892/1998, 310, 311/2000, 618/2008)
[68] Law 3386/2005 (Art. 76 para 1).
[69] Crimes of resistance against Authorities as they are defined in the Greek Penal Code.
[70] Exact translation from the Greek law.
[71] Civil Society Actors insist that in Greece the characterisation of TCN as dangerous for the public order and security is broadly applied in police decisions ordering detention/expulsion without a proper justification (see for example the AIDA Country Report: Greece (2022) p. 206. Aavailable at: [https://asylumineurope.org/reports/country/greece]. Accessed 18/1/2024

Return

The 're-entry process of a TCN either by voluntary compliance with an obligation to return or compulsorily to: a) the country of his/her origin or b) to a transit country, according to EU or bilateral readmission agreements or other arrangements or c) to another third country, to which he/she voluntarily decides to return and to which he/she is accepted'[72].

Judicial deportation

There is no specific definition in Greek legislation for this term. Judicial deportation used to be imposed by the criminal judge as a security measure[73]. Even though, judicial deportation was abolished in 2019[74], the draft amendment to the Criminal Codes submitted to public consultation in late 2023 includes reinstatement of the judicial deportation[75].

Border deportation (επαναπροώθηση)

Even though 'Refoulement' is the word that can best translate the Greek word 'επαναπροώθηση'[76] (used in Law 3386/2005[77]), here the term 'border deportation' is used in order to avoid confusion of terms. There is no specific definition in Greek legislation for this term, but according to Roukounas 'επαναπροώθηση' is the measure taken by the police authorities at the borders and denotes 'the expulsion in too great haste of the illegally entered TCN in the Greek territory to his/her country from which he/she came from and not necessarily to the state of his/her citizenship or residence'[78].

Readmission

There is no specific definition in Greek legislation for the term 'readmission'. The term is listed separately from the terms 'return' and 'deportation', as for example in Law 4939/2022 'on ratification of the Code on reception, international protection of third-country nationals and stateless persons, and on temporary protection in cases of mass influx of displaced migrants'[79] and refers to cases for which 'a return or readmission or deportation decision is already in force'. The term seems to be used in general with the meaning of an 'act by a State accepting the re-entry of an individual (own national, national of another State – most commonly a person who had previously transited through the country or a permanent resident – or a stateless person)'[80].

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[72] Law 3907/2011 (Art. 18c). The term is also defined in the same way in Law 4251/2014 & in Law 5038/2023

[73] Provided by Art. 74 of the Greek Criminal Code

[74] by Law 4619/2019

[75] Ministry of Justice (23.11.2023). Draft law "Interventions in the Criminal Code and the Code of Criminal Procedure etc.". Available at: http://www.opengov.gr/ministryofjustice/?p=17062. Accessed: 10/01/2024

[76] The literal translation of the word in english is 're-forwarding'.

[77] Law 3386/2005 (Art. 82 para 3 & Art. 83 para 2)

[78] Roukounas, E. (1995). *International Protection of Human Rights*, p. 237. Estia Publications, in Simeonidis, E. Administrative Expulsion (2008) p. 240. Sakkoula Publications

[79] Law 4939/2022 (Art. 69 para 5)

[80] IOM (2019) *Glossary on Migration*. Available at: [https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf]. Accessed: 9/9/2023.

Readmission of beneficiaries of temporary protection

There is no specific definition in Greek law for the term 'readmission of beneficiaries of temporary protection'. The term was mentioned in the Presidential Decree 80/2006 'on the provision of temporary protection in the event of a mass influx of displaced TCNs'[81] and it is also mentioned in the Greek Asylum Code[82].

Voluntary repatriation & Enforced repatriation

There are no specific definitions in Greek law for the terms 'voluntary repatriation' and 'enforced repatriation'. Initially, the terms were mentioned in the Presidential Decree 80/2006[83] which transposed the EU Directive 2001/55/EC and today are mentioned in the Greek Asylum Code[84]. They correspond to the terms 'voluntary return'[85] and 'enforced return'[86] of the above-mentioned Directive.

Removal

In Greek law[87] 'removal' is defined as the 'enforcement of the obligation to return by physical transportation out of the Greek territory'.

Return decision

In Greek law[88] 'return decision' is defined as the 'administrative act, stating or declaring the stay of a TCN to be illegal and imposing an obligation to return'.

Third Country National

In Greek law[89] the term follows the EU definition[90].

Illegal Stay

In Greek law [91] 'illegal stay' is defined as 'presence in Greek territory of a TCN who does not fulfil, or no longer fulfils, the conditions of entry, as set in Art. 5 of the Schengen Borders Code, or the other conditions of entry, stay or residence of the legislation'.

[81] Presidential Decree 80/2006 (Art. 11). The PD 80/2006 transposed the EU Directive 2001/55/EC 'on minimum standards for giving temporary protection in the event of a mass influx of displaced persons" into Greek legal order'. It was abolished by Law 4939/2022.
[82] Law 4939/2022 (Art. 127) according to which a person who enjoys temporary protection status in Greece and illegally attempts to enter or remain in the territory of another EU MS is re-admitted to Greek territory. In the event that a beneficiary of temporary protection in another EU member state is found to be or is attempting to enter the Greek territory illegally s(he) is obliged to return to the other EU MS.
[83] Presidential Decree 80/2006 (Art. 21). The Presidential Decree was abolished by Law 4939/2022.
[84] Law 4939/2022 (Art. 137)
[85] Directive 2001/55/EC (Art. 21)
[86] Directive 2001/55/EC (Art. 22)
[87] Law 3907/2011 (Art. 18e).
[88] Law 3907/2011 (Art. 18d).
[89] Law 3907/2011 (Art. 18α).
[90] It is defined as 'any person who is not a citizen of the EU within the meaning of Art. 17 (para 1) of the Treaty and who is not enjoying the Community right of free movement, as defined in Article 2 (para 5) of the Schengen Borders Code'.
[91] Law 3907/2011 (Art. 18β)

Entry ban
In Greek law[92] 'entry ban' is defined as 'administrative act, which accompanies the return decision and which prohibits, for a certain period of time, the entry and stay in the Greek territory or in the territory of another EU member state'.

Risk of absconding
In Greek law[93] 'risk of absconding' is defined as 'the well-founded assumption, which is based on a confluence of objective criteria, that in a specific individual case the TCN, who is subject to return procedure, may escape'. Even though according to the Return Directive the risk of absconding' means 'the existence of reasons in an individual case which are based on objective criteria defined by law[94], the Greek law includes a non-exhaustive and indicative list of such criteria[95].

Voluntary departure
In Greek law[96], 'voluntary departure' is defined as 'the compliance with the obligation to return within the time-limit set for this purpose in the return decision'.

Assisted voluntary return
There is no specific definition in Greek legislation for the term 'Assisted Voluntary return'. It is used to describe the assisted, unforced return of a TCN to the country of origin within the Assisted Voluntary Return and Reintegration program (AVRR) implemented by IOM in Greece. Greek Asylum Code repeatedly mentions the administration's obligation to provide information on the option of voluntary return[97].

Vulnerable persons
According to the law[98] that transposed the Return Directive into Greek legislation, the term 'vulnerable persons' includes 'minors, unaccompanied minors, persons with special needs, the elderly, pregnant women, women having recently given birth, single-parent with minor children, victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation, as well as victims of human trafficking'.

[92] Law 3907/2011 (Art. 18στ)
[93] Law 3907/2011 (Art. 18ζ)
[94] Return Directive 2008/115/EC (Art. 3 para 7)
[95] Such objective criteria are indicatively: a) non-compliance with the obligation of voluntary departure; b) the explicit manifestation of the intention to non-compliance with the return decision; c) the possession of forged documents; d) the provision of false information to the authorities; e) the existence of convictions for criminal offences, pending criminal proceedings or serious indications that a criminal offence has been committed or is about to be committed by the specific person; f) the lack of travel or other identity documents; g) the previous escape; and h) the noncompliance with an existing entry ban
[96] Law 3907/2011 (Art. 18η)
[97] For example: Law 4939/2022 (Art. 39)
[98] Law 3907/2011 (Art. 18θ)

5.2. Return at Border

Return procedures are not applicable in border cases[99]. In these cases, after the illegal crossing of the borders, the Law 3386/2005 is applicable[100] as well as the readmission terms and provisions, as they bind Greece directly or indirectly, through its participation in the EU, or as they arise from international customary law[101]. For the TCNs who are not subject to return procedures, authorities must ensure that they have the same treatment as TCNs subject to return procedures in terms of restrictions on the use of coercive measures, postponement of removal for reasons related to their physical or mental condition, emergency health care, therapeutic treatment, consideration of needs of vulnerable persons and conditions of detention. Furthermore, the principle of non-refoulement must also be applicable to their case[102]. However, in practice, the application of Law 3386/2005, comparatively, provides less procedural guarantees than the application of Law 3907/2011.

Border deportation is imposed in two situations: The first case[103] refers to TCNs who are included in the List[104] of unwanted TCNs[105]. TCNs of this category are subject to entry ban, therefore are not permitted to enter Greece and they are obliged to depart immediately, otherwise they must be returned back to the country of origin or to a third country, where entry may be allowed. The TCN can request to be removed from the List of Unwanted TCNs. The method and the preconditions of deletion vary depending on the reason for which the TCN was registered. The TCN theoretically can submit an appeal against the entry ban. However, in reality the TCNs are much more likely to resort to the international protection process to avoid deportation.

The second case[106] where border deportation is imposed is of criminal nature: In the event that a TCN enters Greece or departs without the necessary legal formalities, the Public Prosecutor of the Magistrate Court, with the approval of the public Prosecutor of the Court of Appeal, under prerequisites, may refrain from initiating criminal proceedings for illegal entry/exit.

[99] According to Law 4825/2021 (Art. 1) & Law 3907/2011 (Art. 17) the return procedures do not apply to TCNs who are subject to entry bans (according to Art. 14 of the Schengen Borders Code) or are arrested or monitored by authorities, in connection with illegal/land/sea/air crossing of the external borders (within the meaning of the Art. 2, par. 2 of the Schengen Borders Code) to whom a permit/right to stay in Greece has not been subsequently granted. In addition, return procedures do not apply to TCN are subject to deportation imposed by court order, as a security measure or as an incidental penalty or subject to extradition procedures in accordance with the provisions of an international convention that binds the Country or of articles 436-456 of the Code of Criminal Procedure or Law 3251/2004 'on European Arrest Warrant etc.'

[100] Law 4825/2021 (Art. 1)

[101] Law 3907/2011 (Art. 34)

[102] Law 3907/2011 (Art. 19 para. 2)

[103] Law 3386/2005 (Art 82 para. 3)

[104] The criteria and the procedure for entering and removing TCNs from the List are determined by decision of specific ministries.

[105] The List is maintained by the Ministry of Citizen Protection

[106] Law 3386/2005 (Art 83 para 2)

5.3. Regular Procedure to Issue a Return Decision

A return decision is issued by the competent authorities in cases of[107]: a) rejection of an application for international protection; b) discontinuation of examination of the application for international protection (due to implicit withdrawal); c) withdrawal of international protection status; d) rejection of an application for granting or renewal of a residence permit; e) revocation of a valid residence permit. In these cases, the return decision is an integral part of the basic decision (which rejects the application for international protection; or interrupts the examination of the application for international protection; or revokes the international protection status; or rejects the application for granting or renewal of residence permit; or revokes a valid residence permit). In all the other cases of TCN, who reside illegally in Greek territory, a return decision is issued by the competent police authorities[108]. In the event that there is already another return or expulsion decision in force, it is considered that the previous return or expulsion decision is incorporated into the new decision that orders the return[109].

TCNs staying illegally in the Greek territory and holding a valid residence permit or any other permit granting them a right to stay, issued by another MS, are obliged to immediately move to that EU MS. In the event of non-compliance or when the immediate departure of the TCN is imposed for reasons of national security or public order, a return decision is issued by the competent police authorities[110].

Against a TCN who has filed a timely application for granting or renewing a residence permit with all the required supporting documents and has received a relevant Certificate of submitting the application, it is not possible to issue a return decision for reasons of illegal residence, until his/her application is finally examined. Likewise, it is not possible to issue a return decision to a TCN for whom a temporary order or decision of an Administrative Court of First Instance has been issued to suspend the execution of an administrative act which has rejected the application for issuance or renewal of residence permit or revoked a residence permit[111].

When a residence permit is issued for humanitarian or other reasons to a TCN who resides illegally in Greece[112] no return decision is issued and, in the event, that it has already been issued, then it is revoked or suspended for a period of time equal to the validity period of the permit[113].

5.4. Special Cases and their Relation with the Obligation to Issue a Return Decision

Intra-corporate transfers

TCNs who hold a valid intra-corporate transferee permit issued by another MS may reside and work in Greece (transposition of Directive 2014/66/EU). When the intra-company transfer permit holder crosses the external borders of Greece, the competent authorities consult the

[107] Law 3907/2011 (Art. 21 para 1)
[108] Law 3907/2011 (Art. 21 para 1)
[109] Law 3907/2011 (Art. 21 para 1)
[110] Law 3907/2011 (Art. 21 para 2)
[111] Law 3907/2011 (Art. 21 para 5)
[112] Law 5038/2023 (Art. 134)
[113] Law 3907/2011 (Art. 21 para 4)

Schengen Information System and refuse entry or object to the mobility of persons, who have been registered as undesirable in the Schengen Information System[114]. In the event that a TCN inter-company transferee, who has moved from Greece to another MS of transfer, stops working in that MS, it is permitted, at the request of the other MS, to return to Greece (as well as his/her family members) without formalities and without delay of the TCN.

Return of long-term residents

The return of a TCN with long-term resident status (transposition of Directive 2003/109/EC) is permitted when there is a present and specifically justified threat to public order or public security[115]. The return decision cannot be based on invoking reasons of more general fiscal policy[116]. When examining the reasons justifying the return, the following facts are taken into account: a. The duration of his/her presence in the country; b. the effects on him/her and his/her family members; c. the ties with the country of residence or the absence of ties with his/her country of origin, d. the age of the person concerned[117]. Additionally, the principle of non-refoulement must be respected[118].

Holders of long-term residence permit issued by another MS

Until the TCN who holds a long-term residence permit issued by another MS acquires long-term resident status in Greece, his/her residence permit is not renewed or revoked. The TCN and his/her family members are obliged to leave Greece in the following cases: a. For reasons of public order or public security; b. The TCN no longer holds a long-term residence permit issued by another MS; c. the TCN does not legally reside in the country[119]. In these events the TCN must immediately return to the first MS that granted him/her long-term resident status.

If the return concerns a beneficiary of international protection with long-term resident status in another MS, the latter is requested to confirm whether the person in question is still entitled to international protection. If a MS submits a relevant request for information, the GAS must respond within 1 month of receipt of the request[120]. In the event that the long-term resident is still entitled to international protection in the other MS, s(he) is returned to that state. By way of exception, the long-term resident may be returned to a country other than the MS that granted him/her international protection, as long as a) it is reasonably considered that s(he) constitutes a risk to the security of the State; or b) constitutes a risk to society due to his/her final conviction for the commission of a particularly serious crime[121].

The TCN can lodge an application for annulment before the Administrative Court against the decision that rejects the application for the granting of a long-term resident residence permit, or revokes the permit, or rejects the application for renewal, or the decision to return[122].

[114] Law 5038/2023 (Art. 55 para 17)
[115] Law 5038/2023 (Art. 150 para 1)
[116] Law 5038/2023 (Art. 150 para 2)
[117] Law 5038/2023 (Art. 150 para 3)
[118] Law 5038/2023 (Art. 150 para 7)
[119] Law 5038/2023 (Art. 157 para 2)
[120] Law 5038/2023 (Art. 150 para 4)
[121] Law 5038/2023 (Art. 150 para 5)
[122] Law 5038/2023 (Art. 151 para 3)

Greece has transposed Directive 2001/20/EC on the mutual recognition of decisions on removal of TCN (by Law 214/2004). The provisions of Law 214/2004 are applied in the following cases[123]: a) when a removal decision has been issued against a TCN due to a serious and present threat to public order or national security, and this decision has been taken: (aa) due to the conviction of the TCN by the MS of the decision for an offence punishable by a penalty involving deprivation of liberty of at least 1 year; (bb) when there are clear indications that the TCN has committed or intends to commit serious criminal acts on the territory of a MS. After the issuance of a removal decision, which meets the above conditions, any residence permit of the TCN is also revoked[124]. b) When a removal decision has been issued against a TCN due to a violation of the provisions on the entry and stay of TCNs of the country of the decision.

The removal decision must not have been revoked or suspended by the MS of the decision[125]. Against the administrative act of execution of the decision of removal, the TCN under removal is entitled to submit Objections and an appeal[126].

Dublin Transfers (Application of Regulation (EU) 604/2013)

When another MS has assumed the responsibility of examining an application, the latter is rejected as inadmissible and at the same time a transfer decision is issued[127]. An appeal can be lodged within 15 days which is considered that it is also directed against the relevant transfer decision[128]. The appeal does not have automatic suspensive effect. A specific request must be lodged to that end. Deportation, readmission or return cannot be carried out before a decision is issued on his/her application[129].

5.5. Voluntary Departure

The return decision may provide for a period of time for voluntary departure, which varies between 7 and 25 days[130]. This period of time in which the TCN can depart voluntarily is automatically granted, without requiring the submission of an application. In the event that the competent authority considers that there is a risk of absconding or the TCN is a risk to public safety, or if the application for legal stay has been rejected as manifestly unfounded or abusive, the competent authorities do not grant a period of voluntary departure[131]. The competent authority can impose several obligations to the TCN throughout the set period for the voluntary departure, in order to avoid the risk of absconding[132]. In the event that the TCN violates these obligations the return decision is executed immediately and the granting of a

[123] Presidential Decree 214/2004 (Art. 3 para 1)
[124] Ibid.
[125] Presidential Decree 214/2004 (Art. 3 para 2)
[126] Presidential Decree 214/2004 (Art. 4)
[127] Law 4939/2022 (Art. 89)
[128] Law 4939/2022 (Art. 97)
[129] Law 4939/2022 (Art. 110 para 2)
[130] Law. 3907/2011 (Art. 22 para 1)
[131] Law 3907/2011 (Art. 22 para 4)
[132] For example, regular appearance before the authorities; a financial guarantee; deposition of documents; obligation to stay in a certain place.

period of voluntary departure or the extension of this period is deemed automatically revoked[133].

According to the Directions of the MMA, in the case of the international protection procedure, the body that rejects the application for international protection examines the possibility of granting a period of voluntary departure. If there is a previous deportation decision, it does not grant a deadline for voluntary departure[134]. Authorities may extend the deadline for voluntary departure with a reasoned decision, for a period of time which cannot exceed 120 days[135] after a relevant application of the TCN.

5.6. Forced Return/ Removal/ Exit

Police authorities are competent to execute return decisions and take all the necessary measures for the execution if[136] a) no period for voluntary departure has been granted; b) a period for voluntary departure has been granted but the TCN has not complied with the obligation to return within the set deadline. In these cases, no independent removal decision is issued[137]. In the event that a period of voluntary departure has been granted, police execute the return decision only after the expiry of the deadline, unless in the meantime it appears that there is a risk of absconding or the TCN is considered a danger to the public security or public order[138]. In this case, the return decision becomes immediately enforceable and the police issue a declaratory act to the TCN[139].

In the event that the TCN who is subject to return procedures/expulsion procedures lacks a travel document[140] all necessary actions are taken before the diplomatic/consular authority of the country of origin (or permanent residence or citizenship) of the TCN to issue a travel document. In case that the above-mentioned authorities refuse the provision of a travel document (or there is no diplomatic or consular authority of the specific state in Greece), the Greek Ministry of Foreign Affairs is informed. When the timely issuance of a travel document is not possible, the TCN is provided with a special type of travel document[141].

Postponement of removal

The removal is compulsorily postponed[142] in cases where i) the principle of non-refoulement is violated; ii) removal has been suspended. The police may, upon a justified decision, postpone the return, for an appropriate period of time, taking into account the specific circumstances of the individual case, such as TCN's physical state or mental capacity and b) technical reasons, such as the lack of means of transport or the lack of possibility of removal, due to the objective impossibility to identity the TCN[143]. If the removal is postponed,

[133] Law 3907/2011 (Art. 37 para 1)
[134] Ministry of Migration and Asylum (2021) *Instructions for the implementation of Law 4825/2021*, p. 4. Available at: [https://www.nomotelia.gr/photos/File/395448-21.pdf]. Accessed: 15/9/2023.
[135] Law 3907/2011 (Art. 22 para 2)
[136] Law 3907/2011 (Art. 23 para 1)
[137] Law3907/2011 (Art. 23 para 3)
[138] Law 3907/2011 (Art. 23 para 2)
[139] Law 3907/2011 (Art. 23 para 3 & Art. 37 para 1)
[140] JMD no. 4000/4/46–α΄ (Art. 4 para 1)
[141] Procedure regulated by PD 124/1997
[142] Law 3907/2011 (Art. 24 para. 1)
[143] Law 3907/2011 (Art. 24 para. 2)

obligations may impose on the TCN (such as regularly appearing before authorities, depositing an appropriate financial guarantee, filing documents or having to stay in a certain place)[144]. The decision that postpones removal consists of a written certification that the return decision cannot be temporarily executed (Certificate of Postponement of Removal). The latter is valid for 6 months and may be renewed upon a new judgement on whether the removal remains impossible.

Within the international protection procedure, in case of submission of a subsequent application until the completion of its examination during the preliminary stage, the execution of any measure of deportation, return or removal in any way is suspended[145]. By way of exception, this does not apply in case i) of a first subsequent application, which is rejected as inadmissible; ii) in case of a second subsequent application, after the issuance of a final decision, by which the first subsequent application is deemed inadmissible, or after the issuance of a final decision with which the application is rejected as unfounded. The above-mentioned provision applies only when the determining authority considers that the return decision will not lead to direct or indirect refoulement, in violation of the international and European obligations of the state[146].

5.7. Return of Unaccompanied Minors (UAMS)

Regarding return procedures the best interest of the child must be always taken into consideration[147]. Before deciding to issue a return decision to an UAM, assistance must be provided by appropriate bodies[148] (other than the authorities enforcing return)[149] and the competent authorities should ascertain[150] that s(he) will be returned to a member of his/her family, a nominated guardian or adequate reception facilities in the State of return[151].

The return of a minor who attends a Greek school of any level of education or whose parents or guardians legally reside in Greece is prohibited[152]. It is also prohibited to return a minor on whom reformative measures have been imposed by a decision of the Juvenile Court.[153] Contrary to what applies to adults, in the event that the application for international protection of the UAM is rejected, the PAAYPA[154] remains active until the return decision is executed or the UAM becomes adult.

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[144] Law 3907/2011 (Art. 24 para. 3)
[145] Law 4939/2022 (Art. 94 para 9)
[146] Law 4939/2022 (Art. 94 para 9)
[147] Law 3907/2011 (Art 20 & Art. 25 para 1)
[148] The competent authority for all the issues concerning the reception and integration of UAMs is the Special Secretariat for the Protection of Unaccompanied Minors (SPUUAM) which operates in the Ministry of Migration and Asylum, under the auspices of the Deputy Minister for Integration. The Secretariat was established with the Presidential Decree 18/2020.
[149] Law 3907/2011 (Art 25 para. 1)
[150] Law 3907/2011 (Art 25 para. 2)
[151] The National Strategy for UAMs makes several references on the issue of return of UAMs. Available at: [https://shorturl.at/eqrFM]. Accessed: 9/9/2023;
The Guardianship System is regulated by Law 4960/2022 'on the National Guardianship System and Framework of Accommodation of UAMs' entered into force in 2022 replacing former Law 4554/2018 on guardianship (which was never implemented in practice).
[152] Law 3907/2011 (Art. 41 para 1α)
[153] Law 3907/2011 (Art. 41 para 1ε)
[154] Temporary social security number for asylum seekers which allows them to access services like

5.8. Entry Bans

A ban on entry into Greek territory is imposed by Greek control authorities on TCNs who do not meet the conditions of entry, as defined in the Schengen Border Code[155]. In this event, the TCN is issued with a reasoned decision[156] which states the specific reasons for refusal of entry[157].

A TCN who has entered Greece from the transit zone and is not allowed to enter the country of destination, is not accepted for re-entry if s(he) does not meet the present conditions again, since upon his/her return s(he) entered a third, intermediate, country[158].

Entry to Greece is not prohibited for a person who proves to have Greek citizenship or the citizenship of an EU MS, even if s(he) still lacks a passport or other travel document[159].

In the event that upon the entry into Greece of a TCN who is the holder of a residence permit, the Greek control authorities find that there are reasons justifying the revocation of the residence permit or the rejection of a relative pending request, they must immediately notify the competent authority in order to initiate the relevant procedure. In these cases, the entry of the TCN is prohibited until the issuance of a decision, without the authorities withholding the residence permit or the certificate of submission of a request with complete supporting documents[160].

Entry ban within return decision

Return decisions must be accompanied by an entry ban if i) no period for voluntary departure has been granted; ii) the TCN has not complied with the obligation to return. In addition, an entry ban may be imposed in the event that the presence of the TCN poses a risk to public order and security, national security or public health[161]. In the event that the voluntary departure takes place after the end of the deadline for reasons of force majeure, it is considered that the TCN has fully complied with the return decision[162]. The entry ban is imposed irrespective of to his/her right to international protection[163].

The length of the entry ban must be determined with due regard to all relevant circumstances of the individual case and shall not in principle exceed 5 years starting from the day of removal. However, it may exceed 5 years if the TCN represents a serious threat to public policy, public security or national security. Each case must be reviewed ex officio every 3 years[164].

The entry ban is enforced by registration in the List of Undesirable TCNs maintained by the Ministry of Citizen Protection[165].

public health care and work.
[155] Law 5038/2023 (Art. 6 para 1)
[156] The decision has a standardized form, in accordance with Schengen Borders Code.
[157] Law 5038/2023 (Art. 6 para 2)
[158] Law 5038/2023 (Art. 6 para 4)
[159] Law 5038/2023 (Art. 6 para 5)
[160] Law 5038/2023 (Art. 6 para 6)
[161] Law 3907/2011 (Art. 26 para 1)
[162] Law 3907/2011 (Art. 38 para 2)
[163] Law 3907/2011 (Art. 26 para 5)
[164] Law 3907/2011 (Art. 26 para 2)
[165] Law 3907/2011 (Art. 38 para 1) & Law 3386/2005 (Art. 82).

Entry-ban decisions are issued in writing and give reasons in fact and in law as well as information about available legal remedies[166]. Against the relative decision, an application for cancellation and application for suspension can be lodged before the Administrative Court.

5.9. Procedural Safeguards

Apart from general rules of administrative law, the Law 3907/2011 stipulates that in return procedures the competent authorities shall take due account of the best interests of the child; family life; the state of health of the specific TCN; and must respect the principle of non-refoulement[167]. The return is prohibited[168] when the TCN is i) a minor who attends a Greek school of any level of education or his/her parents or guardians legally reside in Greece; ii) a parent of a minor with custody or maintenance obligation, which s(he) fulfils; iii) a person who is over 80 years of age; iv) a person who has been granted international protection status or is an applicant of such status and his/her application has not been finally determined (subject to Articles 32 and 33 of the 1951 Geneva Convention); v) a minor on whom reformative measures have been imposed by a decision of the Juvenile Court; vi) an *omogenis*[169] vii) a victim or an essential witness of specific crimes, and comes to file a complaint or report the incident to the police; viii) a pregnant woman during pregnancy and for 6 months after delivery; iv) a victim of domestic violence who comes to file a complaint or report the incident to the police.

Return is not prohibited in above-mentioned cases no. (ii), (iii), (vi) and (viii) in the event that the TCN is considered dangerous to public order or national security or public health[170]. The above-mentioned protection applies also to TCNs subject to expulsion pursuant to Law 3386/2005[171]. Furthermore, police may, upon a justifiable decision, postpone the removal of a TCN taking into account the specific circumstances of each case (physical state, mental capacity etc.)[172].

In Greece, there is no humanitarian status as a special status of protection. The competent authorities (The Minister of Migration and Asylum and the Secretary of Decentralised Administration) may at any time grant an independent residence permit 'for compassionate, humanitarian or other reasons', to a TCN, who resides illegally in the country, in accordance with the relative provisions of the Immigration Code[173]. In the case of the issuance of the above residence permit, no return decision is issued and if the return decision has already been issued, then it is revoked or suspended for a period of time equal to the validity period of the above licence[174]. More specifically, according to the Immigration Code, a residence permit for humanitarian reasons could be issued to a TCN upon his/her application in the event that the

[166] Law 3907/2011 (Art. 27 para 1)
[167] Law 3907/2011 (Art. 20 & 24 para 1); Law 4939 (Art. 20 para 1, Art. 73 para 2b, Art. 90, Art. 91(1b), Art. 92 para 4c, Art. 94 para 9, Art. 110 para. 4); Law 5038/2023 (Art. 150 para 7)
[168] Law 3907/2011 (Art. 41 para 1)
[169] 'Omogenis' is the person who has the citizenship of another country but is of Greek descent and associated with strong ties with Greece.
[170] Law 3907/2011 (Art. 41 para 3)
[171] Law 3907/2011 (Art. 41 para 4)
[172] Law 3907/2011 (Art. 24 para 2)
[173] Law 3907/2011 (Art. 21 para 4)
[174] Ibid.

s(he) falls into specific categories[175]. Additionally, the new Immigration Code[176] provides that a 10-year residence permit is issued to adult TCNs who entered Greece as UAMs and have successfully completed at least 3 grades of secondary education in Greece before reaching the age of twenty-three. Another category of TCNs who can be issued with a residence permit on the basis of humanitarian reasons is those who can prove seven years of continuous residence in Greece[177].

The necessary form of return decisions

Return decisions and entry ban decisions must be in written form and include sufficient justification[178]. They are communicated to the TCN a as well as information on available remedies.

The authorities ensure, upon request, the written or oral translation of the main points of the decisions, including information about the available remedies, "in a language that the TCN understands or is considered reasonable that understands"[179]. This is not applicable for TCNs who have illegally entered and have not subsequently been granted "permission or the right to remain in Greece". In this case, the decisions are issued by means of a standardised form[180]. Return decisions issued by the police and the Foreigners and Immigration Services of the Decentralised Administrations are written in Greek and contain no translation.

Remedies against decisions ordering return

Against return decisions issued by the police, TCN can file an appeal within 5 days of (of the day of issuance)[181]. The appeal is submitted to the police department responsible for the administrative measures. The lodging of the appeal suspends the execution of the return/expulsion decision. In case that along with the return/expulsion, detention was ordered, the suspension concerns only the return/expulsion[182]. In case that the appeal against the return/expulsion decision is rejected the TCN has the right to appeal before the Administrative Court[183].

Furthermore, TCNs have the right to appeal against return decisions that are incorporated in decisions to reject the applications for granting or renewing a residence permit, as well as in decisions to revoke a valid residence permit, within an exclusive period of 2 months from the issuance of the decision[184]. Legal assistance and representation are provided free of charge

[175] Law 5038/2023 (Art. 134). These categories include, inter alia, victims and material witnesses of criminal acts, victims of domestic violence, victims of crimes with racist characteristics, victims of work accidents, those attending a legally approved treatment program for mental dependence, TCNs who 'at the risk of their lives, they performed acts of social virtue, giving and solidarity that promote the values of humanity', TCNs who are suffering from serious health problems. However, for the last category the TCN, in order to apply for humanitarian status, must have already had a residence permit, therefore irregular TCNs are not eligible'; Law 5038/2023 (Art. 134 para 1).
[176] Law 5038/2023 (Art. 161 para 1c)
[177] Law 5038/2023 (Art. 134 para 5)
[178] Law 3907/2011 (Art. 27 para 1)
[179] Law 3907/2011 (Art. 27 para 2)
[180] Law 3907/2011 (Art. 27 para 3) & JMD n. 4000/4/46-a/22.7.2009 (Art. 1 para 2)
[181] Law 3907/2011 (Art. 28 para 1) and 3386/2005 (Art. 77); See also the section of 'Detention' for persons who are issued a return decision as detainees
[182] Law 3386/2005(Art. 77)
[183] Law 3068/2002 (Art. 15 para 1)
[184] Law 3907/2011 (Art. 28 para 1)

upon request, in accordance with the general provisions of Law 3226/2004 "on providing legal aid to low-income citizens"[185]. Application for annulment against return decisions can be lodged before First Instance Administrative Court[186].

5.10. Detention

TCNs who are subject to return procedures are detained for the preparation of the return procedure[187] Authorities may apply other less restrictive measures if these measures are deemed effective and if the police deem that: a) there is no risk of absconding; or b) the TCN is cooperative and does not hamper the preparation of the return procedure; or c) there are no national security reasons[188]. Detention must be imposed for the absolutely necessary period of time for the removal process, which must be executed with due diligence[189]. A TCN can be detained up to 6 months[190] but this period can be extended up to 18 months[191]. In the event that the TCN is arrested to enforce an expulsion order for which s(he) has already been detained and the statutory maximum detention period has been exhausted, s(he) can be detained again but only for the necessary period of time to complete the legal formalities of his removal[192]. Asylum seekers can be detained even in the event that they applied for international protection at liberty.

Decision ordering detention

Detention is ordered by a decision[193] of the police[194]. According to the general provisions of Greek administrative law, all the decisions must be written and have to mention the issuing authority and the applicable legal provisions, the date and the authority of issuance, the right to appeal, the body which is responsible for examining the appeal, the deadline for filing an appeal, as well as the consequences of failing to exercise the right to file an appeal[195].

The detainee, as a first mean of defence, has 48 hours to submit objections before the police authorities[196] arguing why s(he) should not be suspected of absconding and s(he) does not constitute a danger for the public order or security[197]. As a second mean, a TCN can express his/her Objections against the decision before the judge of the First Instance Administrative Court[198]. In case that the Objections are accepted, the judge orders the police to set the

[185] Law 3226/2004 on providing legal aid to low-income citizens.
[186] Law 3068/2002 (Art. 15)
[187] Law 3907/2011 (Art. 30 para 1)
[188] Law 3907/2011 (Art. 30 para 1)
[189] Law 3907/2011 (Art. 30 para 1)
[190] Law 3907/2011 (Art. 30 para 5)
[191] Law 3907/2011 (Art. 30 para 6)
192 JMD no. 4000/4/46–α' (Art. 1 para 1)
[193] Law 3386/2005 (Art. 76 para 2)
[194] In particular by the police Director and especially for the General police Directorates of Athens and Thessaloniki, by the police Director responsible for TCNs issues or a higher officer appointed by the General police Director.
[195] Law 2690/1999 (Art. 16 para 1)
[196] Law 3907/2011 (Art. 30 para 2) & Law 3386/2005 (Art. 76 para 4-5)
[197] Law 3386/2005 (Art. 76 para 2)
[198] Law 3907/2011 (Art. 30 para 2) & Law 3386/2005 (Art. 76 para 3-5)

detainee free and sets a deadline for departure. This deadline cannot exceed the 30 days, unless there is a reason preventing expulsion[199].

5.11. Emergency Situations

In situations where an exceptionally large number of TCNs subject to return procedures provokes an unforeseen, heavy burden on the capacity of the detention facilities or on its administrative or judicial staff of the country, the relevant authorities may, for as long as the exceptional situation persists, decide to extend the deadlines for judicial review and to take urgent measures regarding the conditions of detention derogating from the relative provisions of law[200]. When resorting to such exceptional measures, the competent authorities shall inform the European Commission[201].

Under no circumstances the above-mentioned provisions can be interpreted as allowing Greek authorities to derogate from their general obligation to take all appropriate measures, whether general or particular, in order to ensure fulfilment of their obligations, as arise from the relative legislation[202].

5.12. Readmission Process

Greece has signed and ratified more than 18 bilateral readmission agreements with the following countries: Bosnia-Herzegovina, Bulgaria, Croatia, France, Hungary, Italy, Latvia, Lithuania, Malta, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovenia, Switzerland, Turkey and Germany.

In 2022 Greece and Bangladesh signed a Memorandum of Understanding[203]. This agreement sets out the conditions of entry and temporary residence of Bangladeshi nationals for the purpose of temporary employment[204]. The same year Greece and Egypt signed an Agreement[205] for the employment of seasonal workers in the agricultural sector.

Readmissions on the basis of EU-Turkey Statement

After the adoption of the EU-Turkey Statement[206] a practice of systematic geographical restriction[207] is imposed on every newly arrived person (after 20/3/2016) in order to be readmitted to Turkey in case they do not seek international protection or their applications are rejected. The implementation of returns on the basis of EU-Turkey Statement has been suspended since March 2020[208] after the border incidents that took place in the Evros region

[199] Law 3386/2005 (Art. 76 para 5)
[200] Law 3907/2011 (Art. 33 para 1)
[201] Law 3907/2011 (Art. 33 para 2)
[202] Law 3907/2011 (Art. 33 para 3)
[203] Ratified by Law 4959/2022.
[204] European Commission (2023) *Greece: Online platform opened to facilitate applications for residence from Bangladeshi citizens*. Available at: [https://shorturl.at/cms35]. Accessed: 15/10/2023.
[205] Ratified by Law 5009/2023
[206] European Commission (2016) *EU-Turkey Statement: Questions and Answers*. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/MEMO_16_963]. Accessed: 10/9/2023.
[207] The geographical restriction consists of an obligation not to leave the island and of an obligation to reside at the hotspot facility.
[208] European Commission (2022) *Communication from the Commission to the Council and the*

in 2020[209]. The Greek Turkish bilateral readmission Protocol concluded in 2002 is the only legal framework of the Statement with respect to returns[210] as the parties failed to finalise the legal process aiming to advance the applicability of the provisions EU-Turkey Readmission Agreement (signed on 1.10.2014) on the readmission of TCNs by 1 June 2016[211]. However, the implementation of the Bilateral Protocol has been suspended by the Turkish authorities from 2018[212].

The application of the Safe Third Country concept within the procedure for international protection

Greece considers[213] as Safe Third Countries the following states: Turkey (for applicants from Syria, Afghanistan, Pakistan, Bangladesh and Somalia), Albania and North Macedonia. The application of the Safe Third Country concept is extensive[214] and complaints on violations of a series of provisions of EU and international law have been directly brought before the European Commission the examination of which is still pending[215].

European Parliament: Sixth Annual Report on the Facility for Refugees in Turkey, p. 2. Available at: [https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-06/COM_2022_243_1_EN_ACT_part1_v3.pdf]. Accessed: 9/10/2023.

[209] Teunissen, P. & Koutrolikou, P. (2022) Echoes of Imperialism: Crisis, Conflict and the (Re)configurations of Otherness in the Evros/ Edirne Borderlands. In Lemberg-Pedersen, M., Fett, S.M., Mayblin, L., Sahraoui, N. & Stambøl, E.M. (eds.) *Postcoloniality and Forced Migration. Mobility, Control, Agency*. Bristol University Press.

[210] European Commission (2016) EU-Turkey Statement: Questions and Answers. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/MEMO_16_963]. Accessed: 10/9/2023.

[211] Öztürk, N. O. & Soykan, C. (2019) Third Anniversary of EU-Turkey Statement: A Legal Analysis. Available at: [https://tr.boell.org/en/2019/10/03/third-anniversary-eu-turkey-statement-legal-analysis]. Accessed: 10/01/2024

[212] Apnews (2018) Turkey suspends migrant deal with Greece. Available at: [https://apnews.com/a8d995345279472794573 63a3b072b89/Turkey-suspends-migrant-deal-with-Greece]. Accessed: 10/01/2024; European Commission (2020). Turkey 2020 Report, p. 49. Available at: [https://neighbourhood-enlargement.ec.europa.eu/system/files/2020-10/turkey_report_2020.pdf]. Accessed: 9/1/2024

[213] Pursuant to JMD no. 458568/16.12.2021 'Amendment of no 42799/03.06.2021 Joint Ministerial Decision of the Minister of Foreign Affairs and the Minister of Migration and Asylum 'Designation of third countries as safe and establishment of national list pursuant to Article 86 of Law 4636/2019 (A' 169)' (B'2425)'

[214] On 2021 GAS dismissed 6.424 asylum applications as inadmissible based on the safe third country concept. Out of this number only 979 decisions concern the border procedure. Information available at: [https://www.hellenicparliament.gr/UserFiles/67715b2c-ec81-4f0c-ad6a-476a34d732bd/11873945.pdf]. Accessed: 9/1/2024

[215] RSA (2022) *Greece arbitrarily deems Turkey a 'safe third country' in flagrant violation of rights*. Available at: [https://rsaegean.org/wp-content/uploads/2022/02/RSA_STC_LegalNote_EN.pdf]. Accessed: 9/1/2024

6. International Cooperation

	Type of Bilateral Agreements and Negotiations	Title	Signatory State/ Target Third Country	Date		Link to the document
				Signature	Entry into force	
1	**Standard Readmission agreements signed**	Agreement between the Government of the Hellenic Republic and the Council of Ministers of Bosnia-Herzegovina on the readmission of persons residing illegally in the territory of their respective states. Ratified by Law 3547/2007.	Greece / Bosnia-Herzegovina	09/2/2006	1/6/2007	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wFNA1ry4K61p3dtvSoClrL8SFJZYW49XfPtIl9LGdkF53UIxsx942CdyqxSQYNuqAGCFoIfB9HI6qSYtMQEkEHLwnFqmgJSA5WIsluV-
2		Protocol between the Government of the Hellenic Republic and the Council of Ministers of Bosnia-Herzegovina on the Implementation of the Agreement between the European Community and Bosnia-Herzegovina on the Readmission of Persons Staying Without Permit. Ratified by Law Law 4669/2020.	Greece / Bosnia-Herzegovina	24/11/2015	NOT FOUND	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wHUdWr4xouZundtvSoClrL8b5S2mIvi-NjtIl9LGdkF53UIxsx942CdyqxSQYNuqAGCFoIfB9HI6qSYtMQEkEHLwnFqmgJSA5WIsluV-nRwQ10KqSe4BlQTSpEWYhszF8P8UqWb
3		Agreement between the Governments of the Hellenic Republic and the Republic of Bulgaria regarding the readmission of persons whose residence is illegal. Ratified by Law 2406/1996.	Greece / Bulgaria	15/12/1995	NOT FOUND	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wGW8w3YEhDyt3dtvSoClrL8sN_CI5tJ5zV5MXDoLzQTLWPU9yLzB8V68knBzLCmTXKaO6fpVZ6Lx3UnKl3nP8NxdnJ5r9cmWyJWelDvWS_18kAEhATUkJbox1
4		Agreement between the Government of the Hellenic Republic and the Government of the Republic of Croatia regarding the readmission of persons whose residence is illegal	Greece / Croatia	10/3/1995	14/3/1996	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wEqaJsMsZeph3dtvSoClrL8jXotFUXFV2R5MXDoLzQTLWPU9yLzB8V68knBzLCmTXKaO6fpVZ6Lx3UnKl3nP8NxdnJ5r9cmWyJWelDvWS_18kAEhATUkJbox1
5		Agreement between the Government of the Hellenic Republic and the Government of the French Republic for the readmission of persons in an illegal status. Ratified by Law 2917/2001.	Greece / France	15/12/1999	1/1/2004	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wHgzIpqlooT4HdtvSoClrL88VQbDIJsbtp5MXDoLzQTLWPU9yLzB8V68knBzLCmTXKaO6fpVZ6Lx3UnKl3nP8NxdnJ5r9cmWyJWelDvWS_18kAEhATUkJbox1
6		Agreement between the Government of the Hellenic Republic and the Government of the Republic of Hungary on the readmission of persons residing illegally in the territory of their States. Ratified by Law 3321/2005.	Greece / Hungary	29/1/2003	1/5/2005	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wHrZvzjsKBkq3dtvSoClrL8wKsDxGjkYKjtIl9LGdkF53UIxsx942CdyqxSQYNuqAGCFoIfB9HI6qSYtMQEkEHLwnFqmgJSA5WIsluV-
7		Agreement between the Government of the Hellenic Republic and the Government of the Italian Republic on the readmission of persons in an illegal status. Ratified by Law 2857/2000.	Greece/ Italy	30/4/1999	7/11/2000	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wEtf2Ep4n9LfndtvSoClrL821paEXBAV1p5MXDoLzQTLWPU9yLzB8V68knBzLCmTXKaO6fpVZ6Lx3UnKl3nP8NxdnJ5r9cmWyJWelDvWS_18kAEhATUkJbox1

8		Agreement between the Government of the Hellenic Republic and the Government of the Republic of Latvia regarding the readmission of persons whose residence is illegal. Ratified by Law 2861/2001.	Greece / Latvia	17/3/1999	21/12/2001	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wEtf2Ep4n9LfndtvSoClrL8M3utSzAwpFh5MXDoLzQTLWPU9yLzB8V68knBzLCmTXKaO6fpVZ6Lx3UnKl3nP8NxdnJ5r9cmWyJWelDvWS_18kAEhATUkJbox1
9		Agreement between the Government of the Hellenic Republic and the Government of the Republic of Lithuania regarding the readmission of persons whose residence is illegal. Ratified by Law 2911/2001.	Greece / Lithuania	1/7/1999	1/5/2004	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wHgzIpqlooT4HdtvSoClrL8vJ4GKx8iICXtIl9LGdkF53UIxsx942CdyqxSQYNuqAGCFoIfB9HI6qSYtMQEkEHLwnFqmgJSA5WIsluV-
10		Agreement between the Government of the Hellenic Republic and the Government of Malta on the cooperation of the Ministry of Public Order of the Hellenic Republic and the Ministry of Internal Affairs of Malta in issues of their competence. Ratified by Law 3125/2003.	Greece / Malta	24/5/2001	NOT FOUND	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wFalhF2BrTT7HdtvSoClrL8fss9ofyoJlDtIl9LGdkF53UIxsx942CdyqxSQYNuqAGCFoIfB9HI6qSYtMQEkEHLwnFqmgJSA5WIsluV-nRwO10KqSe4BlOTSpEWYhszF8P8UqWb
11		Protocol between the Government of the Hellenic Republic and the Government of the Republic of Moldova on the implementation of the Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without a permit, which was signed in Brussels, on October 10, 2007. Ratified by Law 4980/2022.	Greece / Moldova	28/3/2014	NOT FOUND	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wGGrezhDLcpZ3dtvSoClrL8u_IHzLbdDJF5MXDoLzQTLWPU9yLzB8V68knBzLCmTXKaO6fpVZ6Lx3UnKl3nP8NxdnJ5r9cmWyJWelDvWS_18kAEhATUkJbox1LIdQ163nV9K--td6SIuRAAJhpAUuggXnLTdbq-K-
12		Protocol between the Government of the Hellenic Republic and the Government of Montenegro on the implementation of the Agreement between the European Community and the Republic of Montenegro on the readmission of persons residing without a permit, which was signed in Brussels on 18 September 2007. Ratified by Law 4862/2021.	Greece / Montenegro	7/3/2019	1/5/2022	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wEzH9d6xfVpRXdtvSoClrL81_YM9eaMm1p5MXDoLzQTLWPU9yLzB8V68knBzLCmTXKaO6fpVZ6Lx3UnKl3nP8NxdnJ5r9cmWyJWelDvWS_18kAEhATUkJb0x1LIdQ163nV9K--td6SIuUKG1rZdaIKwcBvUbPttROI-
13		Agreement between the Government of the Hellenic Republic and the Government of the Republic of Poland regarding the readmission of persons deprived of a residence permit, as amended by the exchange of verbal communications of 13.6.1995 and 20.6.1995. Ratified by Law 2384/1996.	Greece / Poland	21/11/1994 Amended by the exchange of verbal	5/5/1996	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wGW8w3YEhDyt3dtvSoClrL8b5S2mIvi-NjtIl9LGdkF53UIxsx942CdyqxSQYNuqAGCFoIfB9HI6qSYtMQEkEHLwnFqmgJSA5WIsluV-nRwO10KqSe4BlOTSpEWYhszF8P8UqWb
14		Agreement between the Government of the Hellenic Republic and the Government of Romania regarding the readmission of persons in an illegal status. Ratified by Law 2301/1995.	Greece / Romania	6/6/1994	19/8/1995	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wEqaJsMsZeph3dtvSoClrL8_NSNYUWRl5HtIl9LGdkF53UIxsx942CdyqxSQYNuqAGCFoIfB9HI6qSYtMQEkEHLwnFqmgJSA5WIsluV-
15		Implementation Protocol between the Government of the Hellenic Republic and the Government of the Russian Federation regarding the implementation of the Readmission Agreement between the Russian Federation and the European Community of May 25, 2006. Ratified by Law 4466/2017.	Greece / Russia	18/12/2012	NOT FOUND	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wEsrjP0JAlxBXdtvSoClrL8ExDiwSImocLtIl9LGdkF53UIxsx942CdyqxSQYNuqAGCFoIfB9HI6qSYtMQEkEHLwnFqmgJSA5WIsluV-nRwO10KqSe4BlOTSpEWYhszF8P8UqWb_zFijCXNEskXWBB6e1falbkQ6X8un_FU3

16		Protocol between the Governments of the Hellenic Republic and the Republic of Serbia on the implementation of the Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without a permit, which was signed in Brussels on September 18, 2007. Ratified by Law 4861/2021.	Greece / Serbia	11/9/2013	NOT FOUND	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wEzH9d6xfVpRXdtvSoClrL8zS83ZvoDVVR5MXDoLzQTLWPU9yLzB8V68knBzLCmTXKaO6fpVZ6Lx3UnKl3nP8NxdnJ5r9cmWyJWelDvWS_18kAEhATUkJbox1LIdQ163nV9K--td6SIuaR9WOstjFwnlvHbhaQxsqGxtHVV
17		Agreement between the Government of the Hellenic Republic and the Government of the Republic of Slovenia on the readmission of persons in an illegal status and of the attached Protocol. Ratified by Law 2353/1995.	Greece / Slovenia	6/4/1994	13/1/1996	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wEqaJsMsZeph3dtvSoClrL8_NSNYUWRl5HtIl9LGdkF53UIxsx942CdyqxSQYNuqAGCFoIfB9HI6qSYtMQEkEHLwnFqmgJSA5WIsluV-
18		Agreement between the Government of the Hellenic Republic and the Swiss Federal Council for the readmission of persons in an illegal status and of the relevant Implementation Protocol. Ratified by Law 3726/2008.	Greece / Switzerland	28/8/2006	NOT FOUND	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wHtyK1ZYNhP8HdtvSoClrL8f8yKr9Kv77F5MXDoLzQTLWPU9yLzB8V68knBzLCmTXKaO6fpVZ6Lx3UnKl3nP8NxdnJ5r9cmWyJWelDvWS_18kAEhATUkJbox1
19		Protocol for the implementation of Article 8 of the Agreement between the Government of the Hellenic Republic and the Government of the Republic of Turkey on combating crime, especially terrorism, organized crime, illegal drug trafficking and illegal immigration. Ratified by Law 3030/2002.	Greece / Turkey	8/11/2001	5/8/2002	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wHghqNAYvmYB3dtvSoClrL8Tq6rbLkT5HR5MXDoLzQTLWPU9yLzB8V68knBzLCmTXKaO6fpVZ6Lx3UnKl3nP8NxdnJ5r9cmWyJWelDvWS_18kAEhATUkJbox1LIdQ163nV9K--td6SIuSxvfSjBHr6BH7beimMo8BJRoJG9t
20		Administrative agreement between Germany and Greece ("Seehofer Deal")	Greece / Germany	NOT FOUND	18/8/2018	https://www.frnrw.de/fileadmin/frnrw/media/EU_Asylpolitik/Germany_Greece_Deal_eng.pdf
1	**Non-standard readmission arrangements**	Agreement between the Governments of the Hellenic Republic and the Republic of Albania on the cooperation of their Ministries of Public Order in issues of their competence. Ratified by Law 2147/1993. (Police cooperation Agreement)	Greece / Albania	17/7/1992	10/2/1995	https://www.e-nomothesia.gr/diethneis-sunthekes/nomos-2147-1993-phek-96a-16-6-1993.html
2		Protocol between the Government of the Hellenic Republic and the Council of Ministers of the Republic of Albania regarding the implementation of the Agreement between the Governments of the Hellenic Republic and the Republic of Albania on the cooperation of their Ministries of Public Order in issues of their competence. Ratified by Law 3962/2011. (Police cooperation Agreement)	Greece / Albania	12/3/2010	NOT FOUND	https://www.e-nomothesia.gr/diethneis-sunthekes/nomos-3962-2011-phek-98a-29-4-2011.html
3		Agreement on the cooperation between the Ministry of Public Order of the Hellenic Republic and the Ministry of Interior of the Republic of Armenia. Ratified by Law 2499/1997. (Police cooperation Agreement)	Greece / Armenia	18/6/1996	NOT FOUND	https://www.e-nomothesia.gr/diethneis-sunthekes/nomos-2499-1997-phek-100a-16-5-1997.html
4		Agreement between the Government of the Hellenic Republic and the Council of Ministers of Bosnia and Herzegovina on cooperation in combating crime, especially terrorism, illegal drug trafficking and organized crime. Ratified by Law 3725/2008. (Police cooperation Agreement)	Greece / Bosnia and Herzegovina	9/2/2006	NOT FOUND	https://www.e-nomothesia.gr/diethneis-sunthekes/nomos-3725-2008-phek-256a-17-12-2008.html

5		Agreement between the Government of the Hellenic Republic and the Government of the Republic of Lithuania on the cooperation of the Ministry of Public Order of the Hellenic Republic and the Ministry of Internal Affairs of the Republic of Lithuania in issues of their competence. Ratified by Law 2426/1996.	Greece / Lithuania	26/6/1995	NOT FOUND	https://www.e-nomothesia.gr/inner.php/diethneis-sunthekes/nomos-2426-1996-phek-149a-4-7-1996.html?print=1
6		Agreement between the Government of the Hellenic Republic and the Government of Malta on the cooperation of the Ministry of Public Order of the Hellenic Republic and the Ministry of Internal Affairs of Malta in issues of their competence. Ratified by Law 3125/2003. (Police cooperation Agreement)	Greece / Malta	24/5/2001	NOT FOUND	https://www.e-nomothesia.gr/diethneis-sunthekes/nomos-3125-2003-phek-63a-14-3-2003.html
7		Agreement between the Governments of the Hellenic Republic and Romania on the cooperation of the Ministry of Public Order of the Hellenic Republic and the Ministry of the Interior of Romania in issues of their competence. Ratified by Law 2138/1993. (Police cooperation Agreement)	Greece / Romania	6/6/1992	5/11/1994	https://www.e-nomothesia.gr/diethneis-sunthekes/nomos-2138-1993-phek-84a-28-5-1993.html
8		Agreement between the Hellenic Republic and the Republic of Turkey for the cooperation of the Ministry of Public Order of the Hellenic Republic and the Ministry of the Interior of the Republic of Turkey in combating crime, especially terrorism, organized crime, illegal drug trafficking and illegal immigration. Ratified by Law 2926/2001. (Police cooperation Agreement)	Greece / Turkey	20/1/2000	17/7/2001	https://www.e-nomothesia.gr/diethneis-sunthekes/nomos-2926-2001-phek-139a-27-6-2001.html
9		Agreement/Protocol (according to the media) or Common Declaration (According to the Council of Europe) between the Hellenic Republic and the Republic of Turkey for the readmission of persons in an illegal status	Greece / Turkey	14/5/2010	NOT FOUND	NOT FOUND
1	**Deals**	Memorandum of Understanding (MoU) between the Government of the Hellenic Republic and the Government of the People's Republic of Bangladesh on Migration and Mobility. Ratified by Law 4959/2022.	Greece / Bangladesh	9/2/2022	NOT FOUND	http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wGGrezhDLcpZ3dtvSoClrL8VngElbqsA6B5MXDoLzQTLWPU9yLzB8V68knBzLCmTXKaO6fpVZ6Lx3UnKl3nP8NxdnJ5r9cmWyJWelDvWS_18kAEhATUkJbox1
2		Agreement between the Government of the Hellenic Republic and the Government of the Arab Republic of Egypt on the employment of seasonal workers in the agricultural sector. Ratified by Law 5009/2023.	Greece / Egypt	22/11/2022	24/1/2023	https://treaties.un.org/doc/Publication/UNTS/No%20Volume/57666/Part/I-57666-080000028060c238.pdf

7. Funding Return and Related Programmes

The MMA provides information pertaining to Return and Related Programmes through its periodic reports. Funding for these programs is allocated via the Asylum and Migration Fund (AMIF), during the programming periods of 2014-2020 and 2021-2027. The primary beneficiaries of Return-related funding are the Hellenic Police and the International Organisation for Migration (IOM) - Mission in Greece. IOM receives funding for implementing Assisted Voluntary Returns and Reintegration (AVRR), reintegration measures, and operating the Hosting Facility for voluntarily returning applicants. The Hellenic Police primarily receives funding for the operation of Pre-Departure Detention Centers (PROKEKA).

Table 4. **Funded return programs**

Fund	Title	Beneficiary	Project Approval Date	Union Contribution*
AMIF	Improvement of Living Conditions in the Pre-Departure Centers	Hellenic Police	13/10/2016	59,548,925.99 €
AMIF	The implementation of assisted voluntary returns including reintegration measures	International Organization for Migration (IOM)	27/05/2016	24,352,500.00 €
AMIF	The application of Forced Returns of irregular Third Country Nationals	Hellenic Police	14/04/2016	12,152,217.84 €
AMIF	Forced Returns Monitoring and Control System	European Programs Implementation Service (EPIS) of the Hellenic Parliament (HeP)	13/02/2017	200,625.00 €
AMIF	Development of the services provided in the Pre-Departure Detention Centers for Aliens: Medical and Pharmaceutical Care, Psychological Support, Social Support and Interpretation Services	Health Units SA / (AEMY A.E.)	06/10/2017	5,257,480.51 €
AMIF	The implementation of assisted voluntary returns including reintegration measures and the operation of an Open Accommodation Structure for Voluntary Return Applicants in the region of Attica	International Organization for Migration (IOM)	31/08/2019	3,280,515.32 €

AMIF	The implementation of assisted voluntary returns including reintegration measures and the operation of an Open Accommodation Structure for Voluntary Return Applicants in the region of Attica	International Organization for Migration (IOM)	31/08/2019	26,044,484.68 €
AMIF	Funding International Organization for Migration (IOM) - Mission in Greece, for the implementation of the project 'Implementation of assisted voluntary returns and reintegration measures as well as operation of a Hosting Facility for voluntarily returning applicants	International Organization for Migration (IOM)	01/09/2023	39,000,000.00 €
AMIF	Reinforcement of Police Services with personnel for providing guarding and operation services in Pre-Departure Detention Centers	Hellenic Police	29/10/2023	14,739,951.00 €

Source: Ministry of Migration and Asylum (2021) *List of AMIF – ISF Actions, February 2021*. Available at: [https://migration.gov.gr/wp-content/uploads/2021/03/Κατάλογος-Δράσεων-TAME_ΤΕΑ_Φεβρουάριος-2021.pdf]. Accessed: 15/11/2023 (in Greek);
Ministry of Migration and Asylum (2023) *Approved List - Asylum, Migration and Integration Fund (AMIF) 2021-2027*. Available at: [https://tamey.gov.gr/amif2021-2027/calls/grant-agreements/?print=pdf]. Accessed: 15/11/2023 (in Greek).

8. Gaps

The listing of existing legal provisions and institutional arrangements reveals a number of gaps in terms of legal certainty, consistency and guarantees. These gaps can be summarised in the following points:

1. The co-existence of Law 3907/2011 (which transposed the Return Directive) and Law 3386/2005 regarding administrative expulsions in the Greek legal order seems to produce ambiguity regarding the respective scopes of the two laws. Several Greek NGOs emphasise[216] that the way the Return Directive has been transposed to the Greek legal system enables the administration to bypass the procedures of the Directive and apply the deportation procedures of Law 3386/2005.
2. According to the Return Handbook, irregular entrants who have been apprehended at the borders and who subsequently obtained a right to remain as asylum seeker must not be excluded from the scope of the Directive as 'border cases', even if they become again 'irregular' after the final rejection of the asylum application[217]. In Greece, TCNs irregularly entering Greece at the borders are arrested, detained and an expulsion decision is issued against them in dereliction of the reception and identification process set out in Law 4939/2022[218]. Additionally, CJEU has ruled that the term 'in connection with the irregular crossing' in Article 2(2)(a) of the Directive requires a 'direct temporal and spatial link with that crossing of the border'. It thereby applies to persons 'apprehended or intercepted by the competent authorities at the very time of the irregular crossing of the border or near that border after it has been so crossed'[219]. Subsequently, in the event that a TCN applies for international protection, s(he) obtains an authorisation to stay in the country and his/her expulsion is suspended until the completion of the examination of his/her application. If the application is rejected, the expulsion decision is executed in accordance with the procedures of Law 3386/2005. However, this procedure raises issues of compatibility with Article 2 para. (2) (a) of the Return Directive which clarifies that an exception from the scope of the Directive can only occur if TCNs who were caught irregularly crossing the border were not subsequently granted the right to remain in the country[220].

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[216] RSA, GCR, HIAS, DRC (2021) *Observations on the Draft Law Reformation of procedures for deportations and returns of third-country nationals, issues of residence permits and procedures for granting international protection*. Available at: [https://shorturl.at/coqTY]. Accessed: 9/9/2023.
[217] European Commission (2017) *Return Handbook* p. 96. Available at [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017H2338]. Accessed: 17/11/2023.
[218] Law 4939/2022 (Art 38 et seq.)
[219] CJEU, Case C-47/15 Affum b Préfet du Pas-de-Calais and Procureur général de la Cour d'appel de Douai, 7 June 2016, para 72; Case C-444/17 Arib, 19 March 2019, para 46.
[220] National Commission for Human Rights (2021) *Observations on Draft Law of Ministry of Migration and Asylum 'Reform of deportation and return procedures of third country nationals, issues of residence permits and procedures for granting international protection and other provisions within the competence of the Ministry of Migration and Asylum and the Ministry of Citizen Protection*. Available at: [https://www.nchr.gr/images/pdf/apofaseis/prosfuges_metanastes/GNCHR_YMA.pdf]. Accessed: 20/11/2023;
Greek Ombudsman (2021) *Comments and observations on the draft law 'Reformation of procedures for deportations and returns of citizens of third countries, etc*'. Available at: [https://old.synigoros.gr/resources/130921-sxolia-sn-metanasteytiko.pdf]. Accessed: 20/11/2023;
UNHCR (2021) *Reform of deportation and return procedures of third country nationals etc*. Available at: [https://www.refworld.org/docid/61eacbc24.html]. Accessed: 20/11/2023.

3. The decision rejecting an application for international protection, the decision revoking the status of international protection as well as the decision discontinuing the examination of the request incorporate a return decision[221]. However, in the event of one of the above-mentioned decisions, the independent Appeals Committees which examine applications for international protection in the second instance, do not examine whether conditions for a postponement of removal are met e.g. due to a risk of *refoulement*. Rather, they maintain the view that the responsibility lies with the police which is the competent authority for the execution of the removal. However, this is a contradictory situation, since the guarantees of the procedure are reduced as the relevant competence from the Appeals Committees (in which judges participate) is transferred to the police officials[222]. In addition, this runs counter to the duty of authorities to examine *non-refoulement* considerations before *issuing* a removal order, not just before execution thereof[223].
4. Decisions discontinuing the examination of applications of international protection due to implicit withdrawal also incorporate a return decision even though the applicant has the right[224] to submit, within 9 months, an application before the GAS asking the continuation of the examination of his/her application. Consequently, as there has not been examination of the asylum application on the merits, the incorporation of the return decision as an integral part of the decisions that interrupts the asylum application can lead to violation of the principle of non-refoulement since the return decision can be executed as long as the applicant has not exercised his/her right to ask for the continuation of the procedure.
5. The deadline for voluntary departure can be extended to a maximum of three months. This period is deemed inadequate to serve the special circumstances for which it is granted and especially the case where the TCN has minor children who attend schools[225]. The latter case, often consists the ground for suspensive effect where applicants challenge such removal

[221] Law 4939/2022 (Art. 87 para 8 and Art. 100 para 10)
[222] National Commission for Human Rights (2021) *Observations on Draft Law of Ministry of Migration and Asylum 'Reform of deportation and return procedures of third country nationals, issues of residence permits and procedures for granting international protection and other provisions within the competence of the Ministry of Migration and Asylum and the Ministry of Citizen Protection*. Available at: [https://www.nchr.gr/images/pdf/apofaseis/prosfuges_metanastes/GNCHR_YMA.pdf]. Accessed: 20/11/2023;
Greek Ombudsman (2021) *Comments and observations on the draft law 'Reformation of procedures for deportations and returns of citizens of third countries, etc*'. Available at: [https://old.synigoros.gr/resources/130921-sxolia-sn-metanasteytiko.pdf]. Accessed: 20/11/2023;
UNHCR (2021) *Reform of deportation and return procedures of third country nationals etc*. Available at: [https://www.refworld.org/docid/61eacbc24.html]. Accessed: 20/11/2023.
[223] See CJEU C-484 (para 26-28); CJEU-441/19 (para 49)
[224] Law 4939/2022 (Art. 86 para 4)
[225] National Commission for Human Rights (2021) Observations on Draft Law of Ministry of Migration and Asylum 'Reform of deportation and return procedures of third country nationals, issues of residence permits and procedures for granting international protection and other provisions within the competence of the Ministry of Migration and Asylum and the Ministry of Citizen Protection. Available at: [https://www.nchr.gr/images/pdf/apofaseis/prosfuges_metanastes/GNCHR_YMA.pdf]. Accessed: 20/11/2023;
Greek Ombudsman (2021) *Comments and observations on the draft law 'Reformation of procedures for deportations and returns of citizens of third countries, etc*'. Available at: [https://old.synigoros.gr/resources/130921-sxolia-sn-metanasteytiko.pdf]. Accessed: 20/11/2023;
UNHCR (2021) *Reform of deportation and return procedures of third country nationals etc*.. Available at: [https://www.refworld.org/docid/61eacbc24.html]. Accessed: 20/11/2023.

orders in administrative courts[226]. In addition, the extension of the deadline for voluntary departure is given after a relevant application of the TCN, which is examined within 15 days. In the event that the competent authority does not respond within this deadline, it is assumed that the request for an extension of the voluntary departure deadline is implicitly rejected[227]. However, authorities should reply with a reasoned decision within a prescribed period, so that the TCN can appeal this decision. The option of implicit rejection risks rendering ineffective -or even virtual- the obligation to examine the application[228].

6. The suspension of the implementation of returns to Turkey on the basis of EU-Turkey Statement since March 2020 creates a wide 'grey zone' and exposes thousands of applicants for international protection, including vulnerable persons, to the risk of being in a situation of legal uncertainty, extreme poverty, deprivation of the right to access health care and reception conditions and/or generalised detention, taking into account that removal to Turkey is not feasible. It is worth mentioning that on 3/2/2023 the Plenary of the Greek Council of State with its decision[229] formulated preliminary questions to the CJEU regarding the National List of Safe Third Countries[230], which includes Turkey as a safe third country, for asylum seekers whose applications are rejected as inadmissible. The Council of State submits questions to the CJEU regarding the influence on the legality of the national list of the fact that, for a long period of time (over 20 months), Turkey refuses the readmission of applicants for international protection, while at the same time it is not clear whether the possibility of a change in Turkey's attitude in the near future has been taken into account.
7. NGOs and official actors denounce that the application of the concept of a safe third country by the Greek authorities, has led to the systematic rejection of applications for international protection on the basis of pre-formulated, similar and repeated decisions (template decision), raising serious doubts as to the individual assessment of applications, as required by national law and Directive 2013/32/EU on Asylum Procedures[231].
   The application of the Safe Third Country Concept at first instance is extensive even though the suspension of the implementation of the EU-Turkey Statement. Furthermore, at second instance, Appeal Committees systematically refrain from taking position on this issue[232]. This consists a breach of the Asylum Procedure Directive (Art. 38 para 4). Additionally, in 2021, GAS has decided[233] that with regards to subsequent applications lodged by applicants arriving from Turkey whose initial claim has been rejected on the basis of the 'safe third

[226] E.g. Decisions no. 397/2023, 323/2023, 370/2022 Administrative Court (First Instance) of Athens, Decision no. 221/2020 Administrative Court (First Instance) of Thessaloniki, Decision no. N195/2019 of the Administrative Court (Second Instance) of Thessaloniki.
[227] Law 3907/2011 (Art. 36 para 1)
[228] Greek Ombudsman (2021) *Comments and observations on the draft law 'Reformation of procedures for deportations and returns of citizens of third countries, etc*'. Available at: [https://old.synigoros.gr/resources/130921-sxolia-sn-metanasteytiko.pdf]. Accessed: 20/11/2023.
[229] Council of State 177/2023. Available at: [https://rb.gy/5gbouw]. Accessed: 11/1/2024
[230] JMD 458568/15-12-2021. The decision of the Council of State was issued following a request for annulment by the GRC and RSA against the above JMD.
[231] National Commission for Human Rights (2021) Observations on Draft Law of Ministry of Migration and Asylum 'Reform of deportation and return procedures of third country nationals, issues of residence permits and procedures for granting international protection and other provisions within the competence of the Ministry of Migration and Asylum and the Ministry of Citizen Protection. Available at: [https://www.nchr.gr/images/pdf/apofaseis/prosfuges_metanastes/GNCHR_YMA.pdf]. Accessed: 20/11/2023.
[232] RSA (2022) *Greece arbitrarily deems Turkey a "safe third country" in flagrant violation of rights*. Available at: [https://rsaegean.org/wp-content/uploads/2022/02/RSA_STC_LegalNote_EN.pdf]. Accessed: 9/1/2024.
[233] GAS (2021) JMD no. 112808. Available at: [https://rb.gy/6u29a8]. Accessed: 9/1/2024.

country' concept, new substantial elements shall exclusively bear on the assessment of the initial application based on the law and the EU-Turkey Statement relating to whether or not Turkey – as a transit country for the individual applicant – constitutes a Safe Third Country. Where no new substantial elements arise, the subsequent application must be dismissed as inadmissible. This constitutes a violation of article 40 para 2 of the Asylum Procedure Directive.

8. The JMD n. 4000/4/32-λα' which determines the criteria for the registration of TCNs to the National List of Undesirable TCNs, following the Convention Implementing the Schengen Agreement stipulates that in the National List, among others, are registered TCNs, whose presence on Greek territory constitutes a threat to national security, public safety or public order. Such a threat exists especially when there are clear indications that the TCN has committed a serious criminal act or indications that s(he) has carried out preparatory acts for the commission of such an act[234]. For the legality of the registration in the List, both in the event of a conviction and in the event of the existence of nuanced evidence of the commission of a serious criminal act, the decision of the police should take into account all the circumstances of the crime, and contain a specific justification why the presence of the TCN consists a 'threat' to national security, public safety or public order[235]. However, the police register all TCNs in the List based on the fact that at some point s(he) entered irregularly Greece from a non-legislated point of entry into the Greek territory and resided illegally in the country. This wide practice raises concerns as to the violation of the principle of non-refoulement and of Art. 3 of the ECHR.
9. The absence of a distinct humanitarian status for persons who do not qualify for international protection but may nevertheless not be returnable leaves several categories of vulnerable TCNs - notably those who face serious health problems - without the necessary protection and therefore this fact can lead to violation of Article 3 of the ECHR.
10. The decision ordering return or deportation is subject to the limitations of respecting the rules protecting fundamental rights. The violation of art. 3 and 8 of the ECHR is more likely in this case. For this reason, before issuing the decisions, authorities must actually examine thoroughly whether there is a risk of such a violation. And in the event that the TCN consist a danger for public order, a real check of the feasibility, necessity and proportionality of the imposition of the return/deportation measure should be carried out by authorities.
11. While the law provides for alternatives to detention of those issued with a return decision and asylum seekers, the Greek authorities refuse to examine such alternatives, even in cases where a deportation decision cannot be implemented[236]. Detention is certainly the rule rather than the exception when there is a decision for return or deportation, despite that existing detention conditions severely violate detainees' rights and dignity[237]. This is in

[234] JMD n. 4000/4/32-λα' (Art. 1(b)
[235] Hellenic Data Protection Authority (17.10.2012) Opinion n. 3/2012, pp. 227-228. Available at: [https://www.dpa.gr/sites/default/files/2020-12/ARXH%20PROSTASIAS%20APOLOGISMOS%202012_%20WEBUSE.PDF]. Accessed: 22/11/2023.
[236] Greek Council for Refugees & Oxfam (2021) *Detention as the Default. Joint Agency Friefing Paper*. Available at: [https://reliefweb.int/attachments/58d7775e-5b03-3940-9134-8a3913d4cabe/bp-detention-as-default-greece-asylum-161121-en.pdf]. Accessed: 20/11/2023.
[237] Greek Ombudsman (2022) *Return of Third Country Nationals. Special Report 2021*. Available at: [https://old.synigoros.gr/resources/docs/ethsia-ekthesi_2021_eng.pdf]. Accessed: 18/11/2023; BVMN [Border Violence Monitoring Network] (2020). Annual Torture Report. Available at: [borderviolence.eu/app/uploads/Annual-Torture-Report-2020-BVMN.pdf]. Accessed: 20/11/2023.

sharp contrast with the legal provision that authorities must take into account if suitable detention facilities are available and if decent living conditions for the detainees are secured.

12. In the context of international protection, decisions are notified, inter alia, electronically (by email). However, many applicants do not have real knowledge of using a computer or are illiterate. For this reason, in the case of a negative decision, it is not always ensured that the applicant received knowledge of the decision regarding the asylum application and the return decision[238].
13. For both detainees subject to removal and asylum seekers, detention on public order grounds is usually not properly justified and there is a lack of a comprehensive individualised procedure for each detention case, despite the legal obligation to do so. Administrative detention is extensively used, based on the invocation of public order and national security grounds[239]. In several cases detention is ordered solely for reasons of illegal entry (obviously contrary to the prohibition on detaining asylum seekers on account of irregular entry)[240]. Furthermore, the national legislation includes an indicative and non-exhaustive list of criteria for the establishment of a risk of absconding. Thus, other criteria not explicitly defined can also be used for determining the existence of such a risk (obviously contrary to the provision of European law that such criteria 'must be defined by law')[241]. Furthermore, the legality of detention[242], is subject to an automatic judicial review which, however, regulates the extension of detention only and not the detention per se. Concerns have been expressed regarding the effectiveness of this procedure and statistics seem to confirm that the review is undertaken automatically, with no reference to the specificities of each case.[243]
14. Migrants registered with IOM for assisted voluntary return may also be kept in detention. On the one hand, this applies to those who register for AVRR while in detention and remain detained despite their declared willingness and consent to return. On the other hand, it may also apply to those who register for AVRR while at liberty but get arrested afterwards and are held in detention, again despite that AVRR procedures have already started[244].

[238] Greek Ombudsman (2021) *Comments and observations on the draft law 'Reformation of procedures for deportations and returns of citizens of third countries, etc.'*. Available at: [https://old.synigoros.gr/resources/130921-sxolia-sn-metanasteytiko.pdf]. Accessed: 20/11/2023.
[239] Greek Ombudsman (2019) *Return of Third Country Nationals. Special Report 2018.* Available at: [https://old.synigoros.gr/resources/english-final.pdf]. Accessed: 20/11/2023.
[240] AIDA-ECRE (2023) Country Report Greece 2022. Available at: [https://asylumineurope.org/reports/country/greece/]. Accessed: 20/09/2023.
[241] Ibid.
[242] L. 3907/2011 (Art. 30 para 3)
[243] AIDA-ECRE (2023) *Country Report Greece 2022*. p. 218 et seq. Available at: [https://asylumineurope.org/reports/country/greece/]. Accessed: 20/09/2023;
United Nations Human Rights Council (2013) *Report of the Special Rapporteur on the human rights of migrants, Addendum: Mission to Greece.* p. 13. Available at: [https://www.refworld.org/docid/51b983ab4.html], Accessed: 12/1/2024.
[244] Interview with IOM staff for GAPs project, 18 October 2023.

15. Incidences of alleged push backs are systematically reported. Organizations and bodies as inter alia the Committee for the Prevention of Torture (CPT)[245], UNHCR[246], IOM[247], the UN Special Rapporteur on the human rights of migrants[248], the Council of Europe Commissioner for Human Rights[249], European Anti-Fraud Office (OLAF)[250], FRONTEX[251] and civil society organisations[252] have raised concerns or have been reported the persisting practice of alleged push backs. The Recording Mechanism of Informal Forced Returns has recorded[253], between February 2022 and December 2022, testimonies of 50 incidents of informal forced returns that, according to the alleged victims, occurred from April 2020 to October 2022. According to the testimonies, the total number of alleged victims in these incidents amounts to at least 2,157 people. Among them are 214 women and 205 children, as well as 103 people with special needs, such as people with medical problems, people with disabilities, the elderly, etc. On 7/7/2022 the ECtHR condemned Greece for the deadly shipwreck that had taken place in 2014 off the coast of the island of Farmakonisi[254].
16. While participation in AVRR is voluntary in the sense that any participant has the right to withdraw at any time, the wider context in which the program operates is one of coercion, since it is also addressed to migrants issued with a return decision and even detainees.

[245] CPT (2020) *Council of Europe's anti-torture Committee calls on Greece to reform its immigration detention system and stop pushbacks*. Available at: [https://www.coe.int/en/web/cpt/-/council-of-europe-s-anti-torture-committee-calls-on-greece-to-reform-its-immigration-detention-system-and-stop-pushbacks]. Accessed: 11/1/2024
[246] UNHCR (2022) *Press Release: UNHCR warns of increasing violence and human rights violations at European borders*. Available at: [https://www.unhcr.org/news/news-releases/news-comment-unhcr-warns-increasing-violence-and-human-rights-violations]. Accessed: 10/1/2024
[247] IOM (2022) *Concerned about Increasing Deaths on Greece-Turkey Border*. Available at: [http://tinyurl.com/3sra3bhu]. Accessed: 11/1/2024; IOM (2020) IOM Alarmed over Reports of Pushbacks from Greece at EU Border with Turkey. Available at: [https://www.iom.int/news/iom-alarmed-over-reports-pushbacks-greece-eu-border-turkey]. Accessed: 11/1/2024
[248] United Nations, General Assembly (2022) *Human Rights Violations at International Borders: Trends, Prevention and Accountability: Report of the Special Rapporteur on the Human Rights of Migrants, Felipe González Morales*, A/HRC/50/31, 26 April 2022. Available at: [https://daccess-ods.un.org/tmp/3621627.98643112.html]. Accessed: 19/12/2023.
[249] Commissioner for Human Rights (2021) *Greek authorities should investigate allegations of pushbacks and ill-treatment of migrants, ensure an enabling environment for NGOs and improve reception conditions*. Available at [http://tinyurl.com/ht5byny6]. Accessed: 11/1/2024
[250] OLAF (2021) *Final Report: Case No OC/2021/0451/A1*. Available at: [https://cdn.prod.www.spiegel.de/media/00847a5e-8604-45dc-a0fe-37d920056673/Directorate_A_redacted-2.pdf]. Accessed; 11/1/2024
[251] Ekathimerini (2023) *Frontex seeks answers from Greece on alleged 'pushbacks' of migrants*. Available at: [https://www.ekathimerini.com/news/1214437/frontex-seeks-answers-from-greece-on-alleged-pushbacks-of-migrants]. Accessed: 11/1/2024; Frontex (2022) *Fundamental Rights Officer Annual Report 2021*. Available at: [https://www.frontex.europa.eu/assets/Images_News/2022/FRO_Report_2021.pdf]. Accessed: 11/1/2024
[252] AIDA (2023) Country Report Greece 2022. Available at: [https://asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/]. Accessed: 20/09/2023; RSA (2023) *Beyond Farmakonisi*. Available at: [https://rsaegean.org/en/beyond-farmakonisi]. Accessed: 10/1/2024; RSA (2022) *Systemic breaches of the rule of law and of the EU asylum acquis at Greece's land and sea borders*. Available at: [https://rsaegean.org/en/greece_cso_briefing_libe]. Accessed: 11/1/2024
[253] Recording Mechanism of Informal Forced Returns (2023) Recording Mechanism of Informal Forced Returns Annual Report. Available at: [https://nchr.gr/images/pdf/RecMechanism/_fin.pdf]. Accessed: 20/09/2023. (in Greek).
[254] ECtHR, Safi and others v. Greece (appeal no. 5418/15)

AVRR risks being a 'facade' of 'voluntariness' for migrants who face 'the tough dilemma of absconding or departing "voluntarily"'[255].

17. A comparison of funding flows[256] reveals that AVRR program organised and operated by IOM in Greece has received 53.7 million euros since 2016 from AMIF, which is less than the 77.2 million euros directed from the same Fund to the and other agencies for the implementation of forced returns, or the 121.4 million euros granted in 2020 for the construction cost of three reception centres in the islands of Samos, Kos and Leros[257]. Moreover, the resources that are given for the design and the implementation of reintegration schemes in AVRR amount to 10% of potential returnees of the program for the current implementation period (2023-2027), in comparison with 25% of returnees in 2016-2019[258].

18. Moreover, existing legal inconsistencies are accompanied by poor available data on returns. Important data for Greece are missing in Eurostat and national databases, such as about the number of return decisions issued for applicants of international protection. Other data are of poor quality, as it happens with data about returned TCNs which are completely wrong when cross-tabulated by type of return. In short, the 'gaps' (observed) in (relation to) the data can be summarised as follows:
    a. Between different categories of data, reflecting disparities (a) between administrative procedures towards returns (e.g. order to leave the country upon apprehension) and actual enforcement/implementation of returns, as well as (b) between different nationalities/countries, indicating variations between intergovernmental agreements on return and readmission.
    b. Between different data sources on returns, e.g. disparities in data from Eurostat and from Greek sources regarding the same categories, or even within the same source, e.g. Eurostat: e.g. annual data table of 'TCNs returned following an order to leave' shows different figures from quarterly data table on the same category by type of return (among other variables)
    c. Between terms/labels describing different types/categories of returns in the data in different years; shifts in terminology are also apparent in official public statements reporting on the data, e.g. ministerial press releases refer to 'expulsions' in 2021 but 'deportations' in 2022 to describe the very same category of (forced) returns. Data labels are also inconsistent with the legal terminology discussed in the dossier, especially before 2020. These observations may partly point to shifts in systems of recording and reporting on data over the years, alongside (in)consistency between statistical and legal categories and (lack of) convergence with EU terminology (both appear to be less common in recent years).

[255] Triandafyllidou, A. & Ricard-Guay, A. (2019) Governing irregular and return migration in the 2020s: European challenges and Asian Pacific perspectives. *Journal of Immigrant & Refugee Studies*, 17(2), 115-127.
[256] See Section 7.
[257] European Commission (2020) *Migration: Commission and Greece agree joint plan for a new reception centre in Lesvos. Press release*. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2287]. Accessed: 20/09/2023.
[258] IOM Greece (2019) *The Implementation of Assisted Voluntary Returns Including Reintegration Measures (AVRR). Final Report*. Available at: [https://greece.iom.int/sites/g/files/tmzbdl1086/files/documents/IOM%20Greece%20Implementation%20of%20AVRR_EN.pdf]. Accessed: 20/09/2023.

9. Policy Suggestions

One of the most important aspects of the national legislation on return migration in Greece is the simultaneous existence of different legal frameworks that stipulate divergent procedures and undermine the implementation of the Return Directive. At the same time, the system of return governance consists of several national, supranational and international actors and is overall characterised by complexity both on paper and in practice. As it has been stressed by NGOs[259], the disambiguation of legal procedures regarding return and deportation is necessary, especially in terms of their implementation in cases of irregular entry. Greece must retain only the standards of Law 3907/2011 (transposition of the Return Directive) of to provide a persuasive policy basis on the need to maintain a parallel framework under L. 3386/2005. Furthermore, the systematic practice[260] of issuing return/deportation decisions to TCNs who have already been subjected to reception and identification procedures and have already expressed their will to apply for international protection actually exclude asylum seekers from the scope of application of the Return Directive. Therefore, police authorities must have clear guidance on their duties, while detention of asylum seekers should not be used by default or mandatory for all arrivals but rather remain the exemption[261].

While the general responsibility for planning and coordinating return migration policy belongs to the MMA and its semi-autonomous GAS, the police is also a key actor in the system of return migration governance, especially in what concerns administrative expulsions, return decisions, decisions on detention and the management of the detention system. Since the police authorities are organisationally independent from the MMA, it is of crucial importance to ensure their accountability in the implementation of returns and their compliance with basic guarantees.

Detention of migrants for purposes of return is extensively and arbitrarily used in various different cases, even for applicants of international protection and migrants who have registered for assisted voluntary return. The Greek Ombudsman[262] has provided several recommendations to substantially improve living conditions and respect to detainees' rights and dignity, including thorough medical examination of all returnees and issue of individual fit-to-travel certificates, ensuring that returnees have been informed of their rights and timely notified of the return operation, the presence of interpreters throughout the operation, sufficient supply of materials etc. The same independent authority notes that a large number of TCNs continue to be held in police stations, due to insufficient pace in detention facilities, and stresses that this is inconsistent with the duty of the Authorities to ensure decent living conditions.

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[259] RSA, GCR, HIAS, DRC (2021) *Observations on the Draft Law 'Reformation of procedures for deportations and returns of third-country nationals, issues of residence permits and procedures for granting international protection*. Available at: [https://shorturl.at/coqTY]. Accessed: 15/11/2023.
[260] RSA (2022) Persisting systematic detention of asylum seekers in Greece. Available at: [https://rsaegean.org/wp-content/uploads/2022/06/RSA_LN_Detention_EN.pdf]. Accessed: 12/1/2024
[261] UNHCR (2021) *Reform of deportation and return procedures of third country nationals etc*. Available at: [https://www.refworld.org/docid/61eacbc24.html]. Accessed: 20/11/2023
[262] The Greek Ombudsman (2022) *Return of Third Country Nationals. Special Report 2021*. Available at: [ethsia-ekthesi_2021_eng.pdf (synigoros.gr)]. Accessed: 18/11/2023;
The Greek Ombudsman (2019) Return of Third Country Nationals. Special Report 2018. Available at: [https://old.synigoros.gr/resources/english-final.pdf]. Accessed: 20/11/2023.

However important these improvements may be, the Greek administration has to revise the use of detention which is a non-punitive administrative measure, must be a last 'resort' and alternatives to detention have to be implemented. The best interests of the child, family life and state of health of illegally staying TCNs should always be duly considered in the context of return procedures[263].

The AVRR program run by IOM provides the ground for a more humane approach to return migration, with an eye on sustainable reintegration prospects in countries of origin - at least for the limited number of beneficiaries for reintegration. In order to contribute to the establishment of a genuine voluntary alternative, authorities should disassociate assisted voluntary return from detention, at least by releasing those registered for assisted voluntary return. The operation of the Open Centre for AVRR in Athens can be seen as an alternative infrastructure that improves the return process and contributes to sustainable reintegration prospects.

[263] Ibid.

10. Conclusions

Greece has a quite long record of formal, informal, and irregular return migration policies and practices. Informal deportation practices that were taking place during the 1990s, in a period of massive migration from Albania and other Balkan countries, soon crystallised in legal provisions about 'administrative expulsion' as a basic tool for combatting and deterring irregular migration. When migration routes changed to include more distant countries of origin to which deportation was not feasible or was taking a long time, a prolonged and summary detention became an intrinsic part of the rationale of expulsion.

The harmonization of the national legislation with European legislation and the Return Directive did not challenge this intrinsic link among returns and detention. On the contrary, it highlighted and intensified the gaps in policy and practice, especially since the older legal framework on administrative expulsions was not abolished and remains complementary to return procedures. Thus, an ambiguity between notions, different legislation, and relevant procedures, remains an integral part of the legal landscape in the country. Additionally, the aforementioned link between detention and expulsion was not challenged even after the recent institutionalisation of returns, a trend which is evident due to the recent establishment of the Directorate of Returns and Withdrawals of the GAS, in parallel with the (re)establishment of the MMA in 2020 as well as the establishment of the position of a National Coordinator of Returns in late 2023. As a result, return and detention seem to be closely tied together in Greece and return migration policies are determined by high levels of coercion.

A similar ambiguity concerns the competent actors and their powers, as the institutional framework is characterised by both the complexity of the involved authorities.

National legislation emphasises forced return and detention, while assisted voluntary return is underdefined in legal terms. This fact, along with prioritisation of funding for forced removals as opposed to assisted return indicate that more attention is given by the authorities to the fulfilment of certain targets of removing irregular migrants and rejected applicants for international protection than to sustainable reintegration as part of a migration trajectory.

The pervasive imposition of detention in returns, as well as the pressure for more 'efficient' and rapid return decisions and procedures (especially at the borders), risks to seriously jeopardising the right to asylum as well as the human rights of those who are apprehended, 'illegalised' and detained. Furthermore, as the notion – and the practice – of returns to a 'safe third country' gains ground, further concerns about the rights of those 'expulsed' are repeatedly raised by relevant organisations.

In addition to the above, the illegal yet widespread practice of land and sea pushbacks becomes simultaneously a 'non-existence' practice (as it is denied by the government) and an extensively evidenced reality (according to numerous reports and investigations) which de facto violates both international refugee, humanitarian and human rights law and puts people's lives at serious risk. Thus, both legal and administrative decisions and practices and irregular state practices need to be substantially reconsidered and challenged if respect for human and other rights is to be safeguarded. And this arguably also as a core rule of law priority, as this has pervasive effect on effectiveness of the justice system, civic space, media freedom etc.

Appendices

Annex I: Statistics

STATISTICS: GREECE, Latest Update: 23.12.2023																		
														Alternative 1	**Alternative 2**			
Year	**TCNs found to be illegally present (data in Eurostat)**	**Asylum applications[264]**	**TCNs refused entry at the border**	**pushbacks**	**Dublin returns[265]**	**TCNs ordered to leave**	**TCNs returned following an order to leave**	**Third country unaccompanied minors returned following an order to leave**	**TCNs who have left to the territory by citizenship[266]**	**TCNs returned following an order to leave, by type of return[267]**				**Assisted Voluntary Return (AVR), departed migrants[268]**	**returns-departures (according to the Greek Ministry of Migration & Asylum)**			
										assisted 'voluntary' return	**assisted forced return**	**non-assisted 'voluntary' return**	**Total**		**forced**		**'voluntary'[269]**	**IOM (assisted 'voluntary')**
															compulsory expulsions [270]	**border deportations[271]**		
2015	911,470	13,205	6,890		847	104,575	14,390	N/A	N/A	N/A	N/A	N/A	N/A					

[264] Disparities (gaps) between Eurostat data and official national sources (Ministry of Migration & asylum)
[265] Data show the number of outgoing requests transferred (not requests or decisions on requests), Transfer refer to '(taking charge/taking back) which have been effectively carried out by the reporting Member State (Geo)(=Greece) to another Member State'. (see https://ec.europa.eu/eurostat/cache/metadata/en/migr_dub_esms.htm)
[266] There are disparities (gaps) in the data: for 2021, with column J; for 2020 with other Eurostat Tables (https://ec.europa.eu/eurostat/databrowser/view/migr_eirt_ass__custom_8197816/default/table?lang=en), (https://ec.europa.eu/eurostat/databrowser/view/migr_eirt_agr/default/table?lang=en), for 2020 (6952)-2021 (6855)-2022 (6985) in other tables (https://ec.europa.eu/eurostat/databrowser/view/migr_eirt_agr/default/table?lang=en)
[267] Slight disparities between totals and sums of 3 types for 2022 & 2023
[268] Source: Written communication with IOM Greece for GAPs, 25 October 2023.
[269] Voluntary: οικειοθελής'. For the years 2019-2020 this category is called "returns" specified as "Based on the simplified readmission procedure from the northern borders of the country".
[270] Compulsory expulsions: ''αναγκαστικές απελάσεις'
[271] Border deportations: 'Επαναπροωθήσεις', literally 're-forwardings'. For the years 2019-2020 this category is specified as "returns in the context of the returns directive (article 22 L. 3907/2011) following a return order with a deadline for voluntary departure, holders of a 78α certificate, withdrawal from an asylum claim.

2016	204,820	51,110	18,145		890	33,790	19,055	N/A	N/A	N/A	N/A	N/A	N/A	16,960[272]	9,432	3,566	N/A	6,153
2017	68,110	58,660	21,175		4,467	45,765	18,060	N/A	N/A	N/A	N/A	N/A	N/A		9,036	4,403	N/A	5,657
2018	93,365	66,975	14,295		5,447	58,325	12,465	N/A	12,488	N/A	N/A	N/A	N/A		5,776	2,000	N/A	4,968
2019	123,025[273]	77,285	7,015		2,546	78,880	9,650	N/A	N/A	N/A	N/A	N/A	N/A		3,889	979	1,184	3,854
2020	47,295	40,560	3,145	2,157[274]	1,825	38,540	6,950	N/A	6,083	N/A	N/A	N/A	645[275]	10,920[276]	3,660		926	2,565
2021	38,015	28,355	3,075		1,549	28,815	6,855	15	6,875	2,740	3,145	995	6,880		3,276[277]		1,000	2,737
2022	49,060	37,380	5,450		1,037	33,500	6,985	5	N/A	3,070	2,560	1,390	7,015		2,763		1.397	3,065
2023								5[278]		1,865	1,850	525	4,250[279]		268[280]		669	2497
Data sources:	eurostat	eurostat	eurostat	Recording Mechanism of Infor	eurostat	eurostat	eurostat	eurostat	eurostat	eurostat				IOM	2020-23: Greek Ministry of Migration & Asylum [281]			

[272] June 2016 - August 2019.
[273] Disparities (gaps) between Eurostat data and official national sources (Hellenic Police) for 2019 (no available data published online after that year).
[274] Number of alleged victims in 50 incidents of informal forced returns that occurred from April 2020 to October 2022, according to the testimonies.
[275] Second quarter only.
[276] September 2019 - August 2023.
[277] Data for 2021 are missing from the English version of the website, yet they do appear in the Greek version.
[278] First 2 quarters. For 2021 nationalities & types of return are recorded, for 2022-23 such details are not stated.
[279] First 3 quarters. Disparities (gaps) with annual data (column J)
[280] Data for 2023 cover January to November.
[281] All data are from the Greek Ministry of Civil Protection: Yet, 2016-19 data are downloaded from the government data repository (also available on the portal for European data), while 2020-2023 data come from the Ministry of Migration & Asylum's website (see above). All data are monthly, yet for 2016-19 annual sums are based on our calculations, while for 2020-23 (see International Protection – Appendix) we use the totals as in the reports (each month's report contains info about all previous months of the same year). The first source contains also 2020 data, which match the second source for that year; similarly, IOM returns for June 2016-August 2019 are consistent with IOM data in Column Q. However, if sums of all 3 types of returns are calculated for 2021 & 2022 quarterly, these do not much Eurostat quarterly data in Appendix 4 on which Column P data are based. The first source breaks down the 'forced' category inn 2 sub-categories: 'compulsory expulsions' and 'border deportations'.

Annex II: List of Authorities Involved in the Migration Return Governance (Defined and Authorised by the Law)

Authority (English and original name)	Tier of government	Type of organisation	Area of competence in the fields of return	Link
Ministry of Migration and Asylum - Directorate of Returns and Withdrawals (Υπουργείο Μετανάστευσης και Ασύλου - Διεύθυνση Επιστροφών και Ανακλήσεων)	National	Government	Coordinates, monitors and participates in the planning of the management of readmission, return, deportation or relocation procedures.	https://migration.gov.gr/en/ https://migration.gov.gr/gas/dioikisi/
Ministry of Migration and Asylum – Asylum Service (Υπουργείο Μετανάστευσης και Ασύλου – Υπηρεσία Ασύλου)	National/ Regional	Government	Receives and processes international protection applications; contributes to the formulation of Greek policy on international protection; cooperates with international organisations and EU institutions	https://migration.gov.gr/en/gas/
Ministry of Migration and Asylum - Appeals Authority (Υπουργείο Μετανάστευσης και Ασύλου – Αρχή Προσφυγών)	National	Government	Examines applications for international protection at second instance, issues return decisions	https://migration.gov.gr/en/appeals/
Ministry of Migration and Asylum – General Directorate for the Coordination and Management of Programs on Migration and Internal Affairs (Υπουργείο Μετανάστευσης και Ασύλου – Γενική Διεύθυνση Συντονισμού και Διαχείρισης Προγραμμάτων Μετανάστευσης και Εσωτερικών Υποθέσεων)	National	Government	Responsible for the coordination of the funded actions from AMIF, including those that aim at developing capacities for effective and sustainable return and reducing incentives for irregular migration	https://migration.gov.gr/dg-coordination-management-amif-isf-otherfunds/
Hellenic police - Ministry of Citizen Protection (Ελληνική Αστυνομία - Υπουργείο Προστασιας του Πολίτη)	National/ Regional	Government	Issues return and administrative expulsion decisions, implements removal operations, runs detention facilities.	https://www.astynomia.gr/?lang=en
Department of Analysis and Documentation of the National Coordinating Centre for Border Control and Surveillance (NCCBS) - Ministry of Citizen Protection (Τμήμα Ανάλυσης και	National	Government	Monitors the process of returning migrants	https://www.minocp.gov.gr/ethniko-syntonistiko-kentro-elegchou-kai-epitirisi-synoron-eskees/diarthrosi-eskees/

Τεκμηρίωσης του Εθνικού Συντονιστικού Κέντρου Ελέγχου και Επιτήρησης Συνόρων (ΕΣΚΕΕΣ) - Υπουργείο Προστασιας του Πολίτη)				
Department of International Relations of the National Coordinating Centre for Border Control and Surveillance (NCCBS) - Ministry of Citizen Protection (Τμήμα Διεθνών Σχέσεων του Εθνικού Συντονιστικού Κέντρου Ελέγχου και Επιτήρησης Συνόρων (ΕΣΚΕΕΣ) - Υπουργείο Προστασιας του Πολίτη)	National	Government	Monitors the initiatives of the competent authorities to conclude police cooperation agreements and readmission agreements with the competent authorities of other States and ensure their implementation	https://www.minocp.gov.gr/ethniko-syntonistiko-kentro-elegchou-kai-epitirisi-synoron-eskees/diarthrosi-eskees/
Decentralized Administrations - Foreigners and Immigration Services (Αποκεντρωμένες Διοικήσεις -	Regional	Regional government	Receives and processes applications of TCNs	https://www.ypes.gr/apokentromeni-dioikisi-aytodioikisi/
Frontex	European	Supranational	Organises, coordinates and conducts return operations.	https://www.frontex.europa.eu/
Greek Ombudsman (Συνήγορος του Πολίτη)	National	Independent Authority	Monitors the system of returns to ensure transparency and protection of fundamental rights	https://www.synigoros.gr/en
IOM Greece (Διεθνής Οργανισμός Μετανάστευσης Ελλάδας)	International	International Organisation	Organises and implements AVRR	https://greece.iom.int
Civil society actors (Φορείς της Κοινωνίας των Πολιτών)	International/ National/ Local	NGOs, International Organisations, etc.	Provide health care and medical treatment services in the detention facilities; Mediate to inform the TCN about the return decision; Provide confirmation of the voluntary departure	
Greek National Commission for Human Rights (GNCHR) (Εθνική Επιτροπή για τα Δικαιώματα του Ανθρώπου (ΕΕΔΑ)	National	Independent Authority	Implements a Recording Mechanism of Informal Forced Returns	https://nchr.gr/en/recording-mechanism.html

Source: Authors' own elaboration

Annex III: Overview of the Legal Framework on Return Policy

The Title of the Policy/Legislation in English	The Title in the Original Language	Policy Area	Date/Announced Year	Active Period	Key terms	Type of Legislation	Target Group or Immigrant Category
Law 5038/2023 "Migration Code" & its amendments	Νόμος 5038/2023 «Κώδικας Μετανάστευσης»	irregularity, border management	Published on 1/4/2023	With few exceptions it will come into effect from 31/3/2024. Last Amendment on 13.04.2023 by L. 5043/2023	return; entry ban	Law	irregular migrant, family of irregular migrant
Law 4939/2022 "Ratification of the Code on reception, international protection of third-country nationals and stateless persons, and on temporary protection in cases of mass influx of displaced migrants" & its amendments	Νόμος 4939/2022 «Κύρωση Κώδικα Νομοθεσίας για την υποδοχή, τη διεθνή προστασία πολιτών τρίτων χωρών και ανιθαγενών και την προσωρινή προστασία σε περίπτωση μαζικής εισροής εκτοπισθέντων αλλοδαπών»	general/asylum, pre-removal detention	Published on 10/6/2022	Last Amendment on 22.07.2022 by L. 4960/2022	return; return decision; detention of asylum seekers; Pre-removal detention; Forced Repatriation; Readmission of beneficiaries of temporary protection	Law	general/asylum, refugees, rejected asylum seeker
Law 4825/2021 "Reform of deportation and return procedures of third country nationals, etc."	Νόμος 4825/2021 «Αναμόρφωση διαδικασιών απελάσεων και επιστροφών πολιτών τρίτων χωρών κλπ.»	forced return, border management	Published on 4/9/2021	Last amendment on 18.03.2023 by L. 5034/2023	application of return procedures; Voluntary return; return decision;	law	irregular migrant, rejected asylum seeker
Law 4686/2020 "Improvement of the migration legislation, amendment of L. 4636/2019 (A' 169), 4375/2016 (A' 51), 4251/2014 (A' 80) and other provisions" & its amendments	Ν. 4686/2020 «Βελτίωση της μεταναστευτικής νομοθεσίας, τροποποίηση διατάξεων των νόμων 4636/2019 (Α' 169), 4375/2016 (Α' 51), 4251/2014 (Α' 80) και άλλες διατάξεις»	general/asylum, pre-removal detention	Published on 12/05/2016	Last amendment on 10.06.2022 by L. 4939/2022	return; return decision; detention	Law	general/asylum, refugees, rejected asylum seeker
Law 4636/2019 "on international protection and other provisions" & its amendments	Νόμος 4636/2019 «Περί Διεθνούς Προστασίας και άλλες διατάξεις»	general/asylum, forced return, pre-	Published on 01/11/2019	Abolished by L. 4939/2022 with few exceptions	return; return decision; detention of asylum seekers; pre-removal detention	Law	general/asylum, refugees, rejected asylum seeker

		removal detention					
Law 4540/2018 "Adaptation of Greek legislation to the provisions of Directive 2013/33/EU etc."	Νόμος 4540/2018 «Προσαρμογή της ελληνικής νομοθεσίας προς τις διατάξεις της Οδηγίας 2013/33/ΕΕ κλπ.»	general/asylum	Published on 22/5/2018	Articles 1-20 were abolished by L. 4636/2019. Last amendment by L. 4939/2022	detention;	Law	general/asylum
Law 4375/2016 "Organisation and functioning of the Asylum Service, Appeals Authority, Reception and Identification Service, etc." & its amendments	Νόμος 4375/2016 «Οργάνωση και λειτουργία Υπηρεσίας Ασύλου, Αρχής Προσφυγών, Υπηρεσίας Υποδοχής και Ταυτοποίησης κλπ.»	general/asylum	Published on 3/4/2016	Last amendment on 14.12.2022 by L. 5003/2022. Many articles (regarding the transposition of Directive 2013/32/EU) were abolished by Law 4636/2019	return; return decision; detention;	Law	general/asylum, refugees, rejected asylum seeker
Law 4251/2014 "Immigration and Social Integration Code and other provisions" & its amendments.	Νόμος 4251/2014 «Κώδικας Μετανάστευσης και Κοινωνικής Ένταξης και λοιπές διατάξεις»	irregularity	Published on 1/4/2014	It replaced the vast majority of the provisions of L. 3386/2005. From 1/1/2024 is going to be replaced by L. 5038/2023.	return; entry ban	Law	irregular migrant, family of irregular migrant
Law 4052/2012 "Law on the competence of the Ministries of Health and Social Solidarity and of Labor and Social Security for the implementation of the law "Approval of Draft Financial Facility Agreements between the European Financial Stability Fund etc."	Νόμος 4052/2012 «Νόμος αρμοδιότητας Υπουργείων Υγείας και Κοινωνικής Αλληλεγγύης και Εργασίας και Κοινωνικής Ασφάλισης για εφαρμογή του νόμου «Έγκριση των Σχεδίων Συμβάσεων Χρηματοδοτικής Διευκόλυνσης μεταξύ του Ευρωπαϊκού Ταμείου Χρηματοπιστωτικής Σταθερότητας κλπ.»	irregularity	Published on 01/03/2012	Last amendment by L. 5038/2023		Law	
Law 3907/2011 "on the establishment of an Asylum Service and a First Reception Service, transposition into Greek legislation of Directive 2008/115/EC etc." & its amendments	Νόμος 3907/2011 «Ίδρυση Υπηρεσίας Ασύλου και Υπηρεσίας Πρώτης Υποδοχής, προσαρμογή της ελληνικής νομοθεσίας προς τις διατάξεις της Οδηγίας 2008/115/ΕΚ»	forced return, pre-removal detention, irregularity	Published on 26/01/2011	Last amendment on 4.9.2021 by L. 4825/2021	return, return decision; removal order; voluntary return; vulnerable persons, entry ban, detention, emergency situations	Law	irregular migrant, rejected asylum seeker

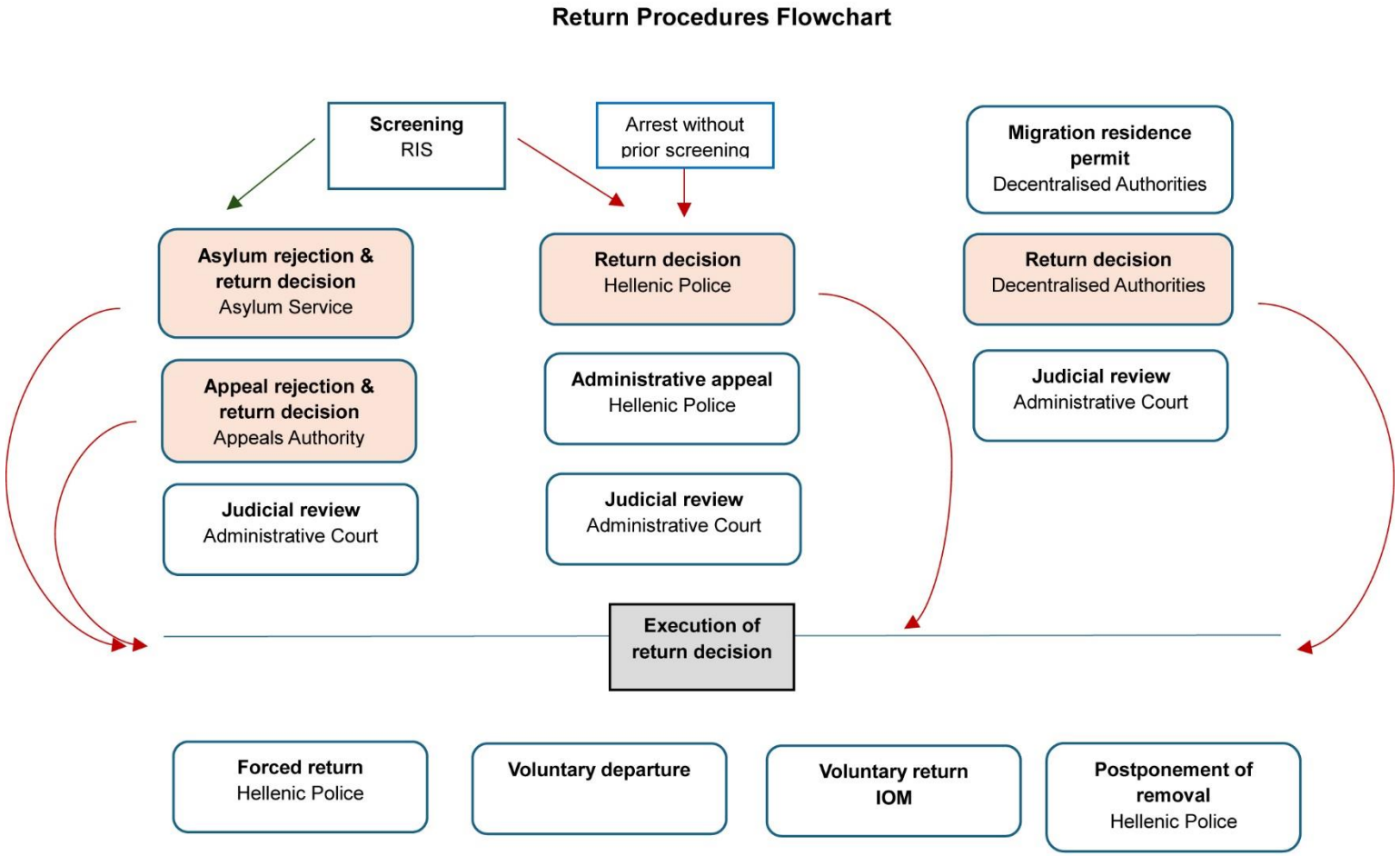
Precidential Decree 106/2007 "Free movement and residence in the Greek territory of citizens of the European Union and their family members" & its amendments	Προεδρικό Διάταγμα 106/2007 «Ελεύθερη κυκλοφορία και διαμονή στην ελληνική επικράτεια των πολιτών της Ευρωπαϊκής Ένωσης και των μελών των οικογενειών τους»	forced return	Published on 21/06/2007	Active	expulsion	Degree	
Law 3386/2005 "Entry, residence and social integration of Third Country Nationals on the Greek territory" & its amendments	Νόμος 3386/2005 «Είσοδος, διαμονή και κοινωνική ένταξη υπηκόων τρίτων χωρών στην Ελληνική Επικράτεια»	forced return, pre-removal detention	Published on 23/08/2005	Abolished by: L. 4251/2014 except for Articles 76, 77, 78, 80, 81, 82, 83, 89(1) - (3) Amended by: Law 4332/2015	detention; expulsion; readmission; illegal entry; illegal exit	Law	irregular migrant
Presidential Decree 124/1997 "Establishment of a travel document (Laissez-Passer) for TCN under removal" & its amendments	Προεδρικό Διάταγμα 124/1997 «Καθιέρωση ταξιδωτικού εγγράφου (Laissez-Passer) για τους υπό απομάκρυνση αλλοδαπούς υπηκόους τρίτων χωρών».	forced return	Published on 03/06/1997	Active	removal	Decree	irregular migrant
Joint Ministerial Decision no. Οικ. 78391/15.02.2022 "Establishment of a national List of countries of origin considered as safe pursuant to para. 5 of Article 87 of Law 4636/2019"	ΚΥΑ υπ' αριθμ. οικ. 78391/15.02.2022 «Κατάρτιση Εθνικού Καταλόγου χωρών καταγωγής που χαρακτηρίζονται ως ασφαλείς, σύμφωνα με την παρ. 5 του άρθρου 87 του νόμου 4636/2019»	general/asylum	Published on 15/2/2022	Remains valid (Joint Ministerial Decision n. 734214/12.02.2022)	safe countries of origin		general/asylum
Joint Ministerial Decision no. 538695 "Definition of third countries characterized as safe and preparation of a national list as defined in article 91 of Law 4939/2022 (A' 111)""	Κοινή Υπουργική Απόφαση υπ' αριθμ. 538695 «Καθορισμός τρίτων χωρών που χαρακτηρίζονται ως ασφαλείς και κατάρτιση εθνικού καταλόγου κατά τα οριζόμενα στο άρθρο 91 του ν. 4939/2022 (Α' 111)»	general/asylum	Published on 15/12/2023	Remains valid	safe Third countries		general/asylum
Joint Ministerial Decision no. 458568/16.12.2021 "Amendment of no 42799/03.06.2021 Joint Ministerial Decision of the Minister of Foreign Affairs and the Minister of Migration and Asylum "Designation of third countries as safe and establishment of national list pursuant to Article 86 of Law 4636/2019 (A' 169)" (B'2425)"	Κοινή Υπουργική Απόφαση υπ' αριθμ 458568 «Τροποποίηση της υπ' αρ. 42799/03.06.2021 κοινής απόφασης των Υπουργών Εξωτερικών και Μετανάστευσης και Ασύλου «Καθορισμός τρίτων χωρών που χαρακτηρίζονται ως ασφαλείς και κατάρτιση εθνικού καταλόγου κατά τα οριζόμενα στο άρθρο 86 του νόμου 4636/2019 (Α' 169)» (Β'2425)»	general/asylum	Published on 16/12/2021	Abolished by Joint Ministerial Decision no. 538695/15.12.2023	safe Third countries		general/asylum

Joint Ministerial Decision no. 42799/7.6.2021 "on designation of third countries as safe and establishment of a national list pursuant to Article 86 of Law 4636/2019"	Κοινή Υπουργική Απόφαση υπ' αριθμ. 42799/7.6.2021 «Καθορισμός τρίτων χωρών που χαρακτηρίζονται ως ασφαλείς και κατάρτιση εθνικού καταλόγου, κατά τα οριζόμενα στο άρθρο 86 του νόμου 4636/2019»	general/asylum	Published on 7/6/2021	Amended by the Joint Ministerial Decision no. 458568 (16.12.2021)	safe Third countries		general/asylum
Joint Ministerial Decision no. 788/29.01.2021 "on the establishment of a national List of countries of origin considered as safe pursuant to para. 5 of Article 87 of Law 4636/2019"	ΚΥΑ υπ' αριθμ. 778/29.01.2021 «Κατάρτιση Εθνικού Καταλόγου χωρών καταγωγής που χαρακτηρίζονται ως ασφαλείς, σύμφωνα με την παρ. 5 του άρθρου 87 του νόμου 4636/2019»	general/asylum	Published on 29/1/2021	Abolished by Joint Ministerial Decision no. 78391/15.02.2022	safe countries of origin		general/asylum
Joint Ministerial Decision no. 1302/31.12.2019 "on the establishment of a National List of countries of origin characterized as safe according to with article 87 par. 5 of Law 4636/2019".	Κοινή Υπουργική Απόφαση υπ' αριθμ 1302/31.12.2019 «Κατάρτιση Εθνικού Καταλόγου χωρών καταγωγής που χαρακτηρίζονται ως ασφαλείς σύμφωνα με το άρθρο 87 παρ. 5 του νόμου 4636/2019».	general/asylum	Published on 31/12/2019	Replaced by Joint Ministerial Decision no. 788/29.01.2021	safe countries of origin		general/asylum
Joint Ministerial Decision no. 82136/11.02.2022 "Amendment of the joint ministerial decision 8038/23/22-ιγ'/20-01-2015 "Establishment and operation of Pre-removal Detention Centers for aliens and Regulation of their Operation"	ΚΥΑ υπ' αριθμ. 2136/11.02.2022 «Τροποποίηση της υπό στοιχεία 8038/23/22-ιγ'/20-01-2015 κοινής υπουργικής απόφασης «Ίδρυση και λειτουργία Προαναχωρησιακών Κέντρων Κράτησης Αλλοδαπών και Κανονισμός Λειτουργίας αυτών»	pre-removal detention	Published on 11/02/2022	Active	Pre-removal Detention Centers		general/asylum, irregular migrant
Joint Ministerial Decision n. 8038/23/22-ιγ/21.1.2015 "Establishment and functioning of Pre-removal Centres of Detention of Aliens, and their regulations"	Κοινή Υπουργική Απόφαση υπ' αριθμ. 8038/23/22-ιγ/21.1.2015 «Ίδρυση και λειτουργία Προαναχωρησιακών Κέντρων Κράτησης Αλλοδαπών και ρυθμίσεις αυτών»	pre-removal detention	Published on 21/1/2015	Amended by Joint Ministerial Decision no. 82136/11.02.2022	Pre-removal Detention Centers		
Precidential Decree 53/2008 "Adaptation of Greek legislation to the provisions of Directive 2004/82/EC of the Council of the European Union of 29 April 2004 (EEL 261/24 of 6.8.2004), on the obligation of carriers to communicate passenger data"	Προεδρικό Διάταγμα 53/2008 «Προσαρμογή της Ελληνικής νομοθεσίας προς τις διατάξεις της Οδηγίας 2004/82/ΕΚ του Συμβουλίου της Ευρωπαϊκής Ένωσης της 29ης Απριλίου 2004 (EEL 261/24 της 6.8.2004), σχετικά με την υποχρέωση των αερομεταφορέων να κοινοποιούν τα στοιχεία των επιβατών»		Published on 9/05/2008	Active		Decree	

Precidential Decree 54/2007 "Assistance during the removal by air of nationals of third countries Directive 2003/110/EC"	Προεδρικό Διάταγμα 54/2007 «Συνδρομή κατά τις απομακρύνσεις δια της αεροπορικής οδού υπηκόων τρίτων χωρών Οδηγία 2003/110/ΕΚ»	forced return	Published on 13/03/2007	Active	removal	Decree	irregular migrant
Precidential Decree 214/2004 "Adaptation of Greek legislation to Council Directive 2001/40/EC of 28 May 2001) on the mutual recognition of decisions on the removal of third-country nationals"	Προεδρικό Διάταγμα 214/2004 «Προσαρμογή της ελληνικής νομοθεσίας στην Οδηγία 2001/40/ΕΚ του Συμβουλίου της 28ης Μαΐου 2001 (ΕΕ L 149) για την αμοιβαία αναγνώριση αποφάσεων απομάκρυνσης υπηκόων τρίτων χωρών»	forced return	Published on 15/10/2004	Active	removal	Decree	irregular migrant
Joint Ministerial Decision no. 4000/4/46–α΄/27.07.2009 «on specifying details for the execution of administrative and judicial decisions to deport aliens»	Κοινή Υπουργική Απόφαση υπ' αριθμ. 4000/4/46–α'/27.07.2009 «Καθορισμός λεπτομερειών για την εκτέλεση διοικητικών και δικαστικών αποφάσεων απέλασης αλλοδαπών»	forced return	Published on 27/7/2009	Active			
Joint Ministerial Decision no. 4000/4/32-ν΄/2017 «on the amendment of no. 4000/4/32-λα' from 05-10-2012 of joint ministerial decision "Definition of the criteria and the procedure for the registration and deletion of aliens from the National List of Undesirable aliens" (Β΄ 2805).	Κοινή Υπουργική Απόφαση υπ' αριθμ. 4000/4/32-ν΄/2017 «Τροποποίηση της υπ' αριθ. 4000/4/32-λα΄ από 05-10-2012 κοινής υπουργικής απόφασης «Καθορισμός των κριτηρίων και της διαδικασίας για την εγγραφή και διαγραφή αλλοδαπών από τον Εθνικό Κατάλογο Ανεπιθύμητων Αλλοδαπών»	forced return	Published on 31/03/2017	Active	National List of Undesirable aliens		irregular migrant
Joint Ministerial Decision n. 4000/4/32-λα΄"Definition of the criteria and the procedure for the registration and deletion of aliens from the National List of Undesirable Aliens"	Κοινή Υπουργική Απόφαση υπ' αριθμ. 4000/4/32–λα΄«Καθορισμός των κριτηρίων και της διαδικασίας για την εγγραφή και διαγραφή αλλοδαπών από τον Εθνικό Κατάλογο Ανεπιθύμητων Αλλοδαπών»	forced return	Published on 17/10/2012	Amended by Joint Ministerial Decision no. 4000/4/32-ν΄/2017	National List of Undesirable aliens		irregular migrant
Joint Ministerial Decision no. 3/5023/ 15.9.2015 "on the establishment of an Open Accommodation Structure in the Attiko Alsos area of the Municipality of Athens Attica for unforced return applicants"	Κοινή Υπουργική Απόφαση υπ' αριθμ. 3/5023/15.9.2015 «Σύσταση Ανοιχτής Δομής Φιλοξενίας Αιτούντων Εθελούσιας Επιστροφής στην περιοχή Αττικού Άλσους του Δήμου Αθηναίων Αττικής»	assisted return	Published on 15/09/2015	Active	assisted return		N/A

Joint Ministerial Decision 53619/735/7.12.2015 "Determining the terms and conditions for access to the labor market of third-country nationals who remain in the country under a status of postponment of removal"	Κοινή Υπουργική Απόφαση 53619/735/7.12.2015 «Καθορισμός των όρων και των προϋποθέσεων για την πρόσβαση στην αγορά εργασίας πολιτών τρίτων χωρών που παραμένουν στην χώρα υπό καθεστώς αναβολής απομάκρυνσης»	forced return	Published on 7/12/2015	Active	removal		irregular migrant
Law 5078/2023 on "Reform of occupational insurance, streamlining of insurance legislation, pension arrangements, appointment and recruitment system of teachers of the Public Employment Service and other provisions"	Νόμος 5078/2023 «Αναμόρφωση επαγγελματικής ασφάλισης, εξορθολογισμός ασφαλιστικής νομοθεσίας, συνταξιοδοτικές ρυθμίσεις, σύστημα διορισμού και προσλήψεων των εκπαιδευτικών της Δημόσιας Υπηρεσίας Απασχόλησης και λοιπές διατάξεις»	forced return	Published on 20/12/2023	Active	return	Law	N/A
Circular No. 1 "Implementation of provisions of Law 4825/2021"	Εγκλύκλιος υπ' αριθμ. 1 «Εφαρμογή διατάξεων του ν. 4825/2021»	forced return	Issued on 12/11/2021	Active	voluntary return, remedies, issuance of decisions	Circular	irregular migrant

Annex IV: Flowchart of the National Return System



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About the Authors

Panos Hatziprokopiou is an Associate Professor at the School of Spatial Planning and Development, Aristotle University of Thessaloniki (AUTh), Greece.

George Kandylis is a Senior Research Fellow at the National Centre for Social Research (EKKE), Athens, Greece and Principal Investigator in GAPs.

Katerina Komita is a Lawyer before the Supreme Court of Greece, MSc Social Discrimination, Immigration and Citizenship.

Penny Koutrolikou is an Associate Professor at the School of Architecture, National Technical University of Athens (NTUA).

Eva Papatzani is a Research Associate at the National Centre for Social Research (EKKE), Athens, Greece and Co-Principal Investigator in GAPs.

Angelo Tramountanis is a Researcher at the National Centre for Social Research (EKKE), Athens, Greece.

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GAPS

Decentring the Study of Migrant Returns and Return Policies

Legal and Policy Infrastructures of Returns in Sweden

Country Dossier (WP2)

Authors:

Rebecca Thorburn Stern (Uppsala University)

Mudar Shakra (Uppsala University)

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Abbreviations

EU	European Union
EEA	European Economic Area
ETIAS	European Travel Information and Authorization System
EFTA	European Free Trade Association
NRO	National Return Operations
JRO	Joint Return Operations
NTE	National Transport Unit
CJEU	the Court of Justice of the European Union
UKRI	UK Research and Innovation
ECtHR	the European Court of Human Rights
ECHR	The European Convention on Human Rights
CRC	The UN Convention on the Rights of the Child
SIS	Schengen Information System
WP	Work Package
MSs	Member States
TCN	Third-country National

Executive Summary

This report delineates the legislative, institutional, and procedural frameworks and infrastructures concerning the return of irregular migrants from Sweden. It further explores key policy developments in this field. Covering the period from 2015 to 2023, with some historical retrospectives, the report provides a brief overview of return-related statistics, elucidates the interplay between Swedish national law, EU law, and public international law, and maps the operational infrastructure for return, including the primary return governance actors at the national level. The focus is chiefly on the legislative framework, especially the transposition of the EU Return Directive into Swedish legislation, and recent legislative and policy shifts in the return context. Section 7, on the legislative framework, specifically examines return procedures, approaches to both voluntary and enforced return, procedural safeguards, detention, and the specific requirements for the return of unaccompanied minors and other vulnerable groups. Additionally, the report addresses international cooperation and funding pertaining to return.

Special emphasis is placed on the political developments in the migration sector following the so-called refugee crisis of 2015, when Sweden received a significant number of asylum seekers, and in the context of the 2022 Tidö Agreement. This agreement, a pact between the current liberal-conservative government and its coalition partner, outlines several reforms, notably in migration and integration policy areas.

A principal finding is that although (while) the EU Return Directive and later EU legislation have been incorporated into Swedish law, the Swedish government has, on numerous points, deemed such revisions unnecessary. The government has contended that existing legislation, principally the Aliens Act, already meets or surpasses the requirements of EU law, thereby obviating the need for additional measures to align Swedish law with EU directives on these matters. This includes several definitions listed in Article 3 of the Return Directive (such as ‘irregular stay’ and ‘assisted return’), and the authorised exemption from applying the Return Directive under specific conditions outlined in Articles 2.2 a) and b).

Another significant observation is that while return has long been a priority—at least on paper— in recent years, its urgency has increased. This is demonstrated by the Swedish Government’s directive to the Migration Agency to prioritise returns more than before, enhancing the efficiency of the return process and increasing the number of people actually departing Sweden. The emphasis seems to have shifted from voluntary to forced returns, which is consistent with the general trend of more stringent Swedish migration policy since 2015, which is summed up by the principle "no means no."

This approach aims to ensure that Sweden does not deviate from the EU’s minimum standards for international protection, asylum procedures, reception conditions, and return measures. The 2022 Tidö Agreement’s reforms further cement this stringent migration stance, reflecting what has been termed a ‘paradigm shift’ in Swedish migration policy.

The report concludes by identifying gaps in the legislative, institutional, and policy frameworks (outlined in Section 9) and proposes several recommendations to the Swedish government and migration authorities, summarized as follows:

- Additional clarification of certain terms and definitions in the Aliens Act is necessary, including 'illegal/irregular stay', 'assisted return', and 'practical impediment to return'.
- A more thorough analysis and revision of Swedish law are required to ensure compliance with EU law, particularly concerning detention and rules related to the refusal of entry or expulsion of a foreign national authorized to reside in another EU state.
- For transparency, data on returns and other migration-related issues should be aggregated and made readily accessible.
- Revisions to Swedish law in accordance with EU requirements should not primarily aim to make national legislation as restrictive as possible.
- While trying to avoid sending conflicting messages to migrants by aiming for "no to mean no," efforts must be made to safeguard fundamental rights and incorporate safety-valve provisions for new circumstances.
- Provisional measures should accompany stricter restrictions on granting residence permits, with proper evaluation of their proportionality and long-term impacts.
- Fundamental human rights standards and the principle of proportionality must always be upheld—the state's interest in pursuing a restrictive migration policy should not override all other considerations.

Keywords: return policy – migration governance –Sweden – Swedish return policy – Swedish migration law – Return Directive

The GAPs Project

GAPs is a Horizon Europe project that aims to conduct a comprehensive multidisciplinary study on the drivers of return policies and the barriers and enablers of international cooperation on return migration. The overall aim of the project is to examine the disconnects and discrepancies between expectations of return policies and their actual outcomes by de-centring the dominant, one-sided understanding of "return policymaking." To this end, GAPs:

- examine the shortcomings of EU's return governance;
- analyse enablers and barriers to international cooperation, and
- explore the perspectives of migrants themselves to understand their knowledge, aspirations and experiences with return policies.

GAPs combines its decentring approach with three innovative concepts:

- a focus on return migration infrastructures, which allows the project to analyse governance fissures;
- an analysis of return migration diplomacy to understand how relations between EU Member States and with third countries hinder cooperation on return; and
- a trajectory approach that uses a socio-spatial and temporal lens to understand migrant agency.

GAPs is an interdisciplinary 3-year project (2023-2026), co-coordinated by Uppsala University and the Bonn International Centre for Conflict Studies with 17 partners in 12 countries on 4 continents. GAPs' fieldwork has been conducted in 12 countries: Sweden, Nigeria, Germany, Morocco, the Netherlands, Afghanistan, Poland, Georgia, Turkey, Tunisia, Greece and Iraq.

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In addition, GAPs benefit from funding provided by UK Research and Innovation (UKRI) under the UK government's Horizon Europe funding guarantee. The Canadian research component of this project is undertaken, in part, thanks to funding from the Canada Excellence Research Chairs Program of the government of Canada.

1. Introduction

This report aims to provide an overview of Sweden's legal, institutional and policy framework on returns and readmission. It also covers cooperation between Sweden and the European Union (EU) in this field as well as bilateral cooperation between Sweden and other Member States and third countries. The report aims to identify gaps in the legal, institutional and policy frameworks described and, on this basis, provide some brief policy recommendations.

2. Methodology and Material

The report adheres to guidelines jointly developed by the participating researchers in GAPs WP 2. Building on a shared template allows comparative analysis across all participating countries.

Section 1 introduces the aims of the report and **Section 2** outlines the methodology and materials used. **Section 3** provides an overview of statistical data on returns from Sweden. The majority of the statistical data included in this report was obtained through correspondence with the Swedish Migration Agency and Swedish Police Authority, supplemented by data sourced from their websites and from the Eurostat database. While much of the information is available on the Migration Agency and Police Authority websites, the statistical data used in this report has been consolidated into a unified dataset by the Swedish Migration Agency. **Section 4** gives a brief overview of key developments in Swedish migration and protection policy, with a particular focus on matters related to return. **Section 5** briefly outlines the relationship between Swedish law, public international law, and EU law. In **Section 6**, the institutional framework and operational infrastructure for returns is outlined. Sections 4, 5 and 6 relies on legislative materials, preparatory works, case law, secondary literature and information sourced from the Police Authority website and the Migration Agency Handbook. **Section 7**, which aims to provide an account of the Swedish legal framework on return and its relationship with EU law, is based on desk research on the Swedish Aliens Act and other related Swedish legislation on migration, EU law, and the preparatory works of such regulations. These preparatory works include official reports from government inquiries and government bills reflecting the processes of current and previous successive governments leading to the implementation of EU law in national legislation, particularly the Return Directive. **Section 8** discusses the funding of return-related programs, using information from the Migration Agency's website, targeting returnees and others. In the final Section, **Section 9**, we describe the main gaps in the legal and institutional framework identified in the report and make recommendations based on the findings presented. A draft version of the findings was discussed with an expert panel in December 2023 before the finalization of the report. The report has been subject to external review.

3. Statistical Overview

The charts on the following page provide a statistical overview of return and return-related matters in Sweden from 2015 to September 2023. The charts are as follows: **Chart 1**. the number of asylum seeker applications; Chart **2.** the number of Dublin return cases; Chart **3.** the number of return decisions resulting from denied asylum applications by the Migration Agency; Chart **4.** the number of assisted voluntary return cases, **Chart 5.** the number of assisted forced return cases, and **Chart 6.** the number of non-assisted voluntary return cases.

While collecting statistical data for the report, we communicated extensively with the Migration Agency and the Police Authority. The charts are based on information from these two government agencies.[1] The two government agencies' responses to specific questions about statistical data collection procedures in the context of the return process can be summarized as follows:

The Police Authority:

Regarding the stock of irregular migrants in Sweden: The Police Authority states that it is not possible to provide any accurate assessment of the number of irregular migrants present in Swedish territory. The Police Authority, however, still has data on open cases involving individuals without the necessary permits to stay in Sweden and have enforceable decisions against them. This data does not represent a complete count due to various situations, such as cases that have expired without applying for new permits, aliens who entered Sweden irregularly and who have not regularized their status, and many more.

Regarding the number of rejections of entry at the border for third-country foreign nationals: The Police Authority referred to figures available on their website, indicating "polisavvisningar vid yttre gräns," which relates to rejections at the entry to Sweden from non-European Union (EU)/European Economic Area (EEA) countries. These individuals are typically put on return flights. According to the Police Authority, the internal border controls in other Schengen countries consist of random checks only. The statistics reflect the number of rejections at these internal border controls and do not represent the total number of third-country nationals (TCNs) who would be rejected if inspected. Denied entry usually leads to a refusal-of-entry decision.

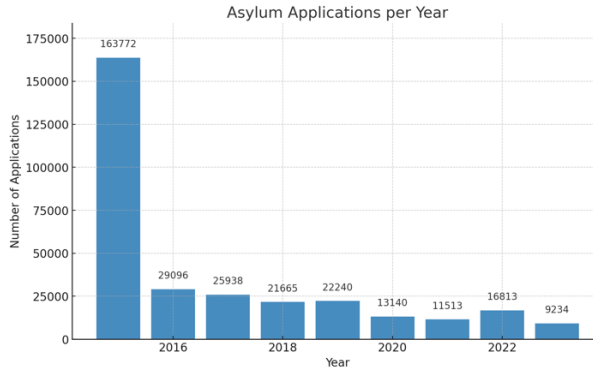
Regarding the number of pushback cases for TCNs with no right to enter Sweden: The term "pushback" is not used in Swedish law. The Police Authority rejects the suggestion that illegal pushbacks are conducted at the Swedish border or within Swedish jurisdiction. (While it is impossible to say with absolute certainty, it should be noted that there are few, if any, reports of illegal pushbacks at Swedish borders.) Foreign citizens who are not eligible for entry will, according to the Police Authority, be denied entry and returned to their country of origin or last departure point.

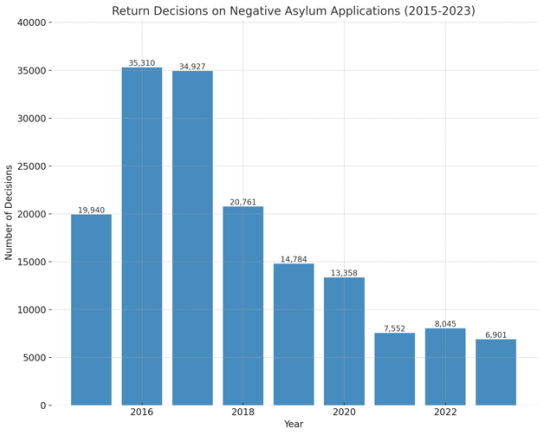
[1] It may be noted that Eurostat data and the data from the Swedish Migration Agency sometimes are not identical. For more information see Eurostat, https://ec.europa.eu/eurostat/cache/metadata/EN/migr_eil_esqrs_se.htm (accessed March 18, 2024).

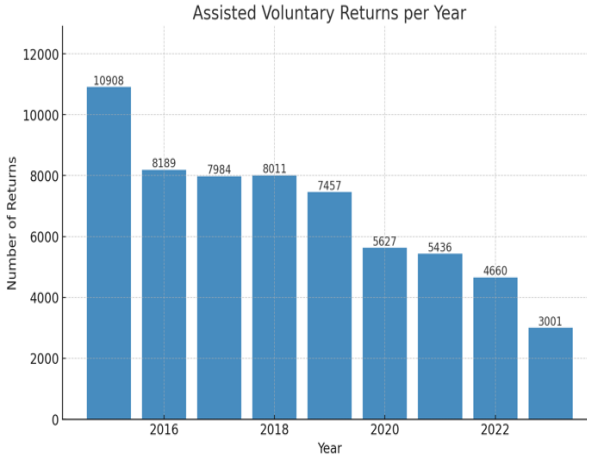
The Swedish Migration Agency:

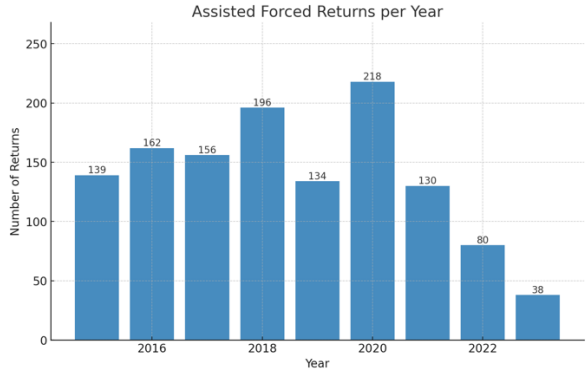
On whether existing data on returns and readmissions are disaggregated: The Migration Agency responded that the data is not disaggregated.

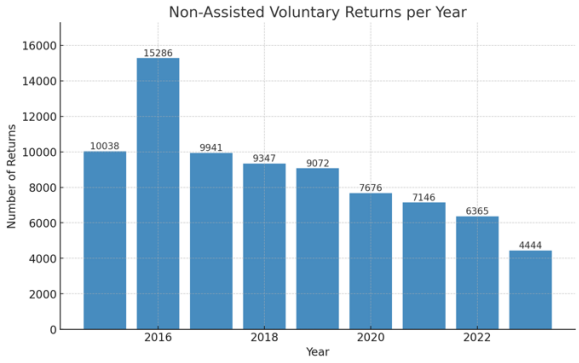
The Swedish Migration Agency is the sole authority responsible for collecting this data. Other authorities, such as the Police Authority, are not involved in this process. As per the Swedish Migration Agency's response, the data is not generally collected in a systematic and coherent way.











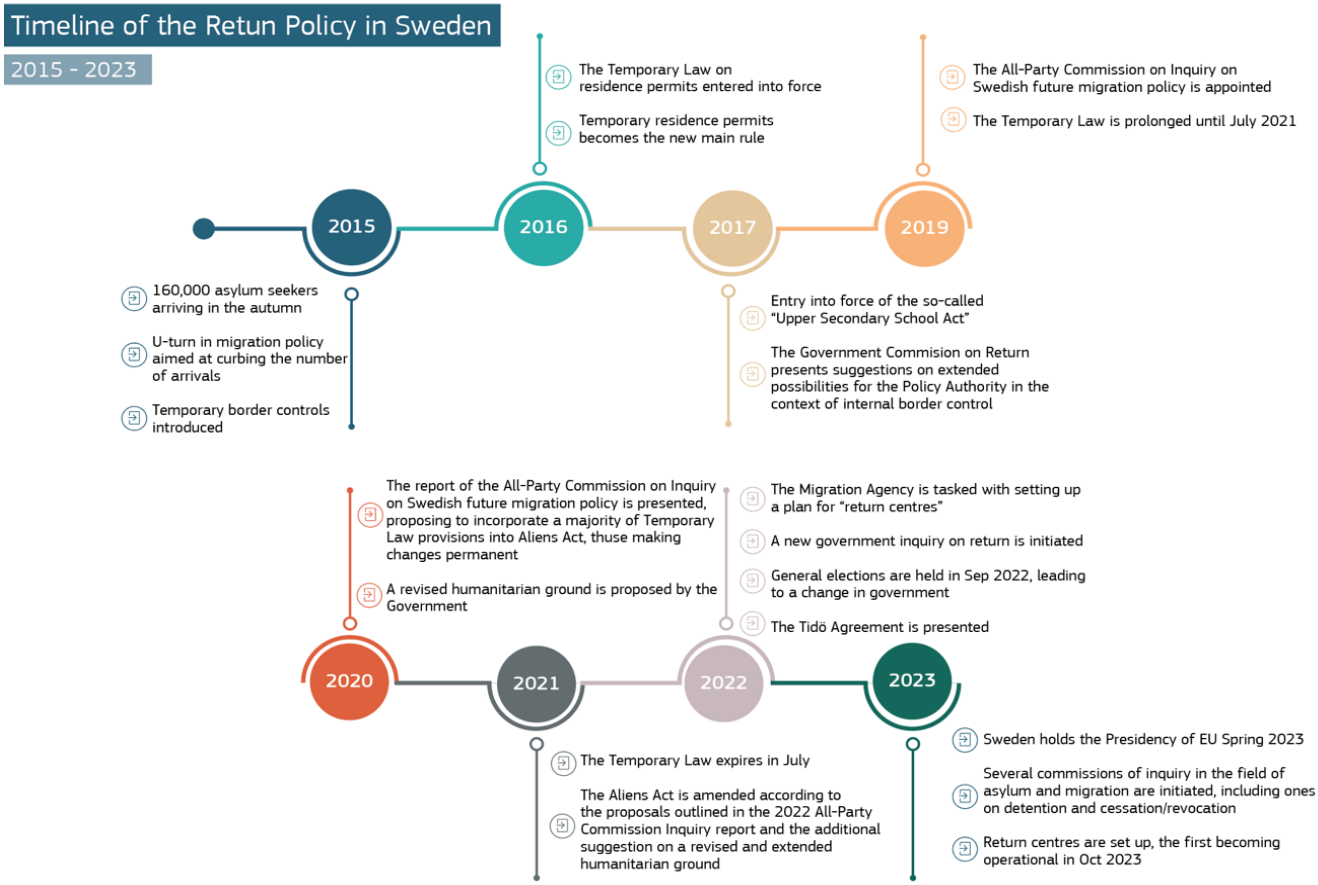
4. The Political Context of the Swedish Return Regime

4.1 Introduction

Sweden can generally be characterized as a liberal democracy with a centralized state that, as Malm Lindberg notes, 'generally has a high capacity in implementing policies in different fields'.[2] To understand the Swedish system, it is essential to note that Swedish government agencies, including the Migration Agency and the Police Authority, are independent and largely autonomous in relation to the government. Although the government can influence how government agencies operate through annual monitoring and evaluations, top-level management appointments, and annual appropriation directives and ordinances, it is not able to interfere with an agency's decision-making regarding the proper application of the law or the appropriate use of its authority.[3] Ministerial rule is in other words not allowed in Sweden.

[2] Henrik Malm Lindberg, "The Tricky Thing of Implementing Migration Policies: Insights from Return Policies in Sweden" in *Migration and Integration in a Post-Pandemic World. Socioeconomic Opportunities and Challenges*, ed. Lin Leopold, Örjan Sjöberg and Karl Wennberg (Springer, 2023), 151-175 (158).

[3] For an overview of how Swedish public agencies are governed, see https://www.government.se/how-sweden-is-governed/public-agencies-and-how-they-are-governed/ (last accessed January 3, 2024).



4.2 1999-2014: Gradually Increasing Focus on Return

From 1999 to the present, Sweden, known for its extensive welfare state and dedication to social equality, has seen notable changes in its migration policy.[4]

In 1999, the Migration Agency was given primary responsibility for the enforcement of return decisions as well as for persons in detention. Previously, it had mainly been the Police Authority, which had been tasked with the enforcement of returns. This responsibility was now limited to specific categories of return.[5] The aim of the return policy at the turn of the millennium was for the majority of returns to be voluntary and for the number of forced

[4] See e.g., Elisabeth Abiri, "The Changing Praxis of 'Generosity': Swedish Refugee Policy during the 1990s," *Journal of Refugee Studies*, Vol. 13, No. 1, March (2000): 11–28; Karin Borevi, "Family Migration Policies and Politics: Understanding the Swedish Exception," *Journal of Family Issues*, Vol. 36, Issue 11, (2015): 1490-1508; Klara Öberg and Maja Sager," Articulations of Deportability: Changing Migration Policies in Sweden 2015/2016,"*Refugee Review*, Vol. 3 (2017): 2-14; Rebecca Thorburn Stern, "Proportionate or Panicky?: On Developments in Swedish and Nordic Asylum Law in Light Of the 2015 'Refugee Crisis,'" in *The New Asylum and Transit Countries in Europe During and in the Aftermath of the 2015/2016 Crisis*, ed. Eleni Karageorgiou and Vladislava Stoyanova (Brill Academic Publishers, 2018), 233-262; Malm Lindberg (2023), "The Tricky Thing of Implementing Migration Policies"; Christine M. Jacobsen, Marry-Anne Karlsen, Shahram Khosravi, eds. *Waiting and the Temporalities of Irregular Migration* (Routledge, 2020); Anna Lundberg, "Pushed Out in Limbo – The Every-day Decision-Making about 'Practical Impediments to Enforcement' in the Swedish Management of Return Migration," *Retfærd. Nordisk Juridisk Tidsskrift*, Vol. 3, No. 3, (2020): 13-31.

[5] See Section 5 of this report.

returns to decrease.[6] During the early 2000s, the necessity of enforcing return decisions, however, was increasingly emphasised in several Migration Agency appropriation directions.[7] In 2006, the current Aliens Act[8] entered into force. Following the September 2006 general elections, a new centre-right coalition came into power in Sweden. During its term of office, migration policies increasingly focused on return efforts rather than reception activities, including enforcement.[9] An exception, however, was labour migration from third (non-EU) countries, the regulation of which was liberalised in 2008.[10] Around 2010, ambitions regarding return were raised.[11] One example is the REVA project ("Rättssäkert och Effektivt Verkställighetsarbete", meaning 'Legally Secure and Efficient Enforcement'). REVA was a government-initiated project operating between 2011 and 2014 that sought to boost the effectiveness of enforcement of deportations of persons staying in Sweden on a long-term basis without possessing the permits necessary for doing so. REVA was a joint operation between the Police Authority, the Prison and Probation Service and the Migration Agency. The project was much debated as it raised concerns about racial profiling, in particular regarding the parts of the project involving the Police Authority.[12]

4.3 2015-2021: The Migration 'Crisis' and its Aftermath

In 2014, a Social Democrat-Green coalition won the general elections. The new government, however, did not lead to any substantial changes to the migration policy.[13] During the 2015 'migration crisis', Sweden received over 160,000 asylum seekers in a few months.[14] While initially welcoming, public opinion as well as the political debate gradually began to shift towards a more hostile stance. The watershed moment was in November 2015 when temporary border controls and a new restrictive asylum policy were introduced, the aim being to provide Sweden with 'breathing space'.[15] The new policy has been described as a paradigm shift in Swedish migration policy.[16] The new policy was codified mainly through the 2016 so-called "Temporary Law",[17] which was revised in 2019 and ceased to apply in July 2021. The key feature of the Temporary Law, which was to be applied instead of the Aliens Act in cases of overlapping norms, was that it introduced temporary residence permits for refugees and

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[6] Prop. (Government Bill) *Verkställighet och återvändande – en del av asylprocessen*, 1997/98:173.
[7] Henrik Malm Lindberg, Delmi rapport 2020:1 *De som inte får stanna. Att implementera återvändandepolitik*, 24.
[8] Swedish Parliament. *Aliens Act,* Svensk författningssamling (SFS) 2005:716.
[9] Malm Lindberg, "The Tricky Thing of Implementing Migration Policies," 159.
[10] See Catharina Calleman and Petra Herzfeld Olsson, eds., A*rbetskraft från hela världen: Hur blev det med 2008 års reform? Delmi report* 2015:9.
[11] Ibid.
[12] See e.g Stina Fredrika Wassen,"Where Does Securitisation Begin? The Institutionalised Securitisation of Illegal Immigration in Sweden: REVA and the ICFs," *Contemporary Voices: St Andrews Journal of International Relations*, Vol. 1, Issue 1 (2018): 78-103.
[13] Cf. Jonas Hinnfors, Andrea Spehar and Gregg Bucken-Knapp, "The Missing Factor: Why Social Democracy Can Lead to Restrictive Immigration Policy," *Journal of European Public Policy* Vol.19 Issue 4, (2012): 585–603.
[14] SOU (Swedish Government Official Reports), *Att ta emot människor på flykt. Sverige hösten 2015,* 2017:12.
[15] Ibid.
[16] Thorburn Stern, "Proportionate or Panicky? On Developments in Swedish and Nordic Asylum Law in Light Of the 2015 'Refugee Crisis."
[17] Swedish Parliament, *Om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige* (*The Temporary Law*), Svensk Författningssamling (SFS) 2016:752.

grantees of subsidiary protection status as the new main rule (previously, these categories have been granted permanent residence permits from the beginning), reduced the number of grounds for a residence permit compared to the Aliens Act, including humanitarian grounds, and introduced more restrictive rules on family reunification.[18]

Another temporary legislation introduced post-2015 was the so-called Upper Secondary School Act ("Gymnasielagen"). In short, the legislation allowed for young people (under the age of 25) who had been granted a temporary residence permit based on the 2016 Temporary Law for studies on the upper secondary school level to be granted a temporary residence permit for the duration of their studies and an additional six months. Such permits, moreover, under certain circumstances, could be prolonged, for example, to find work or form the basis for a permanent residence permit. The first version of the law (formally part of the Temporary Law) applied until July 2021. When the Temporary Law expired, a new, revised version of the Upper Secondary School Act entered into force.[19] The possibility of being granted a residence permit for upper secondary school-level studies ceased to apply in December 2023. The possibility of prolonging residence permits based on the law or turning them into permanent residence permits will cease to apply in 2024 and 2025.

The government took several initiatives during the 2015-2021 phase to increase the number of returns. Examples include instructing the Migration Agency to work more effectively with returns (voluntary and enforced), including increased and more effective cooperation with The Police Authority and the Prison and Probation Service.[20] On the policy and legislative level, several Government Commissions of Inquiry[21] were initiated addressing issues of relevance for return, some also leading to legislative changes. One of these was the 2017 Government Commission on Return, whose proposals included extended possibilities for The Police Authority to use intrusive measures when carrying out internal border control. The proposals became part of the Aliens Act in 2021 and 2023, respectively.

In 2019, the government appointed an all-party Commission of Inquiry to establish a long-term, sustainable migration policy. It may be noted that return policy was not among the key points on the Commission's agenda. In the spring of 2020, the Swedish National Audit Office presented a report evaluating the implementation of the return policy in the years 2013-2018, pointing to several gaps in the implementation, including a lack of cooperation between government authorities, increasing costs, lack of fulfilment of policy goals, lack of overall perspective and conflicting goals between the requirements of the return operations and other regulations and conditions that partially serve other purposes.[22] The report concluded that the

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[18] For an overview, see e.g. Prop. (Government Bill) *Tillfälliga begränsningar av möjligheten att få uppehållstillstånd* i Sverige) 2015/16:174, and Prop. (Government Bill) *Förlängning av lagen om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige*, 2018/19:128.
[19] Swedish Parliament, *Om uppehållstillstånd för studerande på gymnasial nivå,* (*Upper Secondary School Act*), Svensk författningssamling (SFS) 2017: 353.
[20] Malm Lindberg, "The Tricky Thing of Implementing Migration Policies."
[21] Government commissions of inquiry (and, occasionally, all-party commissions of inquiry) play an important role in the Swedish legislative process. The report of the inquiry and the thereupon following comments from the consultation bodies provide the basis for the government bill to be presented to the Riksdag. For an overview of the Swedish legislative process see e.g. https://www.government.se/contentassets/4490fe7afcb040b0822840fa460dd858/the-swedish-law-making-process/ (last accessed December 3, 2023) and Christoffer Wong and Michael Bogdan, eds. *Swedish Legal System*, 2nd ed. (Stockholm, Norstedts Juridik, 2022).
[22] Swedish National Audit Office, *Återvändandeverksamheten – resultat, kostnader och effektivitet,* RIR 2020:7.

goals of the return policy, decided by the Riksdag and the government, to a large extent were not satisfactory fulfilled. In September 2020, the all-party Commission of Inquiry presented its report on the future migration policy. Many of its recommendations aimed to make most of the provisions of the Temporary Law permanent.[23] It is interesting to note that although return for years had been a prioritised matter, at least on paper, return policy was only mentioned in passing in the Inquiry's report, in the analysis of the consequences of the proposals

Due to political differences, the all-party Commission of Inquiry did not reach a consensus on several issues, such as humanitarian grounds for residence permits. Later in 2020, the government, as part of an agreement with the Green Party, presented an additional proposal for a revised humanitarian ground, extending the scope of the existing Aliens Act humanitarian ground.[24] The proposals were all turned into a Government Bill which, in June 2021, the Riksdag after heated debate adopted as amendments and changes to the 2006 Aliens Act.[25]

4.4 2022-Present: A New Era?

In June 2022 the government initiated a new Commission on Inquiry focusing on return, aimed at analysing how returns could be made more effective and increasing the possibility of using control measures on aliens in the return process.[26] The Inquiry's tasks were extended in August 2023, the official report to be presented in 2024.[27] Simultaneously, the government tasked the Migration Agency with analysing the introduction of 'return centres', that is specialised accommodations for individuals who have received an enforceable decision of transfer, deportation, or expulsion.

In September 2022, general elections were held. The election campaign substantially focused on migration and integration, particularly its perceived negative aspects. A centre-right coalition, with the support of the right-wing populist party, the Sweden Democrats, gained the majority. The coalition and its support party – without the support of which the coalition could not have formed a government – in late 2022 presented a comprehensive reform agenda known as the Tidö Agreement, a large part of which is dedicated to migration and immigration.[28] Return is mentioned explicitly in the Tidö Agreement as a prioritised field, including increasing the use of detention and other restrictions of the freedom of movement to enforce return decisions.[29] The overall focus of the Tidö reforms can be summarised as to

[23] See the Official Report of the Inquiry: *En långsiktigt hållbar migrationspolitik*, SOU 2020:54.
[24] Prop. (Government Bill), Ändrade *regler i utlänningslagen*, 2020/21:191.
[25] *Ändrade regler i utlänningslagen*, 2020/21: SfU28.
[26] Dir. (Terms of Reference) 2022:91 *Åtgärder för att stärka återvändandeverksamheten*. On the function of Commissions of Inquiry in the Swedish legislative process, please see e.g. https://www.government.se/contentassets/4490fe7afcb040b0822840fa460dd858/the-swedish-law-making-process/ (last accessed December 13, 2023) and Christoffer Wong and Michael Bogdan, eds., *Swedish Legal System* (Norstedts Juridik, 2022).
[27] Dir. (Terms of Reference) 2023:126 *Tilläggsdirektiv till Utredningen om stärkt återvändandeverksamhet* (Ju 2022:12).
[28] The Conservative Party/The Liberal Party/The Christian Democrats/The Sweden Democrats, "The Tidö Agreement," 2022, https://via.tt.se/data/attachments/00551/04f31218-dccc-4e58-a129-09952cae07e7.pdf (last accessed Januari 2, 2024).
[29] *Tidö Agreement* (2022), 33.

make Sweden less accessible as well as less attractive for migrants, asylum seekers in particular, with several detailed suggestions on how this is to be realised. It may be noted that the Tidö Agreement explicitly states that asylum seekers' rights should be limited as much as possible.

Sweden held the Presidency of the Council of the European Union in the first half of 2023. One of the main aims of the Presidency was to bring the work on the EU Pact on Migration and Asylum forward. Also, in 2023, the new government launched several commissions of inquiry to analyse the reforms outlined in the Tidö Agreement and produce proposals for legislative changes to realise the reforms. These commissions of inquiry are, for example, tasked with analysing and proposing new rules on detention[30], on cessation and revocation of residence permits,[31] and on streamlining Swedish asylum law with the minimum standards required by EU asylum law.[32] The government aims for the majority of the Tidö reforms to have been made into "hard law" before the general elections scheduled for September 2026. An example of the reforms already put in place at the time of writing is the creation of 'return centres', which the Migration Agency was tasked with in June 2023. The first five centres became operational in October 2023 (accommodating approx. 650 persons).[33] It is not obligatory for a person with an enforceable return decision to relocate to one of the centres, but not doing so may have adverse effects on the right to accommodation in Migration Agency housing.[34]

5. The Institutional Framework/Operational Infrastructure: Return Governance Actors

Multiple actors play critical roles in Sweden's return governance. This section summarizes the roles of the Migration Agency and the Police Authority, along with descriptions of other actors, their institutional frameworks, and operational infrastructure.

As already mentioned, the Migration Agency, since 1999, holds the primary responsibility for decisions on return, the enforcement of return decisions, and detention. A rejection of an application for a residence permit is usually accompanied by a refusal-of-entry or expulsion order (Aliens Act, Chapter 8, Section 16). When the order has taken legal effect, it is to be enforced, provided there are no impediments to enforcement (see Section 7.2.2 below).[35] The persons to whom the refusal-of-entry or expulsion order applies are expected to return on a voluntary basis, if needed with the support of the Swedish Migration Agency.

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[30] Dir. (Terms of Reference) 2023:119, *Moderna och ändamålsenliga regler för förvar*.

[31] Dir. (Terms of Reference) 2023:158, *Skärpta krav på hederligt levnadssätt och ökade möjligheter till återkallelse av uppehållstillstånd*.

[32] Dir. (Terms of Reference) 2023:137, *Anpassning av det svenska regelverket för beviljande av asyl och asylförfarandet till miniminivån enligt EU-rätten*.

[33] https://www.migrationsverket.se/Om-Migrationsverket/Pressrum/Nyhetsarkiv/Nyhetsarkiv-2023/2023-10-17-Migrationsverket-startar-atervandandecenter.html (last accessed December 18, 2023).

[34] Ibid.

[35] Certain return decisions may however be enforced before they have taken legal effect, such as when it stands clear that an asylum application is obviously unfounded (*Aliens Act*, Chapter 8, Section 19 and Chapter 12, Section 7).

Once there is a refusal-of-entry or expulsion order (or when the alien has withdrawn his/her asylum application), the Migration Agency initiates what is referred to as "the return process". This process thus starts even before the decision has taken legal effect. The process aims to support individuals who do not possess the necessary permits to remain in Sweden to return voluntarily. The different steps of the return process (routines, etc.) are described in detail in the Migration Agency Handbook on Return,[36] an internal Migration Agency document. These steps include the measures to be taken to notify the alien of the decision on rejection of the application for a residence permit, routines for so-called "return information meetings" ("återvändandesamtal"), routines for providing information about Migration Agency return centres (to which failed applicants in Migration Agency housing are to transfer at the latest when the refusal-of-entry or expulsion order has taken legal effect)[37], categorization of cases depending on the feasibility of carrying out the refusal-of-entry or expulsion order ("verkställbarhetskategorisering")[38] routines on providing information about financial support upon return and for transferring a case to the Police Authority. The return process at the Migration Agency ends once the alien leaves Sweden, the case is transferred to the Police Authority or when the decision is subject to statutory limitation.

The Migration Agency maintains the responsibility for enforcing the refusal-of-entry or expulsion order (Aliens Act Chapter 12, Section 14, Subsection 1) except when *i)* the case falls within the responsibility of the Swedish Security Service or *ii)* it is the responsibility of the Police Authority (see Section 7.3 below). The Migration Agency may transfer an expulsion or deportation case for enforcement to the Police Authority if the person to be expelled or deported is evading the authorities and cannot be found without the assistance of the Police Authority or if it can be assumed that force will be needed to enforce the decision (Aliens Act Chapter 12 Section 14 Subsection 4).

Deportation and expulsion cases differ regarding coercion between the Police Authority and the Migration Agency. Cases involving police enforcement entail coercion, whereas those managed by the Migration Agency are typically voluntary.

The Police Authority is mandated to apprehend aliens without a legal right to stay in Sweden or when tasked with enforcing return decisions, as long as the return decision remains valid. In cases of unsuccessful enforcement, the Police Authority reports back to the Migration Agency for case reviewing. The statute of limitations lasts four years after the decision becomes legally binding. The Prison and Probation Service plays a role in planning, booking, and executing enforced return journeys on behalf of the police, underscoring the Police Authority's continued responsibility.

However, the Migration Agency manages detention centres where individuals await enforcement of their return decisions (see Section 7.9 of the report for further information). In Sweden, return enforcement operations fall into National Return Operations (NRO) and Joint Return Operations (JRO). The critical distinction between them is that JROs involve collaborative efforts between two or more EU states who share a chartered flight to carry out

[36] Migration Agency, "Handbook on Return" (Handbok för processområde Asyl – Återvändandeprocessen) version 1.0, (last accessed October 18, 2023).
[37] Individuals living in private housing are not forced to move to the return centres, but are offered the possibility.
[38] This could for example include identifying whether the alien in question is positive towards returning voluntarily.

return enforcement. This collaboration is often driven by cost-effectiveness and security considerations. Frontex substantially covers the costs of JROs, whereas NROs receive partial coverage. It is up to the Swedish authorities to initiate Frontex's involvement. On return journeys, accompanying personnel include members from the Swedish Prison and Probation Service's National Transport Unit (NTE) and The Police Authority. An interpreter, medical staff, and an independent monitor who reports to Frontex and the EU Agency for Fundamental Rights are also part of the operation. According to 2019 statistics, the Police Authority executes approximately two-thirds of return decisions voluntarily, while one-third requires escort personnel.[39] Most trips are conducted via regular flights, with some involving chartered flights. In 2017, there were 28 joint return operations in which Sweden acted as an organizer or participant. This number was 30 in 2016 and 29 in 2015.

Table 1: Return Governance Actors

Authority	Tier of government (national, regional, local)	Type of organization	Area of competence in the fields of return (Briefly explain the role)	Link
The Migration Agency (Migrationsverket)	National	Government agency	Voluntary return	https://shorturl.at/hvADM
The Police Authority (Polisen)	National	Government agency	Execution of expulsion and deportation decision with coercion	https://shorturl.at/ktJU2
The Prison and Probation Service (Kriminalvården)	National	Government agency	Execution of expulsion and deportation decision with coercion	N/A
The Security Service	National	Government agency	Return in security cases	https://shorturl.at/jrGIo

[39] The Police Authority, "Frågor och svar om verkställighet." Polisen, https://polisen.se/om-polisen/polisens-arbete/granspolisen/fragor-och-svar-om-verkstallighet/ (accessed October 25, 2023).

6. On the Relationship between Swedish Law, EU Law and Public International Law

6.1 Implementing Public International Law in Sweden

Sweden is customarily perceived as a country in the dualist tradition, that is, one in which international law and national law are considered to be two different legal systems.[40] In a dualist country, international law must be "translated" into national law to be directly applicable nationally. The methods for implementing public international law into the Swedish legal system vary depending on whether the rule in question is a rule of customary international law or a treaty ratified by Sweden. In the former case, implementation is usually handled through rules of interpretation or presumption rules. In the case of treaties, one often used method is *the affirmation of normative harmony*, which refers to when the Riksdag, concurrent with ratifying a treaty, determines that Sweden satisfies all treaty obligations without necessitating amendments or supplements to national legislation.[41] A second approach is *transformation*, which in the Swedish legal context refers to rewriting and integrating treaty text, or portions thereof, into existing legislation. Transformation is the predominant method for integrating public international law into Swedish jurisprudence.[42] A third method is *incorporation*, which in Swedish legal tradition refers to when the entire treaty or its pivotal Sections are directly rendered into Swedish law through a specific act of legislation.[43] In addition to these methods, the *principle of consistent interpretation* also applies in Swedish law.[44]

Sweden has ratified most of the core UN human rights treaties (see Table 4), as well as the 1951 Refugee Convention and the 1967 Protocol. The preferred method for implementation in these cases has been transformation. As a result, the treaties cannot be directly invoked in Swedish courts. Nevertheless, all treaties ratified by Sweden, given the principle of consistent interpretation, must be considered when interpreting Swedish law. Conflicts between international and national law are usually avoided by applying the abovementioned principle.[45]

Of treaties particularly relevant in the field of asylum and migration law, only the European Convention on Human Rights (ECHR) and the UN Convention on the Rights of the Child (CRC) at the time of writing have been fully incorporated into Swedish law, thus forming part of its statutory corpus. The ECHR enjoys distinct constitutional protection within Swedish law. Chapter 2, Section 19 of the Instrument of Government (one of four fundamental laws forming the Swedish Constitution) states that no law or other provision conflicting with

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[40] Ove Bring, Mark Klamberg, Said Mahmoudi and Pål Wrange*, Sverige och folkrätten* 6 ed., (Norstedts Juridik, 2020); David Thór Bjorgvinsson, *The Intersection of International Law and Domestic Law: A Theoretical and Practical Analysis* (Edward Elgar Publishing, 2015)*;* Carl-Henrik Ehrenkrona*," Sveriges internationella avtal och dessas genomförande i svensk lagstiftning — några reflektioner," Svensk Juristtidning* (2015): 779.
[41] Ehrenkrona, "Sveriges internationella avtal," 779.
[42] Ibid.
[43] Ibid.
[44] ibid.
[45] See e.g. Maria Grahn Farley, "Fördragskonform tolkning av MR-traktat," *Svensk Juristtidning*, No. 5 (2018): 450–463.

Sweden's obligations under the ECHR may be enacted. The CRC, however, does not hold the same status in Swedish law as the ECHR; it instead enjoys the same place in the legal hierarchy as "ordinary law."

Judgments of the European Court of Human Rights (ECtHR) are, as follows by ECHR Article 46, binding on the state in any case in which it is a party. Since the incorporation of the ECHR, the treaty, as well as ECtHR jurisprudence, have progressively exerted a notable influence over the interpretation and application of Swedish law, including migration law.[46] The Swedish Migration Agency and the migration courts regularly reference ECtHR jurisprudence.[47] Over the years, several cases of migration-related issues against Sweden have been addressed by the ECtHR and, in certain instances, have led to significant alterations or clarifications in Swedish practice, one example being the much-cited *RC v. Sweden* (2010) on the allocation of the burden of proof.[48]

On the other hand, jurisprudence by monitoring bodies of UN human rights treaties such as the CRC Committee, the Human Rights Committee, and the Committee on Torture is not considered legally binding on Sweden. Such jurisprudence is nevertheless considered to provide authoritative interpretations of the treaties and is, at least to some extent, referred to in case law and preparatory works.[49] Moreover, the Aliens Act, Chapter 5, Section 4, stipulates that if an international body such as the Human Rights Committee finds that enforcing an expulsion order would be contrary to a Swedish commitment under a convention, a residence permit shall be granted to the person covered by the order, unless there are exceptional grounds against granting a residence permit. In an early judgment, MIG 2006:1, the Migration Court of Appeal declared the UNHCR Handbook to be considered a source of law in Sweden, thus indicating its relatively strong position in Swedish jurisprudence.

6.2 Implementing EU law in Sweden

Following a 1994 referendum, Sweden officially became an EU member state in 1995 after signing an accession agreement in June 1994. The 1994 Act of Accession governs Sweden's membership in the EU. The Instrument of Government, Chapter 10, Section 6, stipulates that the Riksdag may transfer decision-making authority within the framework of the EU corporation, provided it does not affect the fundamental principles by which Sweden is governed. Such transfer presupposes that protection for rights and freedoms in the field of cooperation to which the transfer relates corresponds to that afforded under the Instrument of Government and the ECHR. The Riksdag may decide to transfer decision-making powers if at least three-quarters of the members vote and more than half of the members of the Riksdag support the decision. Sweden's status as an EU member state is explicitly stated in the Instrument of Government Chapter 1, Section 10.

The cardinal principle of the primacy of EU law dictates that in a conflict between EU law and national law, EU law takes precedence. This principle has evolved through the

[46] Rebecca Thorburn Stern, "Folkrätten i svensk migrationsrätt," in *Folkrätten i svensk rätt: Ett nytt decennium*, ed. Anna-Sara Lind, Rebecca Thorburn Stern and Inger Österdahl (Lund: Studentlitteratur 2024, *forthcoming*).
[47] See e.g. the Migration Court of Appeal judgments MIG 2008:42, MIG 2015:17 and MIG 2018:20.
[48] European Court of Human Rights, *R.C. v. Sweden*, Appl. No. 41827/07, June 9, 2010.
[49] Thorburn Stern (2024), *forthcoming*.

jurisprudence of the Court of Justice of the European Union (CJEU) and has been embraced by member states, Sweden included. There is no specific provision in the Swedish Instrument of Government that directly addresses the primacy of EU law.

In Sweden, this implementation of EU law predominantly transpires through adopting new legislation by the Riksdag or the amendment or revision of existing legislation. The latter method has been predominant in migration and asylum law. Legislative acts such as the Qualification Directive (recast)[50], the Asylum Procedures Directive (recast)[51], the Reception Conditions Directive (recast)[52] and the Return Directive[53] have thus been incorporated into the Swedish Aliens Act. In several cases, such as the Reception Conditions Directive (recast), no actual changes or amendments were, however, considered necessary as the Aliens Act was found already to fulfil the requirements of the Directive. In the case of the Return Directive and the Reception Conditions Directive (recast), there have been discussions as to whether the EU provisions on detention have been sufficiently implemented into Swedish law.[54] In recent case law, such as MIG 2020:14 and MIG 2021:3, the Migration Court of Appeal has pointed to possible discrepancies between the EU directives and the Swedish Aliens Act and emphasized the importance of upholding the primacy of EU law.

The CJEU's judgments hold pivotal significance for the interpretation of EU law and are binding on Swedish courts when applying EU law. Although there is no explicit provision in the Instrument of Government addressing the CJEU's judgments, Sweden, by its EU membership, is committed to adhering to the EU's legal order, which encompasses the CJEU's case law.

Swedish courts of the last instance have the option, and under certain circumstances the obligation, to request a preliminary ruling from the CJEU.[55] It may be noted that, despite Sweden having been a member of the EU for nearly 30 years at the time of writing, the number of requests for preliminary rulings, including in the field of asylum and migration law, remains limited.

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[50] Dir. 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) OJ L 337, 20.12.2011, 9–26.

[51] Dir. 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) OJ L 180, 29.6.2013, 60–95.

[52] Dir. 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), OJ L 180, 29.6.2013, 96–116.

[53] Dir. 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. 98–107.

[54] Simon Andersson, "Förvar och principerna för tvång," *Juridisk Tidskrift*, No. 2 (2020): 367–405.

[55] Cf. the Treaty of the Functioning of the European Union (TFEU), Article 267, and judgments by the Swedish Supreme Court: NJA 2009:66 and NJA 2022:86.

7. The Swedish Legal Framework on Return

7.1 Introduction

The key legal instrument in Swedish migration law, including regarding matters of return, is the 2006 Aliens Act. The Aliens Act is supplemented by the 2006 Aliens Ordinance[56] and several additional Acts and Ordinances (see Table 7) including the Administrative Act and the Administrative Procedures Act, as well as by EU law and international treaties and customary law in human rights and refugee law.

This Section aims to provide an overview of the Swedish legal framework that governs multiple facets of the return regime. Key objectives include outlining the procedures for issuing deportation and expulsion orders, addressing instances of refusal or return at the border, internal and exit checks, control mechanisms, voluntary departure, re-entry bans, the return of unaccompanied minors, Dublin cases, procedural safeguards within this context, including the principle of non-refoulement, and fundamental conditions related to return detention. Furthermore, we delve into unique cases within the realm of return. The overview also describes the measures undertaken by the Swedish government to implement relevant EU legislation, primarily focusing on the 2008 Return Directive. The EMN considered the Return Directive to be fully implemented into Swedish law in 2017.[57]

7.2 Return-related Definitions in Swedish Law

Several terms and definitions in the Return Directive or the Return Regulation[58] have not been transformed into the Swedish Aliens Act or other Swedish legislation. Such terms and definitions include third-country nationals, illegal/irregular stay, return, return decision, removal order, risk of absconding, voluntary departure/return, assisted return, and vulnerable persons. In the government bill on the implementation of the EU Return Directive, the government explained this approach by stating that the existing legal framework already aligned with the Directive's requirements on this point, thus making it unnecessary to introduce specific definitions into the Aliens Act (as will be detailed in the following Sections).[59] It can be added that while the Aliens Act indeed includes a chapter on definitions (Aliens Act Chapter 1 on "The content of the law, certain definitions, and general provisions"), many of its key concepts remain undefined.

Notably, the government held that it was unnecessary to establish a definition for *illegal stay* despite the absence of a Swedish legal provision explicitly outlining what constitutes illegal stay. The government's reason is that "illegal stay" is indirectly defined through the definition of "legal stay" provided by the Aliens Act (that is, if it is not legal, it is illegal).[60]

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[56] Swedish Parliament. *Utlänningsförordning,* Svensk författningssamling (SFS) 2006:97.
[57] European Migration Network (EMN)/Migrationsverket, *EMN Focussed Study 2017. The Effectiveness of Return in EU Member States: Challenges and Good Practices Linked to EU Rules and Standards – Country Report Sweden*. EMN 2017.
[58] Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals.
[59] Prop. (Government Bill) *Genomförande av återvändandedirektivet*. 2011/12:60, 7.
[60] Prop. (Government Bill), *Genomförande av återvändandedirektivet*, 2011/12:60, 26.

Regarding the definitions of *return* and *removal,* a similar line of reasoning was presented in the government bill.[61] On this point, the government held that this requirement had already been met due to the presence of two forms of removal – rejection, expulsion and/or deportation – within the Aliens Act.[62] The Aliens Act outlines, rather than defines, the grounds that may constitute a basis for *refusal* and *rejection* decisions ("avvisning") in Chapter 8 Sections 2-5, as well as for *removal, expulsion*, and *deportation* decisions ("utvisning") in Chapter 8, Section 6. The Aliens Act Chapter 8a specifies the grounds for removal, expulsion, and deportation (utvisning) based on suspected criminality, taking into account the provisions of the Terrorism Offenses Act (2022:666)[63] and the Act (2022:700) on the Special Control of Certain Foreigners.[64] Thus, the Aliens Act Chapters 8 – 8a distinguishes, without providing explicit definitions, between the grounds for removal, expulsion and deportation respectively due to non-criminal and criminal activities.

Swedish law also lacks a definition of *third-country national* (TCN). The legislative amendments introduced in the context of implementing the EU Return Directive and its follow-up did not incorporate such a definition. Instead, the Aliens Act, Chapter 1, provides definitions of an EU Member State, EEA countries and EEA citizens, Schengen member states, Schengen visa, and Schengen convention and the Free Movement Directive[65].

There is also no definition in Swedish law of "*rejection, refusal, removal, expulsion or deportation decision*". The legislative amendments introduced in the context of implementing the Return Directive and its follow-up did not incorporate such a definition. Instead, the Aliens Act (Chapter 8, Section 17, Chapter 8 a, Section 10 and Chapter 12, Section 14) and the Act (2022:700) Concerning Special Control of Certain Aliens determine the grounds on which such decisions may be issued, the authorities mandated to issue them, how they may be appealed (the Aliens Act, Chapter 14) and what the decision should contain (the Aliens Act, Chapter 13, Section 10) as detailed in the section (7.3).

Similar arguments were presented in relation to the possible introduction of a definition of *vulnerable individuals* or to specifically address their special needs. The government held that existing provisions in Swedish law already adequately met the requirements of the Return Directive on this matter as the Act (2008:344) on Health and Medical Care for Asylum-seekers and Others[66] extends access to health care not only to asylum seekers but also to, for example, persons who have been granted temporary protection in Sweden (Section 4, Sub-Section 1). Individuals not covered by the aforementioned Act (including irregular migrants or persons who have absconded in order to avoid deportation)

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[61] Prop. (Government Bill), *Genomförande av återvändandedirektivet,* 2011/12:60, 27–29. Cf. The discussion on terminology in Daniel Thym, *European Migration Law* (Oxford: Oxford University Press, 2023), 527, where 'return' is described as the overarching category and 'removal' as the enforcement component.

[62] Prop. (Government Bill), *Genomförande av återvändandedirektivet*, 2011/2:60, 29.

[63] Swedish Parliament, *Terroristbrottslag*, Svensk författningssamling (SFS) 2022:666.

[64] Swedish Parliament, *Lag om särskild kontroll av vissa utlänningar*, Svensk författningssamling (SFS) 2022:700.

[65] Dir. 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

[66] Swedish Parliament. *Lag om hälso- och sjukvård åt asylsökande m.fl.*, Svensk författningssamling (SFS) 2008:344.

may still receive immediate health care by the Act on Health and Medical Care for Certain Foreign Nationals Residing in Sweden without Necessary Permits[67] (2013:407), the Health and Medical Care Act (1982:763)[68], Section 4, and immediate dental care as specified in the Dental Care Act (1985:125)[69], Section 6. Additionally, the Social Services Act (2001:453)[70] and the Health Care Act (2017:30)[71] contain provisions aimed at providing additional support to individuals with special needs. The Aliens Act, Chapter 11, Section 5, Sub-Section 1, grants aliens in immigration detention access to health and medical care. Additionally, the Detention Act[72], Chapter 5, Section 1, ensures access to health care for inmates when deemed necessary by a medical expert.

Swedish law also does not provide a specific definition for *assisted departure or return*. Instead, as suggested by its title, the Ordinance (1984:890) on Supplements for Foreigners' Travel from Sweden for Settlement in Another Country[73], governs financial matters related to aliens' return process to their home country with government support, specifying the conditions and responsible authority.

However, specific new provisions or legislative changes were introduced to meet the requirements associated with each of these defined terms and their respective articles in the Return Directive. Regarding *voluntary departure*, the government, rather than introducing a definition, added new provisions to several Chapters of the Aliens Act, notably Chapters 8 and 12, to regulate the deadline for voluntary departure in line with the Return Directive's requirements.[74]

In its government bill on the implementation of the Return Directive,[75] the government also highlighted the lack of clearly defined criteria for identifying the risk of absconding. In response, a new provision was introduced into the Aliens Act (Chapter 1, Section 15), aligning Swedish law with the requirement in the Return Directive, Article 3.7. Chapter 1, Section 15 outlines specific situations that can be used to determine the risk of absconding.[76]

A concept not explicitly defined in the Aliens Act but which is of relevance in the context of return is what is referred to as the "*option to change tracks*" (spårbyte). This, in sum, refers to the possibility for an asylum seeker whose application for asylum has been denied and the decision of refusal of entry or expulsion has taken legal effect to, in certain circumstances, apply for a work permit without leaving Sweden (Aliens Act Chapter 5, Section 15 a).[77] A key requirement is that the asylum seekers must have started working during his/her

[67] Swedish Parliament, *Lag om hälso- och sjukvård till vissa utlänningar som vistas i Sverige utan nödvändiga tillstånd*, Svensk författningssamling (SFS) 2013:407.
[68] Swedish Parliament, *Hälso- och sjukvårdslag*. Svensk författningssamling (SFS) 1982:763.
[69] Swedish Parliament, *Tandvårdslag*, Svensk författningssamling (SFS) 1985:125.
[70] Swedish Parliament*, Socialtjänstlag*, Svensk författningssamling (SFS) 2001:453.
[71] Swedish Parliament. *Hälso- och sjukvårdslag*, Svensk författningssamling (SFS) 2017:30.
[72] Swedish Parliament, *Häkteslag*, Svensk författningssamling (SFS) 2010:611.
[73] Swedish Parliament. *Förordning om bidrag till utlänningars resor från Sverige för bosättning i annat land,* Svensk författningssamling (SFS) 1984:890.
[74] Prop. (Government Bill), *Genomförande av återvändandedirektivet*, 2011/12:60, 30. See Section 7.5 of the report for further details.
[75] Prop. (Government Bill), *Genomförande av återvändandedirektivet,* 2011/12:60, 37.
[76] See Section 7.5 of the report for further details.
[77] This also applies if the asylum seeker has had his/her asylum claims reviewed in the first instance but already has received a decision on refusal of entry or expulsion in another case.

time as an asylum seeker. If a work permit is granted, the person in question will also obtain a residence permit and may remain in Sweden. In February 2024, a government commission of inquiry recommended abolishing the 'option to change tracks'.[78]

7.3 Return at Border (Border Rejection), Exit, Internal Check, and Control

7.3.1 General framework

The Aliens Act and the Aliens Ordinance establish a legal framework encompassing various facets of return procedures, including return at border, exit, and internal checks and controls.

The Aliens Act, Chapter 2 outlines the general conditions governing the entry, visit, residence, and work of aliens in Sweden. To enter Sweden, an alien, as a general rule, needs to present a passport, a visa or, when applicable, a residence permit. Exceptions from these requirements are also outlined in the Aliens Act, Chapter 2. Ultimately, however, it is the border police that decide whether a person is allowed to enter Sweden. A person may be rejected at the border even if she has a valid visa or permit, for example, if she/he does not fulfil other requirements, such as necessary vaccinations, such as COVID-19 during the 2020-2022 pandemic.

An alien staying in Sweden for over three months must have a residence permit (Chapter 2, Section 5). The general rule for entry into Sweden stipulates that a residence permit should be applied for and granted prior to entry (Aliens Act Chapter 5, Section 18, Sub-Section 1). The rule allows for several exceptions, for example, for asylum seekers and prolongation of residence permits (see Chapter 5 Section 18, Sub-Sections 2-3, Chapter 5 Section 18 a, and Chapter 5, Section 19.) The Aliens Ordinance indicates specific situations where an alien is not obligated to obtain short-term residence permission (residence permits or visas) to enter Sweden (Chapter 4, Section 6, and Chapter 3, Section 1).

Numerous legislative amendments to the Aliens Act and other relevant legislation concerning entry and exit have been proposed, ratified and eventually enacted to meet the requirements of recent EU regulations in this domain. For instance, these changes encompass the implementation of the European Travel Information and Authorization System (ETIAS)[79] as specified in Regulation (EU) 2018/1240.[80] Another notable example is establishing a unified entry and exit system for electronically recording third-country nationals, particularly those with short-term stays or those refused entry when crossing external borders.[81] Furthermore, another recent addition to the legislative framework is the expanded authority to revoke residence permits outlined in the Aliens Act, Chapter 7.[82] Other legislative

[78] SOU (Swedish Government Official Reports) 2024:15 Nya regler för arbetskraftsinvandring m.m.
[79] Prop. (Government Bill). *Anpassning av svensk rätt till EU:s nya system för reseuppgifter och resetillstånd*, 2022/23:66.
[80] 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.
[81] Prop. (Government Bill), *Anpassning av svensk rätt till EU:s nya in- och utresesystem*, 2021/22:81.
[82] Prop. (Government Bill), *Anpassningar av svensk lag till EU:s förordningar om Schengens informationssystem*, 2020/21:222, 1.

modifications pertaining to the Schengen Information System (SIS) EU regulations and requirements for foreign individuals to furnish fingerprints and undergo photographic procedures for identity verification within the entry and exit system were also introduced into Swedish law.[83]

7.3.2 Procedural Safeguards in the Context of the Entry and Exit System in Sweden

While implementing the Return Directive, the Swedish government held that Swedish law retains and upholds the EU return regime's procedural safeguards. The safeguards include postponement of removal, limitations on the use of coercive measures, access to emergency healthcare, consideration for vulnerable individuals, detention conditions, and adherence to the fundamental principle of non-refoulement.[84] One example of an important procedural safeguard is that a return decision may not be enforced until it has taken legal effect. This means for example that if the Migration Agency has rejected an application for a residence permit (a decision combined with a decision on return) and the decision is appealed to a migration court, the decision does not take legal effect during the appeal process. As a result, it cannot be enforced and the applicant as a general rule may remain in Sweden. The government also held that, in several respects, Swedish law surpasses several of the rights and protections for refugees and asylum seekers stipulated in the Refugee Convention, including Article 33.[85] Furthermore, the government held that there are no regulations that could lead to the separation of family members following decisions on deportation or expulsion.[86] Whether this is really the case may be debated.

The Aliens Act incorporates various provisions to establish a legal framework that ensures the principle of non-refoulement and related matters. These provisions are mainly located in Chapter 8, which concerns expulsion and deportation, and Chapter 12, which concerns the execution of decisions on expulsion and deportation. As detailed in the 2012 Swedish government bill on the implementation of the Return Directive, it was determined that no new legislative amendments were required in Swedish law to maintain compliance with the non-refoulement principle, including the postponement of removal decisions by Articles 9 and 5 of the EU Return Directive.[87]

The Aliens Act, Chapter 12 Sections 1–3a lists impediments to enforcing deportation and expulsion decisions. For instance, Chapter 12, Section 1 prohibits the enforcement of such decisions in a country where there is a reasonable risk of death, corporal punishment, torture, or other inhuman or degrading treatment. Similarly, Chapter 12, Section 3 a, stipulates that an unaccompanied minor may only be returned if there are arrangements for their reception by a family member, appointed guardian, or a suitable care facility.

[83] Ibid, 1.
[84] This adherence is explicitly stated in the Swedish Prop. (Government Bill) 2011/12:60, 60-62 concerning the implementation of the Return Directive.
[85] Prop. (Government Bill), *Genomförande av återvändandedirektivet*, 2011/12:60, 63.
[86] Prop. (Government Bill), Genomförande av återvändandedirektivet, 2011/12:60, 61.
[87] Prop. (Government Bill), *Genomförande av återvändandedirektivet*, 2011/12:60, 42–43, 60–63.

The Aliens Act mandates the Migration Agency, under Chapter 8, Section 17, to assess asylum applications in the context of deportation enforcement. Chapter 12, Section 18, allows for residence permits in cases of new circumstances that impede the execution of deportation or expulsion, in line with the Aliens Act Chapter 12, Sections 1, 2, 3 and 3a (so-called "political" impediments to the enforcement of a return decision, as Chapter 1-3a) address different aspects of the principle of non-refoulement). Chapter 12 also provides for non-execution of the return decision if the intended receiving country refuses to accept the individual or if medical or other exceptional reasons deem execution inappropriate (Chapter 12, Section 18, Sub-Sections 2 and 3, on practical and medical impediments to enforcement). Furthermore, the Migration Agency may, under Chapter 12, Section 18, Sub-Section 4, suspend deportation and expulsion decisions for re-examination of new facts. If permanent impediments arise, the Aliens Act Chapter 12, Sections 19 and 19a provides, under certain circumstances, for a new residence permit review. Execution of expulsion or deportation decisions is deferred until the Migration Agency or appellate instance concludes this new review. The Aliens Act (Chapter 11, Section 6), the Criminal Code[88] (Chapter 24, Section 2), and the Police Act[89] (Section 10), which effectively restricts the use of force during the implementation of coercive measures. It aims to ensure that return procedures are proportional and avoid excessive use of force in compliance with the Return Directive, Article 8.4. Additionally, the government has highlighted the role of various entities in overseeing and protecting the rights of aliens.[90] These include the administrative courts, the Parliamentary Ombudsman (Justitieombudsmannen), the Chancellor of Justice (Justitiekanslern), the Swedish Migration Agency's application Ombudsman, and various NGOs, all of which provide avenues for aliens seeking redress. It should also be mentioned that in most relevant cases, Sweden does not utilize the exemptions to implement the Return Directive allowed for member states under the Directive's Article 2.2 a-b. There are certain exceptions: time limits for voluntary return in the case of denied entry do not apply for individuals mentioned in the Return Directive Article 2.2 a. Also, time limits do not apply to persons who have been issued a return decision by a court as part of their sentence in a criminal trial (the Return Directive Article 2.2 b).[91] The exception in Article 2.2 b is also utilized to permit the Swedish government to make certain decisions concerning detention.

7.4 Regular Procedure to Issue a Return Decision

The regulations about regular procedures for issuing return decisions and their consequences, including re-entry bans and voluntary deportation to Sweden, are primarily established in the Aliens Act and, when applicable, the Act (2022:700) Concerning Special Control of Certain Aliens. The latter Act addresses aliens considered to pose threats to national security. The Migration Agency has the authority to issue expulsion or removal and deportation-related decisions (Chapter 12, Section 14 and Chapter 8, Section 17), which may be appealed to the Migration Court (Chapter 14).[92] The Police Authority can also, under certain circumstances,

[88] Swedish Parliament. *Brottsbalken*, Svensk författningssamling (SFS) 1962: 700.
[89] Swedish Parliament. *Polislag,* Svensk författningssamling (SFS) 1984: 387.
[90] Prop. (Government Bill), *Genomförande av återvändandedirektivet*, 2011/12:60, 41.
[91] Prop. (Government Bill), *Genomförande av återvändandedirektivet*, 2011/12:60, 33.
[92] The Migration Agency's decisions can be appealed to the Migration Courts. The Migration Courts serve as the first instance and are located at four administrative courts in Sweden, namely Stockholm, Malmö, Gothenburg, and Luleå. The final instance for these cases is the Migration Court of Appeal,

issue such decisions (Chapter 12, Section 14 and Chapter 8, Section 17), which may be appealed to the Migration Agency or a Migration Court (Chapter 14). In addition, decisions regarding expulsion due to criminal activity fall under the jurisdiction of the court responsible for the criminal case (Aliens Act, Chapter 8a, Section 10).

The Aliens Act also defines the area of responsibility of the Police Authority concerning the enforcement of expulsion and deportation decisions. This responsibility encompasses the execution of the Police Authority's expulsion and deportation decisions and court decisions for deportation due to criminal activities (Aliens Act, Chapter 12, Section 14). Additionally, it involves enforcing a decision of expulsion and deportation if the alien, after the decision has been enforced once, is found to have returned to Sweden (Chapter 12, Section 23). The Aliens Act, Chapter 8, specifies the various grounds for expulsion and deportation, stating that an alien lacking the necessary permit to stay in Sweden should be expelled or deported, while Chapter 12 details the different aspects of enforcement of expulsion and deportation decisions. For instance, crime or suspected criminality according to the Terrorist Crimes Act (2022:666) and considerations for Sweden's security that can be found in the Act (2022:700) on Special Control of Certain Aliens are stated as grounds for expulsion in the Aliens Act (Chapter 8, Section 1, Sub-Sections 1, 2 and 3). The Security Service enforces expulsion and deportation decisions related to security cases as specified in the Aliens Act (Chapter 12, Section 14) and defined in it (Chapter 1, Section 7).

The Aliens Act outlines the circumstances under which decisions on immediate enforcement can be implemented (Chapter 8, Section 19) and provides instructions for enforcement procedures (Chapter 8, Section 20). It also details when a decision on deportation or expulsion shall be considered executed (Chapter 12, Sections 21 and 22) and when enforcement of a decision has not ceased or is still applicable (Chapter 12, Section 23).

An expulsion and deportation decision must include specific information and be structured as follows: The Aliens Act (Chapter 13, Section 10) mandates that a decision must be in writing and provide the rationale for the decision, especially when it concerns matters such as re-entry bans, expulsions, and deportations. This provision was integrated into the Aliens Act in 2012 to comply with the requirements of Articles 12 and 15.2 of the EU Return Directive.[93] In fact, the Administrative Procedure Act (2017:900)[94] in its Section 20 specifies also that a decision by an authority in any matter involving individual rights shall state the grounds on which it is based. This decision should also outline the potential penalties for violating the re-entry ban as indicated in the Aliens Act (Chapter 8a, Section 10, Sub-Section 2). Additionally, the decision should contain instructions regarding enforcement measures that may be applicable based on the specific circumstances of the individual case, as stipulated in the Aliens Act (Chapter 8, Section 20). Furthermore, the Aliens Act (Chapter 8, Section 27) specifies that certain decisions must be included with expulsion and deportation decisions. This requirement applies even if the affected individual did not initially raise the issues covered by these decisions, or if the issues were not addressed in earlier stages. This includes, for instance, situations like the deportation or expulsion of a child under the age of 16 who is under the custody of an alien subject to return.

which is situated at the Administrative Court of Appeal in Stockholm. For more information, please see the Swedish Courts' website for more information www.domstol.se.

[93] Prop. (Government Bill), *Genomförande av återvändandedirektivet*, 2011/12:60, 57.

[94] Swedish Parliament. *Förvaltningslag*, Svensk författningssamling (SFS) 2017:900.

7.5 Special Cases and their Relation with the Obligation to Issue a Return Decision

7.5.1 Irregular aliens covered by existing bilateral agreements between Member States and holders of a return decision issued by another Member State

Sweden has established several readmission agreements with other EU member states.[95] Consequently, the Swedish government concluded that Article 6.3 of the Return Directive does not necessitate any legislative amendments within Swedish law.[96] This conclusion was based on the premise that Article 6.3 grants each member state the option to abstain from issuing a return decision to a third-country national who is residing illegally on its territory. This option is applicable if another Member State readmits that individual under bilateral agreements or arrangements that were in effect when the Directive came into force.[97] The rationale behind this decision stems from the understanding that these agreements do not supersede the rules of the Aliens Act about decisions on expulsion or deportation. Therefore, there is no requirement to invoke the option of exemption from the obligation to render a decision on deportation or expulsion in this context by Article 6.3.[98] Consequently, this reasoning is applicable to cases involving individuals holding a return decision issued by another EU member state.

7.5.2 Irregular aliens benefitting from humanitarian (or other) permit/authorisation or subject to a pending procedure renewing a permit/authorisation

The Aliens Act encompasses legislative provisions pertinent to aliens present in Sweden under irregular conditions or without a valid residence permit. This scenario extends to individuals engaged in the renewal of their permits or those benefiting from humanitarian or alternative forms of authorization, as delineated in Articles 6.4 and 6.5 of the Return Directive.[99]

Diverse clauses within the Aliens Act articulate that any decision regarding deportation or expulsion becomes null or unenforceable when the individual possesses a valid residence permit. This is particularly relevant for aliens who, subsequent to being issued a deportation order, are subsequently granted a residence permit. The Aliens Act (Chapter 5, Sections 18 and 19) implicitly affords a right to foreign nationals who have filed for an extension of their residence permits to legally reside in Sweden for the duration of the processing period of their application.[100] Consequently, such individuals are exempt from expulsion or deportation during this interim. The government, thus, in the government bill on the implementation of

[95] See Section 7.11 of this report.
[96] Prop. (Government Bill), *Genomförande av återvändandedirektivet*, 2011/12:60, 29.
[97] Ibid.
[98] Ibid.
[99] Prop. (Government Bill), *Genomförande av återvändandedirektivet*, 2011/12:60, 28.
[100] Ibid.

the EU Return Directive, interpreted these sections as complying with the Directive's mandate for the revocation or temporary postponement of return decisions upon the issuance of a residence permit.[101]

Moreover, as is also emphasized in the government bill, under Article 6.4 all Member States are vested with the prerogative to issue a residence permit or any alternative authorisation for residency at any given juncture. This discretion is manifest in the Aliens Act, particularly in Chapter 12, Section 18, which stipulates the potential for an alien to be granted a residence permit under new circumstances that pertain to the execution of a legally binding decision on expulsion or deportation or in instances where such a decision is subject to suspension.

7.5.3 Irregular aliens which can be transferred to another Member State under Dublin rules (or under readmission rules)

The Aliens Act, Chapter 1, Section 9, specifies that the regulations regarding expulsion and deportation decisions, as outlined in the Act, also apply to Dublin transfer decisions directed to the responsible Member State.[102] The Aliens Act, Chapter 5, Section 1 b stipulates in which cases an asylum application may be rejected, and under which conditions. The provision implements the Asylum Procedures Directive (recast), Article 33.2 a.[103] The Aliens Act, Chapter 5, Section 1 c, Sub-section 1 stipulates that transfer decisions for asylum seekers are conducted in compliance with the Dublin Regulation, extending to EU member states as well as Iceland, Norway, Switzerland, and Liechtenstein. Chapter 5, Section 1 c, Sub-Section 2 stipulates that an asylum application shall be rejected in the case of a Dublin transfer. The provision implements the Asylum Procedures Directive (recast), Article 33.1. If the applicant claims a need for international protection concerning the state responsible for the asylum application due to the Dublin Regulation, the Migration Court of Appeal has concluded that what is to be assessed is if the transfer may constitute a violation of the principle of non-refoulement (see MIG 2010:21 and MIG 2016:16).

The Aliens Act, Chapter 12, Section 9 a, stipulates that if a decision on transferring an alien following the Dublin Regulation has been appealed, and during the period of appeal, a request for the suspension of the decision has been made, the transfer decision shall not be executed until a migration court has examined the issue of suspension. This applies only the first time the foreign national requests suspension. A decision to deny such a request for suspension must be duly justified. [104]

Swedish case law has had a significant impact on the application of the Dublin Regulation. An example is the judgment of the Migration Court of Appeal, MIG 2006:4, which established that once a transfer decision has been made under the Dublin Regulation, there is

[101] Ibid.
[102] Cf. Prop. (Government Bill) *Ändringar i utlänningslagen med anledning av den omarbetade Dublinförordningens ikraftträdande*, 2013/14:197; Prop. (Government Bill) *Ytterligare anpassning av svensk rätt till Dublinförordningen*, 2016/17:150. and Prop. (Government Bill) *Genomförande av skyddsgrundsdirektivet och asylprocedurdirektivet*, 2009/10:31, 216.
[103] Prop. (Government Bill), *Ändringar i utlänningslagen med anledning av den omarbetade Dublinförordningens ikraftträdande,* 2013/14:197.
[104] Prop. (Government Bill), *Ytterligare anpassning av svensk rätt till Dublinförordningen,* 2016/17:150.

no possibility to review the asylum application in Sweden. A second example is the judgment of the Migration Court of Appeal, MIG 2014:29, which determined that the provisions on legal aid in the Aliens Act (Chapter 18, Section 1) could be applied to cases concerning transfer issues under the Dublin Regulation if the need for legal assistance is deemed necessary.

7.5.4 Irregular aliens with a right to stay in another Member State

In late 2016, the Swedish government proposed legislative amendments to the Aliens Act to, to a more considerable extent, align Swedish migration law with the Return Directive and the Directive governing the status of third-country nationals as Permanent Residents.[105] The proposals resulted in the introduction of new provisions into the Aliens Act. The Aliens Act Chapter 8, Section 6 a addresses the expulsion and deportation of individuals who meet the following criteria: (1) are not EEA nationals or family members of EEA nationals, (2) possess a residence permit from another EU state, but (3) do not meet the requirements for staying in Sweden under the Aliens Act, Chapter 8, and (4) are subject to deportation or expulsion from Sweden under the same Chapter of the Aliens Act. The provisions outlined in the Return Directive, Article 6.2, made this legislative amendment necessary. Notably, during discussions on Sweden's implementation of the Return Directive, the European Commission pointed out in a memorandum the absence of specific regulations governing the expulsion and deportation procedures for the category of aliens addressed here.[106] These persons are to, following the first subsection of the Aliens Act Chapter 8, Section 6 a, to be instructed by the deciding authority to voluntarily proceed to the other EU state within a reasonable time. The instruction may not be appealed because it is considered a decision in favour of the alien (it is not enforceable). The deciding authority may only determine the issue of removal or expulsion if the foreign national has not complied with such an instruction. The Aliens Act Chapter 8, Section 6 a, Sub-section 2 however stipulates that the first subsection does not apply in the following cases:

1. The Migration Agency rejects or denies an application for a residence permit which, according to the provisions of this Act or any other legislation, may be granted after entry into Sweden.
2. The alien is denied entry into the country.
3. The alien is intercepted in the act of illegally crossing an external border.
4. The alien poses a risk to public order and security.
5. It is deemed probable that the alien would not comply with the instruction.

In April 2023, the CJEU in the case C-629/22 (which concerned Sweden and the validity of the Aliens Act Chapter 8, Section 6 a, subsection 2) found that the Return Directive, Article 6.2, requires states to provide irregular aliens with the possibility to return to the member state in which they hold a residence permit before the national authorities issue a decision on return.[107] The CJEU, in the judgment, concludes (without saying so explicitly) that the Aliens

[105] Prop. (Government Bill), *Uppföljning av återvändandedirektivet och direktivet om varaktigt bosatta tredjelandsmedborgares ställning,* 2016/17:61.
[106] Ibid, 14.
[107] CJEU, C-629/22, ECLI:EU:C:2023:365.

Act Chapter 8, Section 6 a, subsection 2 does not fully comply with the Return Directive, Article 6.2. So far, however, the legislation remains unchanged.

7.6 Voluntary Departure

The relevant regulations concerning voluntary return and the consequence of their non-compliance, which is "re-entry bans", have undergone multiple legislative amendments in the Aliens Act since the implementation of the Return Directive in May 2012, particularly the deadline of the voluntary return. This aspect aligns with the legislative change required by the EU Return Directive, Article 7. The matter of voluntary return was acknowledged as central due to its impact on the execution of other articles within the Return Directive and eventually on the entire return regime by the Swedish government.[108] Consequently, the Aliens Act establishes a general rule (Chapter 8, Section 21, Sub-Section 1) concerning the inclusion of a deadline for voluntary departure and re-entry bans in expulsion or deportation decisions, along with exceptional rules (Chapter 8, Section 21, Sub-Section 2) in some instances and situations where this voluntary departure deadline cannot be given in the expulsion or deportation decisions. Accordingly, a decision of expulsion or deportation must include a timeframe within which the alien must leave Sweden voluntarily (Chapter 8, Section 21, Sub-Section 1) as a general rule. The voluntary departure deadline can be set for up to two weeks in the case of expulsion and four weeks in the case of deportation by the Aliens Act regulations (Chapter 8, Section 21, Sub-Section 1). The Migration Court of Appeal in MIG 2021:13 declared that no coercive measures may be taken against a foreign national to ensure the enforcement of a removal order while the period for voluntary departure is running.

For EEA citizens or their family members who have travelled in Sweden, different rules apply to the voluntary return deadline or departure. The Aliens Act states that an EEA citizen or their family members shall be granted no earlier than four weeks from the day the EEA citizen or family member received the decision unless there are exceptional reasons for implementing the decision (Chapter 12, Section 15, Sub-Section 3). This provision aligns with the requirement of Article 30.3 in the Citizen's Rights Directive (2004/38/EC).[109]

The deadline for voluntary departure can be extended if special reasons exist (Chapter 8, Section 21, Sub-Section 1). This provision corresponds with the Return Directive, Article 7.2, which provides several examples of specific circumstances in individual cases, "such as the length of stay, the existence of children attending school, and the existence of other family and social ties".[110] However, the Swedish government determined that the circumstances warranting an extension of the voluntary departure deadline should not be specified in the new provision, as an extension should be possible if required.[111]

This extension for the voluntary return deadline is determined by the Migration Agency or the Policy Authority (Chapter 12, Section 14b). Additionally, the Aliens Act (Chapter 8, Section 21, Sub-Section 2) lists specific situations where a voluntary return deadline need not be included in deportation and expulsion decisions based on five grounds: i) there is a risk that alien will abscond; ii) the alien poses a threat to public order and security; iii) a deportation

[108]Prop. (Government Bill), *Genomförande av återvändandedirektivet*, 2011/12:60, 31.
[109] Prop. (Government Bill), *Genomförande av återvändandedirektivet*, 2011/12:60, 33.
[110] Ibid.
[111] Ibid.

decision denies the alien entry into the country; iv) the alien is intercepted while illegally crossing an external border and is subsequently deported *or* v) the alien is deported by the Migration Agency with immediate execution.

These grounds correspond with the Return Directive, Article 7.4.[112] The concept of a "risk of absconding" was recognized as central in this context as it impacts the implementation of several articles in the Return Directive, including voluntary return, re-entry bans, and detention, and eventually the main objective of precise whole implementation of the Return Directive.[113] As a result a provision was incorporated into the Aliens Act (Chapter 1, Section 15) specifying its meaning or circumstances as follows:

'If, in the application of this Act, an assessment is made as to whether there is a risk of an alien absconding, considerations may only be given if he or she:

- has previously evaded authorities,
- has declared an intention not to leave the country after an expulsion decision,
- has used a false identity,
- has not cooperated in clarifying their identity, thereby hindering the examination of their residence permit application,
- has knowingly provided false information or withheld material information,
- has violated an announced re-entry ban in the past,
- has been convicted of a crime punishable by imprisonment or
- has been expelled by a general court based on criminal grounds.'

On the matter of financial support in the context of return, the special Ordinance (1984:890) addresses financial support for an alien's travel from Sweden to resettle in another country. This ordinance designates the Migration Agency to determine government grants for the following categories:

> Aliens granted residence permits in Sweden based on government transfer;
>
> Aliens granted residence permits in Sweden for protection reasons, per the Aliens Act, Chapter 5);
>
> Aliens granted residence permits in Sweden due to their connection to those in the previous categories 1 or 2, not eligible for assistance under Swedish law.

Sections 3 and 5 of this Ordinance specify that this grant is disbursed when the recipient departs Sweden, provided they lack the means for the journey and can show they will be received in their intended settlement country.

An alien whose asylum application has been rejected or who has withdrawn their asylum application may also, under certain circumstances, apply for financial (cash) support to help re-establish in the country of return.[114] The process and conditions are regulated by the Ordinance (2008:778) on re-establishment support for certain aliens. The cash support is

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[112] Prop. (Government Bill), *Genomförande av återvändandedirektivet*, 2011/12:60, 37.
[113] Ibid.
[114] For more information on to which countries the support applies, see https://www.migrationsverket.se/Privatpersoner/Lamna-Sverige/Avslag-pa-ansokan-om-asyl/Stod-till-ateretablering/Kontantstod.html (last accessed Januari 2, 2024).

made available to the alien in the country of return. There is also a possibility to apply for reintegration measures in the context of the European collaboration programme Joint Reintegration Service (JRS).[115]

7.7 Return of Unaccompanied Minors

The Aliens Act, Chapter 1, Section 1 a) states that "child" for the purpose of the Act refers to a person below the age of 18. The Aliens Act Chapter 1, Section 10 and Chapter 1, Section 11 implement two fundamental principles of the Convention on the Rights of the Child into the Act: the best-interests principle and the right to be heard. The two provisions were introduced in the Aliens Act in 1997 as part of the efforts to transform key parts of the CRC into Swedish law.[116] The Aliens Act, Chapter 1, Section 10 mandates the consideration of a child's health, development, and overall best interests in all cases related to children and is based on Articles 3.1 and 6 of the CRC.[117] The Aliens Act Chapter 10, Section 11 mandates that when assessing questions related to a residence permit under the Aliens Act, and when the decision impacts a child, the child must be heard unless it is deemed inappropriate. Account must be taken of what the child has said to the extent warranted by the age and maturity of the child. Chapter 1, Section 11 is based on Article 12 of the CRC. Both Chapter 1, Section 10 and Chapter 1, Section 11 apply in deportation and expulsion cases. Moreover, it may be noted that the right to oral proceedings in asylum cases, as outlined in the Aliens Act, Chapter 13, Section 1, applies to adults and children alike. When implementing the Asylum Procedures Directive (recast) into Swedish law, the government concluded that there was no need for legislative amendments to specifically require child-oriented interviews with minors, given the fact that the right to be heard as well as the best-interests principle were already included in the Aliens Act.[118]

While the Aliens Act does not contain a specific definition of unaccompanied minors (UAMs), it is recognized in Swedish migration law that UAMs are entitled to special protection.[119] The “Reception of Asylum Seekers and Others Act” stipulates that special conditions apply to UAMs, for example regarding housing.[120] Moreover, the Unaccompanied Minors Guardian Act (2005:429) states that the interests of UAMs are to be protected through the appointment of a special guardian ("*god man*"). The special guardian acts instead of the child's parents or legal guardian and thus has a different role than the child's legal representative. Following the Aliens Act, Chapter 18, Section 1 a, a public legal counsel shall always be appointed to a child seeking asylum in Sweden if the child does not have a legal guardian in Sweden. The same applies to children appealing a negative decision on asylum or on impediments of enforcement. The right to public legal counsel also applies to children who

[115] Ibid.
[116] Prop. (Government Bill), *Svensk migrationspolitik i globalt perspektiv*, 1996/97:25. See also Section 4 of the report.
[117] The Migration Court of Appeal has discussed the interpretation and implementation of the best interests-principle in several judgments, including MIG 2020:24 and MIG 2021:18.
[118] Genomförande av det omarbetade asylprocedurdirektivet, Prop. (Government Bill) 2016/17:17, 50.
[119] The Aliens Act however refers to this group in various terms, such as the reference to “children who have arrived in Sweden separated from their parents or another adult having effectively taken the parent’s place, or if the child has been abandoned after arrival” in the Aliens Act, Chapter 5, Section 3. The matter of age assessments, in order to determine whether a person claiming to be a child actually is below the age of 18, is addressed in the Aliens Act Chapter 13, Sections 17 and 18, and in the Aliens Ordinance, Chapter 4, Section 21 d.
[120] Section 1 b of the Reception of Asylum Seekers and Others Act.

have been assigned a special guardian according to the Unaccompanied Minors Guardian Act (2005:429).[121]

The Aliens Act, in addition to the overarching provisions pertaining to the right to be heard and the best interests principle in Chapter 1 of the Act, also includes specific provisions addressing the rights of unaccompanied minors in the context of return.[122] Chapter 12, Section 3 a establishes that a decision to deport or expel an unaccompanied minor cannot be enforced unless the enforcing authority ensures that the child will be received by a family member, an appointed guardian, or a reception unit well-equipped to care for children. If these requirements are not met, the return decision cannot be enforced – there is what is referred to as a practical impediment to the enforcement of the decision (see Section 7.2.2 above). In these cases, the UAM will usually be granted a temporary residence permit valid until he or she turns 18 based on the Aliens Act Chapter 5, Section 11. The Migration Court of Appeal in MIG 2015:23 emphasized that the Migration Agency has a special responsibility for unaccompanied minors, including in the return process, and that the Migration Agency has the primary responsibility for ensuring that the reception conditions in the country of origin are adequate, even though the child is expected to contribute to the process.[123] Also in MIG 2015:23, the Migration Court of Appeal on the matter of re-entry bans held that, as the child in question was found to have contributed to the return process as best she could, the requirements for not applying a re-entry ban (as stipulated in the Aliens Act Chapter 12, Section 15 a) were fulfilled.

While the Aliens Act and adjacent legislation on paper provide for safeguarding the special needs of UAMs in Sweden, this, as has been continuously pointed out by NGO-s and migration scholars, has not always translated into practice.[124]

The 2016 introduction of temporary residence permits in combination with the increased focus on return, while simultaneously remaining to be difficult to enforce return decisions, has resulted in many non-citizens, including UAMs or young adults, becoming stuck in legal limbo, often living under challenging economic and social circumstances.[125] In addition, the normalization of an immigration-critical (or immigration-hostile) discourse has contributed to their difficult situation and to justifying repeal of legislation aimed at safeguarding their rights (such as the Upper Secondary School Act and humanitarian grounds in the Aliens Act Chapter 5 Section 6, Sub-Section 2).[126]

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[121] Migration Court of Appeal judgment MIG 2015:23.
[122] See also CJEU, C-484/22, February 15, 2023, ECLI:EU: C:2023:122.
[123] See also CJEU, C-C-441/19, January 14, 2021; ECLI:EU:C:2021:9.
[124] Barnombudsmannen, *Barn på flykt. Barns och ungas röster om mottagandet av ensamkommande* (Stockholm, Barnombudsmannen, 2017); Swedish Red Cross, *Mitt liv räknas – den humanitära situationen för ensamkommande unga* (Stockholm, Svenska Röda Korset, 2020); Daniel Hedlund, *Drawing the Limits. Unaccompanied Minors in Swedish Asylum Policy and Procedure*, dissertation (Stockholm, Stockholm University, 2016); Marianne Garvik and Marco Valenta, "Seeking Asylum in Scandinavia: A Comparative Analysis of Recent Restrictive Policy Responses Towards Unaccompanied Afghan Minors in Denmark, Sweden and Norway," *Comparative Migration Studies*, Vol. 9, Issue 1 (2021): 1-22.
[125] Garvik and Valenta, *Seeking Asylum in Scandinavia: A Comparative Analysis of Recent Restrictive Policy Responses Towards Unaccompanied Afghan Minors in Denmark, Sweden and Norway*.
[126] Amber Horning, Sara V. Jordenö and Nicole Savoie, "Double-Edged Risk: Unaccompanied Minor Refugees (UMRs) in Sweden and Their Search for Safety, *Journal of Refugee Studies*, Vol. 33, No. 2, June (2020): 390–415.

7.8 Re-Entry Bans

To implement the provisions on entry bans from the Return Directive into Swedish law, numerous revisions and amendments have been made to the Aliens Act.[127] These amendments tie the regulation of entry bans closely to the regulation of timeframes for voluntary return, as discussed in Section 7.5. According to the Aliens Act (Chapter 8, Section 23), if it proves impossible to set a timeframe for voluntary departure the decision on expulsion by the Police Authority and the decisions on rejection, expulsion, or deportation by the Migration Agency must include a re-entry ban. This is unless specific circumstances relating to the individual's situation warrant otherwise. This requirement is contingent upon the absence of conditions for setting a voluntary departure deadline based on the five criteria detailed in the Aliens Act (Chapter 8, Section 21, Sub-Section 2).

The Aliens Act, Chapter 8, Section 24 mandates that the duration of an entry ban based on Chapter 8, Section 23 typically should not surpass five years, except in cases where the individual poses a significant risk to public order and security, which may justify a longer ban. For aliens who fail to comply with an expulsion or deportation decision and remain in Sweden past the voluntary departure period, the re-entry ban is set to one year (Chapter 12, Section 15a). In early February 2024, a Government Inquiry suggested that the duration of entry-bans based on Chapter 12, Section 15 a should be based on an individual assessment of the case in question, something which might lead to longer entry bans for this category.[128] It is also suggested that it should be specifically stated in the Aliens Act that a re-entry ban not issued by a general court shall commence on the day the alien leaves the territory of the Member States or, if the decision on expulsion or deportation is to be enforced to a Member State, on the day the he or she exits Sweden.[129] Should these proposals become law, they are to enter into force in 2025.

The Aliens Act differentiates between re-entry bans resulting from criminal conduct (Chapter 8a) and those due to non-criminal reasons (Chapter 8). In the context of criminal activities, the duration of a re-entry ban may be specified or indefinite, as outlined in the Aliens Act (Chapter 8a, Section 11, Sub-Section 1). Recent legislative updates to the Aliens Act and the Penal Code have facilitated the deportation of individuals who commit crimes and have introduced stricter regulations on deportation for criminal activities.[130] These amendments, effective from 1 August 2022, have extended the length of re-entry bans, which now commence on the day of departure.

Notably, specific rules apply to re-entry bans for EEA citizens and their family members. Only decisions concerning public order or security can result in a re-entry ban for an EEA citizen or their relative, in accordance with the Aliens Act (Chapter 8, Section 23). This provision, adopted in 2006, aligns with Article 15.1 and 3 of the EU Free Movement Directive,

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[127] Cf. Prop. (Government Bill), *Genomförande av återvändandedirektivet,* 2011/12:60; Prop. (Government Bill), *Uppföljning av återvändandedirektivet och direktivet om varaktigt bosatta tredjelandsmedborgares ställning*, 2016/17:61 and Prop. (Government Bill), *Utvisning på grund av brott – ett skärpt regelverk*, 2021/22:224.

[128] Preskription av avlägsnandebeslut och vissa frågor om återreseförbud, SOU 2024:10 (Chapter 6.3).

[129] Ibid.

[130] Prop. (Government Bill), *Utvisning på grund av brott – ett skärpt regelverk,* 2021/22:224.

highlighting the necessity to avoid imposing re-entry bans on EU citizens and their family members for reasons beyond public order or security.[131]

Furthermore, the Aliens Act (Chapter 8, Section 26, Subsection 1) allows for the Migration Agency, the Migration Court, and the Migration Court of Appeal to wholly or partially revoke a re-entry ban if special circumstances indicate the ban is no longer appropriate. The government bill on the implementation of the Return Directive provides examples, such as considerations of the best interests of children, which could warrant the lifting of a re-entry ban. The legislation also offers a mechanism for the affected individual or the Migration Agency to request the lifting of a ban (Chapter 8, Section 26, Sub-Sections 2 and 3). The Aliens Act links the enforceability of expulsion or deportation decisions to the imposition of re-entry bans, specifying that a re-entry ban cannot be notified if the execution of an expulsion or deportation decision is hindered by a stay of execution, an application for a residence permit, or a re-evaluation request (Chapter 12, Section 15a, Sub-Section 2).

7.9 Procedural Safeguards in the Context of Return Enforcement

The Swedish return regime includes several procedural safeguards, demonstrated throughout this report. However, some aspects of this procedural safeguard regime remain to be summarized in this section. When first implementing the EU Return Directive, the government concluded that legislative amendments were unnecessary since the existing provisions in Swedish law met the criteria set out in the Directive Articles 12.1, 12.2, 12.3, 13.3, and 13.4.[132] For instance, when dealing with individuals who do not speak Swedish, it is incumbent upon an authority to engage an interpreter if necessary, ensuring that documents are translated to enable the person to exercise their rights, as stipulated in the Administrative Act (FL 2017:900) Section 13. Moreover, both the Administrative Court Procedure Act (FPL, 1971:291) Section 50[133] and the Act of Judicial Procedure (RB 1942:740) Section 5, Sub-Section 6 guarantee linguistic assistance by appointing an interpreter when needed if a party, witness, or any other individual to be heard in court does not speak Swedish. These provisions regarding interpreters also encompass the translation of documents, encompassing both incoming documents and those prepared by the Migration Agency.

The Aliens Act provides a mechanism for offering public legal aid in the form of public legal counsel in certain situations or under particular conditions for aliens. These situations encompass cases involving deportation and expulsion decisions. Importantly, this legal assistance is provided without charge and is not subject to means-testing, meaning that foreign nationals are not obligated to reimburse any associated costs.[134] It should also be highlighted that the right to legal representation under the Aliens Act extends more broadly than the right to legal aid stipulated by the Asylum Procedures Directive. This expanded scope is due to the presumption rule outlined in the Aliens Act Chapter 18, Section 1. As a result of this rule, a legal counsel is appointed in nearly all cases of expulsion, deportation, and

[131] Gerhard Wikrén and Håkan Sandesjö, *Utlänningslagen med kommentarer*, 13A ed. JUNO (digital edition).
[132] Prop. (Government Bill), *Genomförande av återvändandedirektivet*, 2011/12:60, 59.
[133] Swedish Parliament. *Förvaltningsprocesslag,* Svenska författningssamling (SFS) 1971:291
[134] Prop. (Government Bill), *Genomförande av återvändandedirektivet,* 2011/12:60, 68.

enforcement proceedings involving the detention of an alien.[135] It follows by Chapter 18, Section 1 that the appointment of a legal counsel is mandatory, except when it can be reasonably assumed that there is no need for legal assistance.

7.10 Basic Conditions for Return Enforcement Detention in Sweden

(Immigration) detention (‘*förvar*’) and the less restrictive measure of supervision (‘*uppsikt*’) are regulated in the Aliens Act. Chapters 10 and 11 of the Aliens Act outline the conditions under which these coercive measures may be used (Chapter 10) and the minimum standards according to which a detainee is to be treated (Chapter 11). The Act (2022:700) on special control of certain Aliens regulates detention in security cases. The Aliens Act Chapter 1 Section 8 stipulates that the Aliens Act ‘shall be applied to ensure an alien’s freedom is not restricted more than is necessary in each individual case”. The proportionality principle expressed here also applies to detention and supervision.[136] As a consequence of the proportionality principle, detention should only be used in cases where supervision is not considered sufficient.[137] The conditions for putting a person under supervision are outlined in the Aliens Act Chapter 10, Sections 6 and 7. The Migration Court of Appeal in MIG 2020:2 established that for supervision to be used instead of detention, there must be a basis for detention according to the Aliens Act, which is compatible with EU law. Chapter 1, Section 8 and Chapter 10, Section 6 combined are found to fulfil the requirement of using alternative sufficient but less intrusive measures as specified in the Return Directive, Article 15.1. Sweden, however, has been repeatedly criticized for not using detention as a last resort, but rather as a first choice.[138]

It is noteworthy that although the grounds for detention in EU directives such as the Return Directive, Reception Conditions Directive, and the Asylum Procedures Directive target different categories of third-country nationals and thus differ, the same distinction is not made in the Aliens Act Chapter 10; these rules apply to all third-country nationals. The Migration Court of Appeal in MIG 2020:2 emphasized that while the Swedish regulations on detention form the basis for detention, they must be interpreted and applied in a manner compatible with EU law. It can be added that the same applies to the ECHR, Article 5.1 f in particular, and also the EU Charter on Fundamental Rights.

The Aliens Act, Chapter 10, Section 1 regulates the circumstances under which an adult may be detained. Chapter 10, Section 1, Sub-Section 3 outlines the requirements for a person to be detained for return: that is, either to prepare for the enforcement of a return decision or actual enforcement of such a decision (‘*verkställighetsförvar*’). When the Return Directive was implemented into Swedish law in 2012, the primary conditions for detention for removal in the Aliens Act were modified in order to align with the requirements of the Directive, Articles 15 and 16 in particular.[139] Revisions included specifying under which circumstances a person can be detained for this purpose (see Chapter 10, Section 1, Sub-Section 4). These are now limited to when there may otherwise be a risk that the alien engages in criminal activities

[135] Ibid.
[136] Andersson, ”Förvar och principerna för tvång, ”*Juridisk Tidskrift*, No.2 (2020): 367–405.
[137] On supervision, see *the Aliens Act* Chapter 10, Sections 6 to 8.
[138] CCPR/C/SWE/CO/7, p. 33; CAT/C/SWE/CO/6-7, p. 10.
[139] Prop. (Government Bill), *Genomförande av återvändandedirektivet*, 2011/12:60, 70.

within Sweden, will evade the authorities, go into hiding or otherwise obstruct the execution of the return decision.[140] While "otherwise engaging in criminal activities" is not one of the grounds for detention listed in Article 15.1 of the Return Directive, the Swedish position is that the wording of Article 15.1 is not exhaustive and thus allows for additional grounds to be included in national legislation.[141]

In order to align the Aliens Act with the Return Directive's Articles 15.1, 15.5, and 15.6, new time limitations for detention were introduced in the Aliens Act in 2012.[142] Consequently, the Aliens Act Chapter 10, Section 4, Sub-Section 2 stipulates that an alien aged 18 or older should not be detained for enforcement purposes for more than two months unless compelling reasons warrant a longer duration. Even if there are compelling reasons, the alien must not be detained for more than three months unless enforcement is likely to take longer due to the alien's non-cooperation or the time needed to obtain necessary documents, in which case the detention should not exceed twelve months. However, the three and twelve-month time limits do not apply if the foreign national has been expelled by a criminal court due to criminal offences, in which case detention may be more prolonged.[143] Article 2.2 b of the Return Directive allows for such exceptions.[144]

Children may also be taken into detention or put under supervision for return. The Aliens Act Chapter 10, Section 2, Sub-Section 1 stipulates that a child may be detained under the following circumstances: if it is probable that the child will be expelled by the Police Authority or deported with immediate effect by the Migration Agency or if it concerns preparing or executing the enforcement of such a decision, there is a clear risk that the child will otherwise abscond, thereby jeopardizing enforcement that should not be delayed, and it is insufficient for the child to be placed under supervision. In addition, a child may be put in detention to prepare or enforce a return decision in cases other than those above if previous attempts to enforce the decision have proven insufficient to place the child under supervision (see the Aliens Act Chapter 10, Section 2, Sub-Section 2). Under the Aliens Act Chapter 10, Section 5, a child may not be detained for more than 72 hours or, if exceptional grounds apply, for another 72 hours. Chapter 10, Section 3 stipulates that a child must not be separated from both of its guardians by detaining either the child or the guardian. A child who does not have a guardian in Sweden may only be detained for exceptional reasons – in other words, UAMs may be put in detention, but only under very particular circumstances.

Not all of the provisions on detention of the Return Directive have been implemented into the Aliens Act. This is as the government, in the process of implementing the Return Directive into Swedish legislation, concluded that existing national legislation already met many of the requirements outlined in the Return Directive Articles 15, 16, and 17.[145] Such requirements include the EU provisions on review of detention decisions, immediate release, decision-making authorities and conditions of detention.[146]

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[140] Andersson, "Förvar och principerna för tvång."
[141] Prop. (Government Bill), *Genomförande av återvändandedirektivet*, 2011/12:60, 69–72. See also the discussion in Andersson, "Förvar och principerna för tvång," 374–375.
[142] Prop. (Government Bill), *Genomförande av återvändandedirektivet*, 2011/12:60, 74–75.
[143] Ibid, 74.
[144] Ibid, 76.
[145] Ibid, 69–71.
[146] Ibid, 69–71.

Detention-related decisions can, as stipulated in the Aliens Act Chapter 10, Sections 12-17, be made by the Police Authority, the Migration Agency, the Security Police, the Migration Courts, and the Migration Court of Appeal. In security cases, the Swedish government may also make decisions on detention as provided for in the Act (2022:700) on special control of certain Aliens, which regulates detention in security cases. As follows by the Aliens Act Chapter 16, Section 4, detention cases shall be expedited. There is, however, no specific time limit set for this matter.[147]

Decisions by the Migration Agency, the Police Authority and the Security Police can be appealed to a Migration Court (the Aliens Act Chapter 14 Section 9). No time limits apply to such appeals. Additionally, the Aliens Act Chapter 10, Section 9, Sub-Section 1 specifies that a decision on detention shall be re-evaluated within two weeks from the commencement of enforcement. If the alien is detained due to an expulsion or deportation decision, a new review shall be conducted continuously within two months of enforcement's commencement. Chapter 10, Section 9, Sub-Section 4 stipulates that a detention decision should be immediately revoked if there are no longer sufficient grounds for the decision.

The Migration Agency is responsible for enforcing decisions on detention (the Aliens Act Chapter 10, Section 18). It may, for this purpose, request assistance from the Policy Authority. Detention shall, as stated in the Aliens Act Chapter 11, Section 2, take place in facilities designated explicitly for the purpose. The Migration Agency is responsible for these facilities. In late 2023 the Migration Agency had a total capacity for detaining approximately 567 individuals. This capacity is distributed across six locations: Gävle, Flen, Ljungbyhed, Märsta, Mölndal, and Åstorp. The capacity for detaining individuals is expected to increase in the coming years with capacity for approximately another 200 individuals.[148]

The Migration Agency may, however, decide that an alien taken into detention is placed in a penitentiary, remand centre, or police custody (the Aliens Act Chapter 10 Section 20). This may be the case when a criminal court expels the alien due to criminal offences or when special reasons apply. In any case, the regulations of the Aliens Act, Chapter 11 on the conditions of detention apply, as well as relevant provisions of the Detention Act (as stated in the Aliens Act Chapter 11, Section 2).[149]

Chapter 11, Section 1 of the Aliens Act emphasizes humane treatment and respect for the dignity of the detained individual. The detainee must be informed of their rights, and activities related to detention should be designed to infringe minimally on their privacy and rights (as stipulated in the Return Directive Article 16.5). The Migration Agency is responsible for treating and supervising detainees (Chapter 11, Section 2). Chapter 11, Section 3 states that detainees should have activities, recreation, physical exercise, and outdoor time opportunities. Children in detention should have access to play and age-appropriate activities. Whether this is the case in practice has been questioned, for example, in a 2018 report by the Swedish Red Cross.[150] The conditions in Swedish detention centres on several occasions have been criticized, including by the Parliamentary Ombudsmen, for not living up to the standards established by the Aliens Act, Chapter 11, Section 1. Examples of misconduct has included

[147] Ibid, 77.
[148] Migrationsverket, Skrivelse, drn 1.1.1.2-2023-17747, Redovisning av uppdragen i regleringsbreven för 2022 och 2023 om plan för utökad förvarskapacitet och ytterligare förvarsplatser.
[149] See also the Detention Act, Chapter 2, Section 2.
[150] Swedish Red Cross, *Barn i förvar – en undersökning av Svenska Röda Korset*, Swedish Red Cross 2018.

access to health care for detainees, the conduct of employees towards detainees, and unlawful body searches. [151]

Under certain conditions, detainees may, according to Chapter 11, Section 4, receive visits and correspondence. They may also be separated from other detainees (Chapter 11, Section 7). Chapter 11, Section 7 mandates that families in detention be offered separate accommodation. All decisions regarding the treatment of detainees can typically be appealed.

7.11 Emergency situations

The Swedish government has opted not to pursue legislative amendments to implement the provisions in Article 18 of the Return Directive. Article 18 allows for exceptions in implementing certain detention-related provisions, particularly in scenarios involving exceptionally high numbers of third-country nationals subject to deportation or expulsion decisions.[152] The first option under Article 18 permits the extension of time limits for judicial reviews in detention cases, as outlined in Article 15.2. However, the Swedish government found that Swedish law already had this possibility or flexibility in its legal framework. This was specifically evident in the Aliens Act (Chapter 4, Section 16), which addressed the need for expeditious handling of detention cases, though without specifying a particular time limit.[153] The second option in Article 18 pertains to taking emergency measures regarding detention conditions, allowing deviations from the provisions in Article 16.1 related to access to legal representatives, family members, and relevant organizations. However, the Aliens Act, specifically Chapter 11, Section 2, Sub-Section 1, already provides the flexibility to address situations envisioned in Article 18 of the directive concerning the requirements of Article 16.1.[154] Additionally, the government has opted not to exercise the third option or exception in Article 18, which relates to deviations from the requirement in Article 17.2 regarding family detention with separate accommodation ensuring sufficient privacy. Consequently, the Aliens Act (Chapter 11, Section 2, Sub-Section 1) continues to mandate that detained aliens be housed in specially designated premises. This includes facilities established by the Migration Agency in reception centres or other locations, as well as facilities provided or arranged by the Migration Agency, such as hotel rooms.[155]

[151] Cf. Justitieombudsmannen (Riksdagens ombudsmän, the Parliamentary Ombudsmen), OPCAT Inspection Protocol No. O 3-2023, Inspection 17-18 January 2023 of the Migration Agency detention centre in Mölndal; Justitieombudsmannen (Riksdagens ombudsmän, the Parliamentary Ombudsmen), Decision No. 9303–2022, 12 December, 2023, Justitieombudsmannen (Riksdagens ombudsmän, the Parliamentary Ombudsmen), Decision No. 1432-2018, 3 December 2019; Justitieombudsmannen (Riksdagens ombudsmän, the Parliamentary Ombudsmen), Decision No. 6090-2009, May 19, 2011.
[152] Prop. (Government Bill). *Genomförande av återvändandedirektivet*, 12:60, 78–81.
[153] Ibid, 78.
[154] Ibid, 81.
[155] Ibid.

7.12 Readmission Process and International Cooperation

Sweden entered into 15 bilateral readmission agreements with various countries, both within and outside the EU, starting with Germany in 1956 (see Table no. 6).[156] These countries include Iraq, Bulgaria, Cyprus, Estonia, France, Kosovo, Croatia, Estonia, Latvia, Lithuania, Romania, Switzerland, Germany, and Vietnam. Furthermore, from 2008 to 2022, Sweden has been a party to 18 EU and bilateral agreements, extending to countries such as Ukraine, Turkey, Sri Lanka, Serbia, Russia, Pakistan, Montenegro, Moldova, North Macedonia, Macao, Cape Verde, Hong Kong, Georgia, Bosnia, Belarus, Azerbaijan, Armenia, and Albania.

8. Funding (Budget) and Programmes Related to Return

According to information published on the Swedish Migration Agency's website, the available funding (budget) and financial support and programs related to the return process are as follows:

***Table 2*: Funding (Budget) and Programmes Related to Return**

Link	Cash support for re-establishment	Other form of Support	Link
https://tinyurl.com/49bv44f2	Adult: 30000 SEK	Reception on arrival at the airport in your country of origin	https://tinyurl.com/y6wtyatt
	Child: 15000 SEK	Temporary accommodation in your country of origin	
	Family: 75000 SEK	Allowance for setting up your own business in your country of origin	
	Post-arrival Support for the three days: 615 EUR	Help with getting onto the job market in your country of origin	
		Education (including vocational training)	
		Job advice	
		Support in contact with the authorities in your country of origin	
		Legal advice	
		Medical care	

[156] Swedish Migration Agency, Planeringsavdelningen/Norrköping, Enheten för statistik och analys, email Correspondence with Philip Engman, statistician, in September and November 2023 (on file with the authors).

9. Gaps in the Return Regime and Policy Recommendations

9.1. Introductory Remarks

The concept of "gaps" may have several different meanings. It may, for example, refer to a gap in the implementation of laws and policies (an implementation gap), a gap between public discourse and policy on paper (a discursive gap) or the difference between the implemented policies and their effect on, for example, migration (an efficacy gap).[157] The consequences of the gaps may also be perceived as positive or negative depending on whom you ask: for the failed asylum seeker, an implementation gap between a restrictive return policy and its implementation in practice may be perceived as a positive thing as it may postpone or delay the enforcement of a deportation decision. In contrast, the same lack of implementation may be harmful from the point of view of the policymaker whose credibility relies on enforcing a restrictive return regime. In this section, we list various gaps in the legal, institutional and international cooperation frameworks in the Swedish return field, which we have identified during the research carried out for this report, as well as recommendations on how to bridge or counteract the gaps.

9.2. Legal Gaps

A. Lack of definitions of the concepts identified in the Return Directive, Article 3 in particular

The Swedish Aliens Act does not specifically include several of the definitions lined up in the Return Directive, Article 3, such as "irregular stay", "return", "removal", "rejection, refusal, removal, expulsion or deportation decision", "vulnerable individuals" or "assisted return". In the 2011 government bill on the implementation of the Return Directive into Swedish law, the government held that introducing the definitions into the Aliens Act was not necessary as the existing legal framework (the Aliens Act and related legislation, for example, on the right to health care for asylum seekers) already aligned with the Directive's requirements on this point. It may be noted that the Aliens Act indeed includes some definitions (see the Aliens Act, Chapter 1) but not a complete list of all the concepts used in the Act. In the case of the Return Directive, some definitions, or at least descriptions, indeed have been incorporated into the Aliens Act – Chapter 1, Section 15 on the risk of absconding being one example – but in general the meaning of the concepts is to be understood either indirectly (as in "illegal/irregular stay" being the opposite to "legal stay"), or through reading the grounds on which a decision on for example refusal-of-entry/rejection, or on expulsion may be taken. While there may be logic in not making an already comprehensive Aliens Act even heavier with definitions and instead referring to the definitions stated in the Return Directive itself, the lack of definitions may

[157] Malm Lindberg, "The Tricky Thing of Implementing Migration Policies: Insights from Return Policies in Sweden," 157.

create legal uncertainty on which rules apply and their content. In other words, the more unclear the legal status is, the less stable it becomes, making access to rights precarious.

Recommendation 1: incorporate the definitions outlined in the Return Directive, Article 3, in the Aliens Act.

B. Unclarities regarding what constitutes "a practical impediment" to enforcing a return decision and when such an impediment should be taken into account

The Aliens Act, Chapter 8, Section 7 requires that in the assessment of whether a decision on refusal-of-entry or expulsion may be taken, the prevalence of impediments to enforcement as described in the Aliens Act Chapter 12, as well as other possible impediments to enforcement, must be taken into account (see also Chapter 8 Section 15 on EEA citizens and Chapter 8 a Section 3 on expulsion due to criminal activity). If such impediments exist, a residence permit typically should be granted. The impediments to enforcement may be related to the risk of non-refoulement (Aliens Act Chapter 12, Section 1-3 a), be of a practical nature (for example, that the person will not be allowed entry or cannot get travel documents), or of a medical nature. Chapter 12 Section 18 addresses the situation *after* a return decision has taken legal effect, when certain impediments to the enforcement of a decision on refusal of entry or expulsion may, even if they have occurred after the decision has taken legal effect, lead to a residence permit being granted. Such impediments include, following Chapter 12, Section 18, Subsection 2, *i)* the risk of non-refoulement, *ii)* when there is reason to assume that the receiving country will not allow the alien entry and *iii)* medical reasons and "other particular reasons". The second impediment mentioned here is referred to by the term practical impediments to enforcing a return decision. While not explicitly stated in the Aliens Act, the preparatory works underline that the difficulties in such a situation to implement the decision must, according to the government, not in any part be due to the individual's refusal to cooperate in the implementation.[158]

It can be noted that although the term "practical impediments" is not included in the Aliens Act, it is nevertheless a well-established term used in preparatory works by the migration authorities and in case law. The gap identified here has several aspects: i) that the term as such is not included in the Aliens Act may lead to unclarities as to when the prevalence of such impediments must be taken into account, ii) the lack of definition of what constitutes a practical impediment to enforcement may cause uncertainty as to what constitutes such an impediment and iii) it is, as has been pointed out in a 2017 report of a Government Inquiry on practical impediments to enforcement, somewhat unclear what is required of the alien in order to be considered to have sufficiently participated in the implementation of the decision.

Recommendation 2: The Aliens Act should include a definition of what may constitute "a practical impediment" to enforcing a return decision.

We do not formulate any recommendation stating that what is required for an alien to be considered not having participated in or contributed to implementing the return decision should be specified in the Aliens Act. However, it would be helpful if the Migration Court of

[158] Prop. (Government Bill), Ny *instans- och processordning i utlännings- och medborgarskapsärenden* 2004/05:170, 299.

Appeal addressed the issue and clarified what expectations can be placed on the individual in these cases.

C. The provisions on detention in the Aliens Act do not sufficiently align with EU law

There are grounds on which a person can be held in detention in the Reception Directive (recast), the Asylum Procedures Directive (recast), the Return Directive and the Dublin Regulation (recast). The various grounds for detention differ in the different directives, and thus also for the various categories of TCNs. The conditions for detention in the context of return are specified in the Return Directive, Article 15. However, the rules on detention in the Aliens Act do not distinguish between different TCNs, and the rules in the Aliens Act, Chapter 10, Section 1 apply to all categories. The differences between the EU Directives and Swedish law may cause problems. For example, it is consistent with the wording in Chapter 10, Section 1, to detain an asylum seeker on the grounds of probability. However, as the Migration Court of Appeal has pointed out in MIG 2020:14 and 2021:3, such detention must comply with the Reception Directive Article 8.3 for it to be legal. While the Migration Court of Appeal in MIG 2020:2 made clear that the provisions on detention in the Aliens Act must be interpreted and implemented in line with EU law, it may be argued that the lack of specificity in the Aliens Act may lead to decisions on detention that do not have a solid legal ground in an EU law perspective. It is interesting to note that the Government Inquiry on detention established in August 2023 (dir. 2023:119) while being instructed to analyze the compatibility of Swedish law and EU law on detention, including detention for the purpose of enforcing a return decision, seems to focus mainly on exploring additional grounds for detention in EU law compared to Swedish law, and not specifically look into whether Swedish law needs adjusting in order to adhere to minimum standards as established by the Directives.

Recommendation 3: Further analysis is needed to establish whether Swedish law on detention is consistent with minimum standards established in EU law.

D. The rules pertaining to the refusal-of-entry or expulsion of an alien who has permission to reside in another EU state does not fully align with EU law

In April of 2023, the CJEU in the case C-629/22[159] (which concerned Sweden and the validity of the Aliens Act Chapter 8, Section 6 a, subsection 2), found that the Return Directive, Article 6.2, requires states to allow irregular aliens with the possibility to return to the member state in which they hold a residence permit to do so before the national authorities issue a decision on return. The CJEU concludes that

> the Return Directive, Article 6(2) must be interpreted as meaning that the competent authorities of a Member State are required to permit a third-country national staying illegally on the territory of that Member State who holds a valid residence permit or other authorization offering a right to stay issued by another Member State to go to that other Member State before they adopt, if the circumstances so require, a return

[159] CJEU, C-629/22, ECLI:EU: C:2023:365.

> decision in respect of such a national, even though those authorities consider it likely that that national will not comply with a request to go to that other Member State.[160]

The CJEU moreover held that

> an interpretation of Article 6(2) to the effect that that provision permits the competent authorities of the Member States to adopt a return decision where it is 'likely' that the third-country national concerned will not comply with a request to go immediately to the territory of the Member State which issued him or her with a valid residence permit or other authorization offering a right of residence would amount to establishing a derogation which is not provided for in Article 6(2) and would therefore deprive that provision of its practical effect.[161]

The CJEU case concerned Sweden and the implementation of the Aliens Act, Chapter 8 Section 6 a, subsections 1-2, which implements the Return Directive Article 6.2 but also allows for derogation from the duty to instruct an alien to leave the country and, also, from refraining from issuing a return decision if, for example, there are reasonable grounds to assume that such an instruction would not be adhered to (subsection 2, item 5). As pointed out by the CJEU, the Swedish provision seems to offer more leeway for the state to decide when to allow the alien to leave the country without being the subject of a return decision. This decision may have additional adverse effects for the individual if combined with an entry ban. The CJEU ruling so far, from what we have been able to establish, has yet to lead to any changes in the guidance provided by the Migration Agency or in case law, and certainly not on the legislative level.

Recommendation 4: The Migration Agency and the Police Authority should draft guidelines on the implementation of the Aliens Act, Chapter 8, Section 6 a, to ensure compliance with the CJEU case law.

9.3. Policy Gaps

E. Mixed messages – does "no" always mean "no"?

It is a clearly stated aim in Swedish migration policy that an individual present on Swedish territory without the necessary permits to be there is to leave the country, preferably voluntarily. "A no needs to mean no", as the Minister of Migration Maria Malmer Stenergard repeatedly has stated, for the system to function or to remain credible and predictable (both essential in a legal certainty perspective).[162] At the same time, the nature of migration law, asylum law in particular, which in essence concerns assessing future risk, means that a "no" needs to take into account the fact that new circumstances might arise that presents obstacles towards enforcing a return decision (new information about persecution, for example), or prevent such a decision from being taken in the first place (such as humanitarian grounds, or family ties).

[160] Ibid, 27.
[161] Ibid, 26.
[162] Cf. Moderaterna (the Consevative Party) https://moderaterna.se/nyhet/atta-forslag-att-fler-ska-utvisas-ett-nej-ska-vara-ett-nej/ (last accessed January 4, 2024) and Swedish Radio (Sveriges Radio), https://sverigesradio.se/artikel/regeringen-infor-atervandandecenter-vill-oka-atervandringen (last accessed January 4, 2024).

In later years, Swedish migration policy has been criticized for sending "mixed messages" to asylum seekers. The critique refers to the state, on the one hand emphasizing that "no means no" and allocating resources to increase the number of returns, and on the other hand allowing for asylum seekers to "change track" from asylum to work permits, for practical impediments to enforcement of return decisions (such as the receiving state not issuing travel documents) to generate temporary residence permits (thus prolonging the stay in Sweden), and for return decisions not to be enforced before the limitation period is over, allowing for a new application to be submitted and the process to start anew, to mention just a few examples.[163] The point made by critics is that this creates uncertainty as well as false hopes, and may lead to the system not functioning the way it is intended, thus losing legitimacy, as well as unnecessary suffering among failed asylum seekers and other migrants. While the present Government and its support party strongly emphasize the "no means no-approach", examples including proposals on abolishing both the "track change-option" and limitation times[164], there is a danger that a single-minded focus on restrictive measures might increase the risk for fundamental rights such as protection from persecution and the right to family life to be overridden.

Recommendation 5: The Government should ensure that, while seeking to fulfil the goal "no needs to mean no, " fundamental rights are safeguarded and that return-related legislation includes safety-valve clauses.

F. Compliance of many of the proposed reforms in the 2022 Tidö Agreement with the fundamental human rights of migrants

The 2022 Tidö Agreement between the Conservative/Liberal Government and its populist right-wing support party, the Sweden Democrats, contains a considerable amount of proposals for reforms of Swedish migration policy. The reforms, including those on the matter of return, have a common denominator – the aim to make Swedish migration policy more restrictive and to make Sweden less attractive to asylum seekers and other categories of migrants – migration policy as a deterrence measure. Return-related proposals include (but are not limited to) abolishing or considerably prolonging limitation periods for the validity of return decisions, prolonging the validity of an entry ban, increasing focus on finding people staying irregularly in Sweden and providing the Police Authority with an increased mandate to do so, increase the number of places in detention centres, discharging the possibility for people having been granted asylum to be granted a permanent residence permit, increased focus on the cessation of residence permits, severely increase the number of people opting for "voluntary repatriation", use development aid as a tool to increase returns and counteract irregular migration and deny people staying irregularly in Sweden any access to financial support from municipalities. The human rights perspective and the perspective of the migrant are all but absent from the reform agenda, which, among many other concerns, raises doubt as to the proposal's compatibility with Sweden's human rights obligations and the Swedish Constitution. A majority of the proposals are now being analyzed by government inquiries or

[163] This was one of the points raised by the expert panel in the GAPs Work Package 2 roundtable on Swedish return policy, held 20 December 2023.
[164] Dir. 2023:126, Tilläggsdirektiv till utredningen om stärkt återvändandeverksamhet (Ju 2022:12).

prepared by the Ministry of Justice, and the aim is for as many as possible to be implemented before the September 2026 general elections.

Recommendation 6: We urge the Government to keep in mind that even a restrictive migration policy must take into account and respect the fundamental human rights also of irregular migrants present on the territory and that Sweden's binding legal obligations in the field of human rights and refugee law are minimum standards that must be adhered to. We also urge the Government to consider the proportionality of the reforms outlined in the Tidö Agreement and their effects on the integration of migrants into Swedish society.

G. Internal immigration control and the risk of racial profiling

One of the measures suggested in the Tidö Agreement in the context of return is an increased focus on identifying and finding people staying irregularly in Sweden. One of the measures suggested to achieve this goal is an extended mandate for the Police Authority regarding internal immigration control. Historically, an increased focus on random identity checks, for example, on public transport (the REVA project of the early 2010s), has raised questions about racial profiling and targeting of individuals of a particular category. While such profiling is prohibited, concerns may be raised as to whether such practices may resurface in light of the pressure put on the Police Authority to intensify the identification of irregular migrants in Sweden.

Recommendation 7: For the Police Authority to make it a top priority racial profiling does not take place when conducting internal immigration control, and for the Government, when extending the Police Authority's mandate in this respect, to be explicit that racial profiling must be avoided at all costs.

H. Sudden changes in conditions for residence permits

Recently, several of the grounds on which a person may be eligible for a residence permit have been questioned, and some have also changed. Many of these changes have entered into force without there being any provisional regulations, meaning that conditions may change from one day to another and that a person during, for example, the asylum process or the process of prolonging a residence permit based on employment, no longer is eligible for said permit. One example is the humanitarian ground "particularly distressing circumstances" in the Aliens Act Chapter 5, Section 6, subsection 2, which was abolished and ceased to apply on 1 December 2023. The remaining humanitarian ground, "severely distressing circumstances", raises the bar. Fewer individuals will likely be able to be granted a residence permit on this basis.

A second example is the minimum salary required for a person to be granted a work-based residence permit in Sweden, which, as of 1 November 2023, was increased from 13,000 SEK to 27,360 SEK. The new rules do not apply to individuals who already have a permit but will affect them once their work permit needs prolongation. It also applies to individuals who had submitted their applications but had yet to receive a decision when the change entered into force. The substantial raise in the minimum wage is intended to ensure that aliens working in Sweden may support themselves, but it has been criticized for being unnecessarily high, thus risking that people working in, for example, the service section will not be able to meet these

conditions when their current permit expires and end up either returning to their countries of origin, leaving Swedish businesses, the health care section and other sectors without the necessary workforce, or remaining in Sweden as irregular migrants. The lack of provisional measures sharpens the blow.

Recommendation 8: Provisional measures must be included when introducing stricter measures limiting the possibility of being granted a residence permit. Moreover, the proportionality and long-term effects of the proposed measures must be properly evaluated. Restrictive rules cannot be a means in itself.

9.4. Institutional gaps

I. The lack of updated, easily accessible statistical data on returns

One of the main obstacles when drafting this report was collecting reliable data on the number of enforced return decisions, voluntary returns and forced returns. While the Migration Agency is the government authority responsible for data collection on migration-related matters, including return, data is not easily accessible or presented in a systematic and disaggregated way, making external evaluation of return policies and practices complicated, contributing to unclarities to prevail and the dissemination of disinformation.

Recommendation 7: The Government should instruct the Migration Agency to present accurate, updated, disaggregated, and easily accessible statistical data on return on its website.

J. Implementing the legal framework in practice

The legal framework for return, of which we have tried to provide an overview in this report, in theory, is relatively well-functioning: there are procedural guarantees, the right to appeal both a denial of a residence permit (and the return decision accompanying it) and detention decisions, general clauses are emphasizing the principle of proportionality (cf. the Aliens Act Chapter 1, Section 8) and the child rights perspective to mention a few examples. At the same time, there have over the years been numerous accounts and reports of people being held in immigration detention on a long-term basis without clear legal grounds, on the difficult situation in many detention centres, not least for young people, on attempts to execute return decisions to countries to which the person to be returned has very weak, if any, ties, and on the child-rights perspective often having to step back in favour of upholding a restrictive migration policy. This is a cause for concern, perhaps even more so in the current climate in Swedish migration policy and the paradigm shift towards a more restrictive position.

Recommendation 9: Echoing previous recommendations on legal certainty, respect for fundamental human rights, and proportionality, we call upon those tasked with implementing the legislation, irrespective of its restrictiveness, to safeguard respect for human rights, human dignity, and to refrain from equating irregularity with illegality.

10 Appendices

Table 3: Conventions within the framework of the Council of Europe that Sweden has ratified [165]

Name of the treaty	Time of signing	Time of ratification
Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005)	28/11/1950	04/02/1952
Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 009)	20/03/1952	22/06/1953
European Social Charter (ETS No. 035)	18/10/1961	17/12/1962
Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (ETS No. 046)	16/09/1963	13/06/1964
Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty (ETS No. 114)	28/04/1983	09/02/1984
Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 117)	22/11/1984	08/11/1985
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126)	26/11/1987	21/06/1988
Additional Protocol to the European Social Charter (ETS No. 128)	05/05/1988	05/05/1989
Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158)	09/11/1995	01/07/1998
European Social Charter (revised) (ETS No. 163)	03/05/1996	29/05/1998
Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 177)	04/11/2000	01/04/2005

[165] Please see for more information the Council of Europe's website https://shorturl.at/aceqE

Source: Council of Europe

Table 4. Ratification Status for Sweden of International Human Rights Treaties and Refugee Law Instruments[166]

Treaty Names	Treaty Name Abbreviation	Signature date	Ratification date, Accession (a), Succession (b) date
Convention Relating to the Status of Refugees		28 July 1951	26 October 1954
Protocol Relating to the Status of Refugees			4 October 1967
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	CAT	4 February 1985	8 January 1986
Optional Protocol of the Convention against Torture	CAT-OP	26 June 2003	14 September 2005
International Covenant on Civil and Political Rights	CCPR	29 September 1967	6 December 1971
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty	CCPR-OP2-DP	13 February 1990	11 May 1990
Convention for the Protection of All Persons from Enforced Disappearance	CED	6 February 2007	
Convention on the Elimination of All Forms of Discrimination against Women	CEDAW	7 March 1980	2 July 1980
International Convention on the Elimination of All Forms of Racial Discrimination	CERD	5 May 1966	6 December 1971
International Covenant on Economic, Social and Cultural Rights	CESCR	29 September 1967	6 December 1971

[166] For more information see the United Nations, United Nations Treaty Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=168&Lang=EN (accessed 18 March 2024).

Convention on the Rights of the Child	CRC	26 January 1990	29 June 1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	CRC-OP-AC	8 June 2000	20 February 2003
Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography	CRC-OP-SC	8 September 2000	19 January 2007
Convention on the Rights of Persons with Disabilities	CRPD	30 March 2007	15 December 2008

Source: UN Treaty body database

Table 5. Acceptance of Individual Complaints Procedures for Sweden[167]

Treaty Names	Treaty Name Abbreviation	Acceptance of Individual Complaints procedures	Date of Acceptance/ non-acceptance
Optional Protocol to the International Covenant on Civil and Political Rights	CCPR-OP1	Yes	06 Dec 1971
Individual complaints procedure under the International Convention on the Elimination of All Forms of Racial Discrimination	CERD, Art.14	Yes	06 Dec 1971
Individual complaints procedure under the Convention against Torture	CAT, Art.22	Yes	08 Jan 1986
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	CEDAW-OP	Yes	24 Apr 2003
Optional protocol to the Convention on the Rights of Persons with Disabilities	CRPD-OP	Yes	15 Dec 2008

Source: UN Treaty Body Database

[167] Ibid.

Table 6: EU and Bilateral Readmission Agreements

Countries	EU and Bilateral readmission agreements	Entered into force	"EU source/Swedish Official Gazette."	**Link**
Albania	EU	2006-05-01	2005/371/EG EUT L 124/22	På engelska
Armenia	EU	2014-01-01	2013/629/EU EUT L 289/13	På engelska
Azerbaijan	EU	2014-09-01	2014/239/EU EUT L 128/17	På engelska
Belarus	EU	2020-07-01	2020/751/EU EUT L 181/3	På engelska
Bosnia	EU	2008-01-01	2007/820/EG EUT L 334/66	På engelska
Georgia	EU	2011-03-01	2011/118/EU EUT L 52/47	På engelska
Hong Kong	EU	2004-06-01	2004/80/EG EUT L 17/25	På engelska
Cape Verde	EU	2014-12-01	2013/522/EU EUT L 282/15	På engelska
Macao	EU	2004-06-01	2004/424/EG EUT L 143/99	På engelska
Macedonia	EU	2008-01-01	2007/817/EG EUT L 334/7	På engelska
Moldavia	EU	2008-01-01	2007/826/EG EUT L 334/149	På engelska
Montenegro	EU	2008-01-01	2007/818/EG EUT L 334/26	På engelska
Pakistan	EU	2010-10-07	2010/649/EU EUT L 287/52	På engelska
Russia	EU	2007-06-01	2007/341/EG EUT L 129/40	På engelska
Serbia	EU	2008-01-01	2007/819/EG EUT L 334/46	På engelska
Sri Lanka	EU	2005-05-01	2005/372/EG EUT L 124/43	På engelska
Turkey	EU	2014-05-07	2014/252/EU EUT L 134/3	På engelska
Ukraine	EU	2008-01-01	2007/849/EG EUT L 332/48	På engelska
Iraq	Bilateral	2008-02-18	SÖ 2008:10	
Bulgaria	Bilateral	2005-08-01	SÖ 1999:6	
Cyprus	Bilateral	2006-02-17	SÖ 2006:26	
Estonia	Bilateral	1997-05-02	SÖ 1997:27	
France	Bilateral	1991-06-29	SÖ 1991:16	
Kosovo	Bilateral	2012-01-01	SÖ 2012:3	
Croatia	Bilateral	2003-04-06	SÖ 2003:6	
Latvia	Bilateral	1997-05-01	SÖ 1997:10	
Lithuania	Bilateral	1997-05-24	SÖ 1997:1	
Poland	Bilateral	1999-04-09	SÖ 1999:2	

Romania	Bilateral	2002-02-10	SÖ 2002:5	
Switzerland	Bilateral	2003-01-09	SÖ 2003:48	
Slovakia	Bilateral	2005-04-05	SÖ 2005:2	
Germany	Bilateral	1954-06-01	SÖ 1954:80	
Vietnam	Bilateral	2008-12-31	SÖ 2008:36	

Source: The Migration Agency

Table 7: Legislative Framework of Return Regime in Sweden

The Title of the Policy/Legislation in English	The Title in the Original Language	Policy Type/Area	Date/Announced Year	Level of Legislation	Type of Legislation or Administrative Action	Department or Agencies or National Law Enforcement mentioned in the Policy/Legislation (Optional)
The Aliens Act (SFS 2005:716)	**Utlänningslag (SFS 2005:716)**	assisted return, border management, forced return, general/asylum, pre-removal detention, other	2005 (entry into force 2006)	National	Act	Migration Agency, Migration Courts, Migration Court of Appeal, Police Authority
The Aliens Ordinance (SFS 2006:97)	**Utlännings förordning (SFS 2006:97)**	general/asylum, forced return, border management	2006	National	Decree	Migration Agency, Migration Courts, Migration Court of Appeal

Act (2022:700) on special control of certain foreigners	**Lag (2022:700) om särskild kontroll av vissa utlänningar**	other, pre-removal detention	2022	National	Act	Security Police, Migration Agency, Migration Court of Appeal, the Government
The Act on residence permits for students at upper secondary level (2017:353)	**Lag (2017:353) om uppehållstillstånd för studerande på gymnasial nivå**	general/asylum, other	2017	National	Act	Migration Agency, Migration Courts, Migration Court of Appeal
the Administrative Procedure Act (2017:900).	**Förvaltningslag (2017:900)**	general/asylum, other, forced return, assisted return	2017	National	Act	Migration Courts, Migration Courts of Appeal
The temporary Act (2016:752) on temporary restrictions on the possibility of obtaining residence permits in Sweden."	**den tillfälliga lagen (Lag (2016:752) om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige**	general/asylum, assisted return, forced return, other, irregularity, pre-removal detention	2016-2021 July	National	Act	Migration Agency, Migration Courts, Migration Court of Appeal
The Unaccompanied Minors Guardian Act (2005:429)	**Lag (2005:429) om god man för ensamkommande barn**	general/asylum	2005	National	Act	Migration Agency, Migration Courts, Migration

						Court of Appeal
Reception of Asylum Seekers Act (LMA) (1994:137)	**Lag (1994:137) om mottagande av asylsökande m.fl. (LMA)**	general/asylum, other	1994	National	Act	Migration Agency
Ordinance on Reception of Asylum Seekers and others (1994:361)	**Förordning (1994:361) om mottagande av asylsökande m.fl.**	general/asylum, pre-removal detention, other	1994	National	Decree	Migration Agency
Act on health care for asylum seekers and others. (2008:344)	**Lag (2008:344) om hälso- och sjukvård åt asylsökande m.fl.**	general/asylum, pre-removal detention, forced return	2008	National	Act	Migration Agency
Ordinance on health care for asylum seekers etc. (2008:347)	**Förordning (2008:347) om hälso- och sjukvård åt asylsökande m.fl.**	general/asylum, other	2008	National	Decree	Migration Agency
Ordinance on state compensation for healthcare for asylum seekers. (1996:1357)	**Förordning (1996:1357) om statlig ersättning för hälso- och sjukvård till asylsökande**	general/asylum	1997	National	Decree	Migration Agency
Ordinance on re-establishment support for certain	**Förordning (2008:778) om återetableringsstöd för vissa utlänningar**	assisted return, other	2008	National	Decree	Migration Agency

foreigners (2008:778)						
Act (2021:1187) with supplementary provisions to the EU's regulations on the Schengen Information System.	**Lag (2021:1187) med kompletterande bestämmelser till EU:s förordningar om Schengens informationssystem**	other	2021 (entry into force 2023)		Act	Migration Agency
The Detention Act (2010:611)	**Häkteslag (2010:611)**	forced return, irregularity, assisted return	2010	National	Act	Police Authority
the Act of judicial procedure (RB 1942:740)	**Rättegångsbalk (1942:740)**	forced return	1942	National	Act	Migration Courts, Migration Courts of Appeal
Act (2018:1693) on the police's processing of personal data within the scope of the Criminal Data Act	**Lag (2018:1693) om polisens behandling av personuppgifter inom brottsdatalagens område**	forced return	2018	National	Act	Police Authority

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About the Authors

Rebecca Thorburn Stern is Professor of Public International Law at Uppsala University, Sweden.

Mudar Shakra is a Doctoral Candidate in Psychology of Religion, Department of Theology, Social Sciences of Religion and Practical Theology, Uppsala University.

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GAPS

Decentring the Study of Migrant Returns and Return Policies

Legal and Policy Infrastructures of Returns in Poland

Country Dossier (WP2)

Authors:

Anna Trylińska, Tomasz Sieniow, Marta Pachocka, Mateusz Krępa, Dominik Wach

Centre of Migration Research, University of Warsaw

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List of Abbreviations

AMIF	Asylum, Migration and Integration Fund
AVR	assisted voluntary return
CJEU	Court of Justice of the European Union
CROs	collecting return operations
Dz.U.	Journal of Laws of the Republic of Poland (in Polish: *Dziennik Ustaw Rzeczypospolitej Polskiej*)
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
Frontex	European Border and Coast Guard Agency
IOM	International Organisation for Migration
ISF	Internal Security Fund
JROs	joint return operations
MENA	Middle East and North Africa
NGOs	non-governmental organisations
SIENA	Secure Information Exchange Network Application
SIRENE	Supplementary Information Request at the National Entries
SIS	Schengen Information System
TEU	Treaty on European Union
UAMs	unaccompanied minors
UN	United Nations
UNHCR	Office of the United Nations High Commissioner for Refugees

Summary

In this report on Poland's return policy, developed under Horizon Europe GAPs project, we analysed the legal, institutional, and infrastructure framework of the country's return procedures for foreigners covering the years 2015-2023 (in some cases also early 2024). We also included selected statistics regarding the scope of this report. The report discusses the relationship of EU law to Polish law, Poland's compliance with EU law and the implementation of judgments of European tribunals. Included also is a reference to cooperation between national institutions and organisations, as well as international cooperation. Based on the professional experience of the project team members, we were able to include their practical knowledge and expertise related to the provision of legal support and services to foreigners in Poland.

We identified important gaps regarding Poland's return policy, including among others:

- improper implementation of the EU Return Directive through, among others, not providing procedural safeguards and access to free legal assistance;
- establishing the Border Guard as the only body conducting return obligation proceedings, both in the first and second instances, shortening the period for filing an appeal, and abolishing the suspensive effect of filing a complaint to court;
- lack of qualified guardians in return proceedings concerning unaccompanied minors;
- carrying out pushbacks, which have intensified since 2021 in connection with the humanitarian crisis on the Polish-Belarusian border; despite numerous ECtHR judgments, pushbacks are carried out;
- automated use of detention, including the detention of children and the possibility of long-term detention;
- failure to ensure sufficient transparency in monitoring the implementation of return decisions.

The rights of foreigners have been drastically limited in Poland since 2021, along with the humanitarian crisis on the Polish-Belarusian border. Further, Poland has very effective enforcement of return decisions (77% for the period of 2022 and Q1-3 of 2023), according to data provided by Eurostat. In this context, we identified multiple gaps that may lead to the exceptional performance of the Polish return policy.

We observed that the 2008 EU Return Directive was improperly being implemented, and that Poland is not honouring some of the Court of Justice of the European Union judgements. We also reported on pushbacks as illegal practices at the Polish land borders.

As Poland effectively enforces return decisions, migrants' rights should be protected. Moreover, the humanitarian crisis has had a significant impact on the relations between the Border Guard and civil society organisations working for foreigners, as well as on the inhabitants of border regions and Polish society. Gaps in the legal framework are also linked with improper implementation of the EU Return Directive. Foreigners have limited access to legal remedies, including appeals. Foreigners against whom return proceedings have been initiated are not entitled to free legal assistance. They may seek help from NGOs providing free assistance to foreigners, which depends on funding, but it is not certain whether their

case can be dealt with in a comprehensive manner (i.e., full representation before the authorities) due to the large number of people in need of help.

The reform of the Act on foreigners of 2023 has significantly changed return proceedings, accelerating the procedures and sharply limiting migrants' rights (shortening the deadline for filing an appeal against the decision to oblige them to return, abolishing the suspensive effect of a complaint filed with the court). The most important change, however, is the transfer of the return obligation proceedings entirely to the Border Guard. For the procedures started before April 7, 2023, the appeal body continues to be the Head of the Office for Foreigners. As is evident from our legal practice (some of the co-authors are law practitioners on a daily basis), the time of examining appeals against return decisions in Poland was (in cases started before April 2023) very long (even 2-3 years). We do not have data on the duration of current appeal procedures. The inspectors (migration officers) applied the provisions regarding, among others, integration into Polish society or the special interest of a foreigner. There are no statistics on appeal proceedings conducted under the new rules. The Border Guard, the body that currently deals comprehensively with return proceedings, is not effectively controlled by external stakeholders or courts, which raises doubts as to the correctness of the decision control in appeal proceedings.

There is no particular support for vulnerable persons regulated by Polish law. Foreigners who are in the return procedure (with the exception of those being released from detention and directed to stay in the Fundacja Dialog facility) have neither access to medical assistance, psychologists, and interpreters nor the right to work. There are also no accommodation facilities provided, except the detention centres. Unaccompanied minor foreigners against whom return obligation proceedings have been initiated are not always properly represented. In practice, finding curators is difficult because there is a lack of qualified personnel who understand return and asylum-related procedures. Poland does not seem to promote effective monitoring of the return operations of forced removal due to the lack of funding for the institutions who carry out these duties (NGOs) and too late informing them about the planned returns.

In 2021-2022, the number of people staying in detention centres increased significantly due to the humanitarian crisis on the Polish-Belarusian border. The former government of the right-wing parties' coalition led by the Law and Justice (in Polish: *Prawo i Sprawiedliwość*) established temporary detention centres where conditions were assessed by the Ombudsman (among others) and found to be not satisfying. Foreigners staying in overcrowded centres initiated numerous protests.

The policy of pushbacks on the border was put in effect almost 10 years ago. Since mid-2021, the number of foreigners trying to cross the Polish-Belarusian border (including irregular border crossings) has increased. The number of people trying to enter Poland (who were physically pushed by Belarusian border guards onto Polish territory) and later pushed back by the Polish border guards has increased. The Polish border guards refused to accept international protection requests from those people and pushed them back to the Belarusian side multiple times.

As a result of the 2023 parliamentary elections, a new government was formed by a coalition, which includes broad political forces from the Centre-Right to the Left and is acting in a reserved manner when it comes to the rapid changes of the policy on the Polish-

Belarusian border. The Prime Minister, Donald Tusk, repeatedly emphasised the need to 'protect the border'. Currently, the government is working on a new national migration strategy, as well as the issue of pushbacks. Maciej Duszczyk, the vice-minister of the Interior, announced the launching of search-and-rescue teams of the Border Guard; however, he stated that he has no plans to stop pushbacks for now.

Our report also formulates policy recommendations based on our desk research and the expertise of some of us as practitioners dealing with legal support for foreigners in Poland with the goal to respect human rights. First of all, we suggest introducing legal changes such as eliminating detention of children in return procedures, restoring the 14-day period for filing an appeal against the return decision and amending the Act on foreigners, under which it will not be possible to initiate return proceedings against a foreigner who has already submitted an application for a temporary residence permit and who has a family life in Poland. Secondly, we recommend enabling and providing funds for the Ombudsman to monitor the enforcement of the return decision as well as increasing the use of alternatives to detention in return procedures. Last but not least, our suggestions include increasing cooperation between the Border Guard and NGOs dealing with counteracting human trafficking, especially in the case of unaccompanied minors and establishing at least three open centres or allocating places in existing centres open to foreigners for people who have no place of residence and are waiting for a decision or return.

The GAPs Project

GAPs is a Horizon Europe project that aims to conduct a comprehensive multidisciplinary study of the drivers of return policies and the barriers to and enablers of international cooperation on return migration. The overall aim of the project is to examine the disconnects and discrepancies between expectations of return policies and their actual outcomes by decentring the dominant, one-sided understanding of "return policymaking." To this end, GAPs:

- examines the shortcomings of the EU's return governance,
- analyses enablers of and barriers to international cooperation, and
- explores the perspectives of migrants themselves to understand their knowledge, aspirations and experiences with return policies.

GAPs combines its approach with three innovative concepts:

- a focus on return migration infrastructures, which allows the project to analyse governance gaps;
- an analysis of return migration diplomacy to understand how relations between EU member states and with third countries hinder cooperation on return; and
- a trajectory approach, which uses a socio-spatial and temporal lens to understand migrant agency.

GAPs is a three-year interdisciplinary research project (2023–2026), coordinated by Uppsala University and the Bonn International Centre for Conflict Studies (BICC) with 17 partners in 12 countries on four continents. GAPs' fieldwork has been conducted in 12 countries: Sweden, Nigeria, Germany, Morocco, the Netherlands, Afghanistan, Poland, Georgia, Turkey, Tunisia, Greece and Iraq.

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1. Statistical Overview Regarding Returns and Readmissions at the National Level

The whole data table on return-related statistics, which mainly draws from the Eurostat database, is included in **Annex I**. Besides Eurostat statistics, quite rich statistical data on returns are available at the national level from sources published by or obtained from the Border Guard and the Office for Foreigners. The data on readmissions and returns are not disaggregated and are collected separately by the Border Guard and the Office for Foreigners. Some of the data are collected and published in a systematic and coherent way, but not all of them.

The Border Guard publishes quarterly statistics on the number of foreign citizens returned (literally in the report they are 'handed over')[1] based – as indicated by the Border Guard – on Readmission [agreements and clauses – authors], Dublin III Regulation[2], national administrative decisions obliging them to leave the territory of the Republic of Poland and other agreements, along with the details on the country of citizenship. Also, the data about pushbacks (officially called a 'return to the border line') were being published day-by-day by the Border Guard on social media (mostly Twitter[3]) and aggregated data were provided to one of the NGOs upon the procedure of obtaining access to public information[4]. The Office for Foreigners publishes yearly data on foreign citizens in relation to those who received decisions obliging them to leave the territory of Poland as well as decisions on refusal of entry, along with the details on the country of citizenship and gender. Also, the Office for Foreigners counts the number of people for whom it provided assisted voluntary return, but these data are not publicly accessible (they can be obtained upon the procedure of obtaining access to public information).

From 2015 until the outbreak of the Covid-19 pandemic, the number of irregular migrants found to be present in Poland was increasing – rising from 12,557 persons in 2015 to 26,625 in 2019. The year 2020 marked a reversal of the trend, and from then until 2022, the numbers dropped: from 9,823 to 7,166. Similarly, the number of foreigners ordered to leave was the highest in 2018 and 2019 (more than 29,000 annually), growing each year since 2015, in line with the figures on Dublin returns. During the time the state of Covid-19 epidemic emergency[5], these figures dropped from 12,003 persons in 2020 to 8,412 in 2022. Also, the biggest number of foreigners utilised voluntary return in 2017 and 2018 (yet, the numbers are rather small, 507

[1] Straż Graniczna, Statystyki SG, accessed March 29, 2024, https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html.

[2] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

[3] The X account of the Border Guard, https://twitter.com/Straz_Graniczna.

[4] Joanna Klimowicz. Nie 47 tys. wywózek ludzi do Białorusi, a ponad 50 tysięcy. Autopoprawka Straży Granicznej. Gazeta Wyborcza. Last modified January 1, 2024, https://bialystok.wyborcza.pl/bialystok/7,35241,29314977,nie-47-tys-wywozek- ludzi-do-bialorusi-a-ponad-50-tysiecy.html.

[5] The state of epidemic emergency has been officially called off on 1 July 2023 and it had various consequences on extension of legality of the stay of foreigners in Poland. See more: https://www.gov.pl/web/udsc-en/revocation-of-the-state-of-epidemic-emergency--consequences-for-the-legal-situation-of-foreigners, accessed March 26, 2024.

and 450, respectively). During the epidemic emergency, these figures dropped, reaching only 100 in 2022, then increasing to 183 in 2023.

The main nationality of third country nationals ordered to leave in the years 2015-2021 were Ukrainians. 2022 and 2023 marked a change in this matter, as at the first place were citizens of Georgia. Ukraine occupied the second place in 2022 and, interestingly, sixth in 2023 (as of 30 November) which can be explained by the Russian invasion on this country. However, the invasion did not cancel the returns thoroughly as there were still 435 Ukrainians returned in 2023. Other four main nationalities returned between 1 January and 30 November of 2023 were Belarusians, Moldovans, Russians and Turks. In 2022, the third place was occupied by citizens of Iraq and in 2021 the second which can be explained by the humanitarian crisis on the Polish-Belarusian border (ongoing since August 2021) within which Iraqis were considerable foreigners entering Poland irregularly (lack of exact data on this matter but some estimations are accessible[6]). In 2015-2017 among the five most numerous nationalities returned were Vietnamese who form a considerable community in Poland since the time of Poland-Vietnam cooperation under communist rule. In general, the first five places on this list are occupied by the citizens of Poland's eastern neighbours as well as Georgia and Moldova.

However, other statistics do not match these trends. For instance, the number of asylum applications was the highest in the beginning of the studied period (more than 12,000 applications per year in 2015 and 2016). Then, it started to drop and was less than 3,000 in 2020, mainly due to the pandemic restrictions. Since then, it increased to 9,993 in 2022. The number of foreigners refused entry on the border does not manifest any regularity: the highest figure was reached in 2016 (almost 104,00) while the lowest was in 2022 (28,272).

Interestingly, there is a steadily growing trend of Polish nationals readmitted to Poland. In 2015, it was only 17 persons, the number exceeded 100 in 2017, while it was 500 persons in 2020. The data from 2023 (collected until 30 November) indicate that as many as 683 Polish nationals were readmitted.

The statistics on Dublin returns show contradictory trends. While the number of Dublin returnees to Poland decreased considerably (from over 1,400 in 2016 and 2017 to less than 250 in the pandemic years 2020-2021), the number of foreigners returned from Poland increased. However, the figures of Dublin transfers from Poland are much smaller – not exceeding 100 per year (with the exception in 2021). The highest number of foreigners returned from Poland through Dublin procedures was noted in 2021 (120 persons), however also the years 2018, 2022 and 2023 were marked by the relatively high numbers – exceeding 80 per year. In turn, the lowest number was at the beginning of the research period: only 9 in 2016. Also, a decrease in the pandemic year of 2020 can be observed when compared to 2019 and 2021.

Some of the data is not accessible. As the Border Guard answered to the request for provision of the statistics, this institution is not collecting the specific data on return decisions issued upon negative asylum applications. The data on third country unaccompanied minors returned following an order to leave are accessible only concerning the years 2022 and 2023 – there was only one such case per year in this period.

[6] M. Krępa. Traktowanie osób migrujących na granicy polsko-białoruskiej jako przemoc systemowa. In K. Fiałkowska, K. Łukasiewicz (eds.). Raport z realizacji projektu „Wyjść z Cienia. Wsparcie pokrzywdzonych z nienawiści". Warsaw: Association for Legal Intervention. 2022, pp. 63–72.

The detailed data are presented in the charts below.

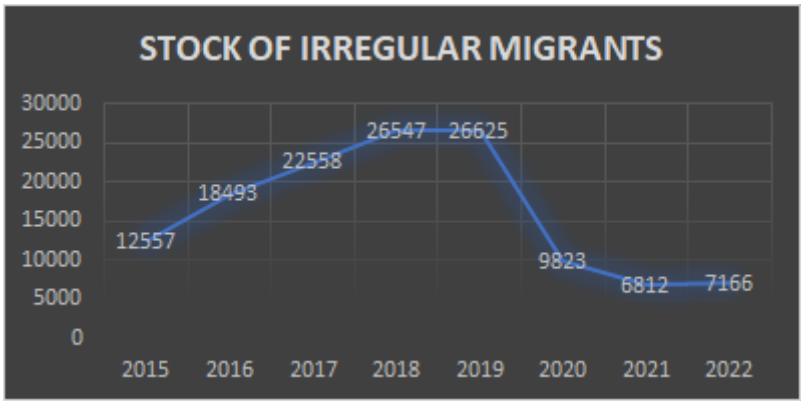

Figure 1: Stock of irregular migrants

Source: The Border Guard, Statystyki SG, https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html, accessed March 19, 2024.

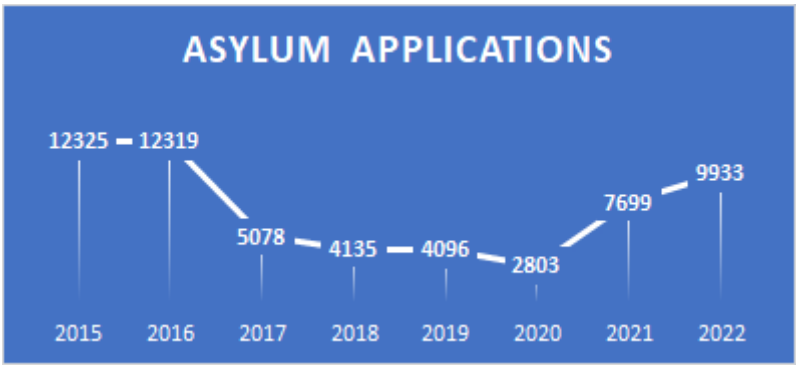

Figure 2: Asylum applications (for the purpose of comparison between the countries, this data concerns number of applicants, as in Poland several persons can be included in one application if they are family)

Source: The Office for Foreigners, Zestawienia roczne, https://www.gov.pl/web/udsc/zestawienia-roczne, accessed 19 March 2024.

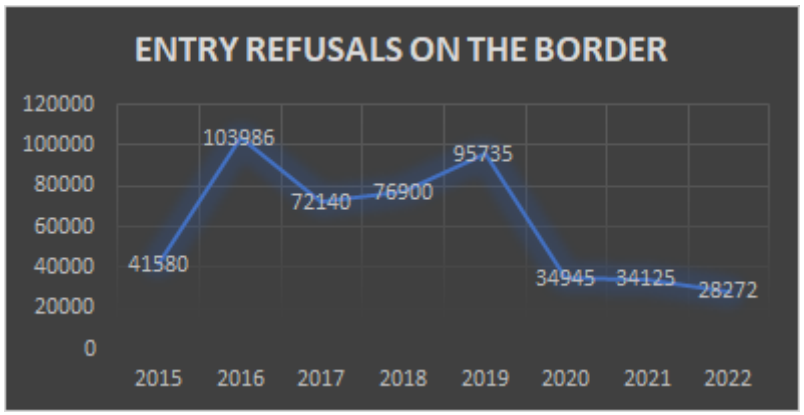

Figure 3: Entry refusals on the border

Source: The Office for Foreigners, Zestawienia roczne, https://www.gov.pl/web/udsc/zestawienia-roczne, accessed 19 March 2024.

Figure 4: Dublin returns from Poland

Source: The Office for Foreigners, Raporty miesięczne, https://www.gov.pl/web/udsc/miesieczny-raport-z-dzialalnosci-urzedu, accessed 19 March 2024.

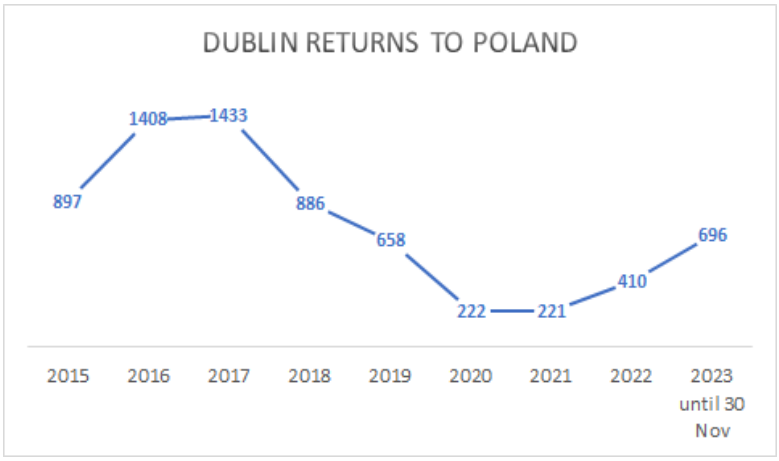

Figure 5: Dublin returns to Poland

Source: The Office for Foreigners, Raporty miesięczne, https://www.gov.pl/web/udsc/miesieczny-raport-z-dzialalnosci-urzedu, accessed 19 March 2024.

Figure 6: Orders to leave

Source: The Office for Foreigners, Zestawienia roczne, https://www.gov.pl/web/udsc/zestawienia-roczne, accessed 19 March 2024.

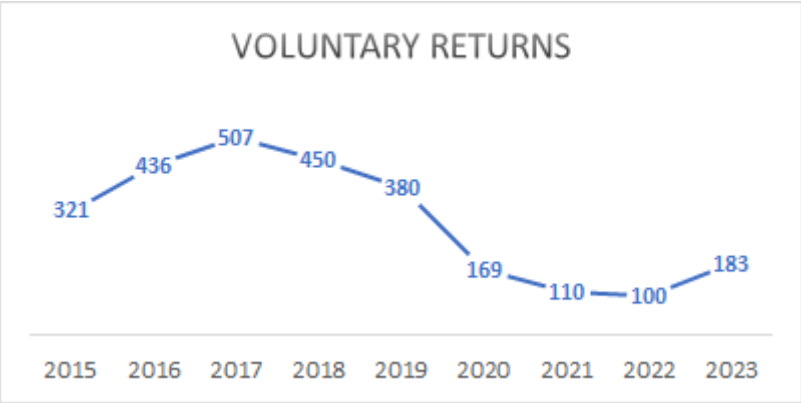

Figure 7: Voluntary returns

Source: The Border Guard (statistics obtained upon request).

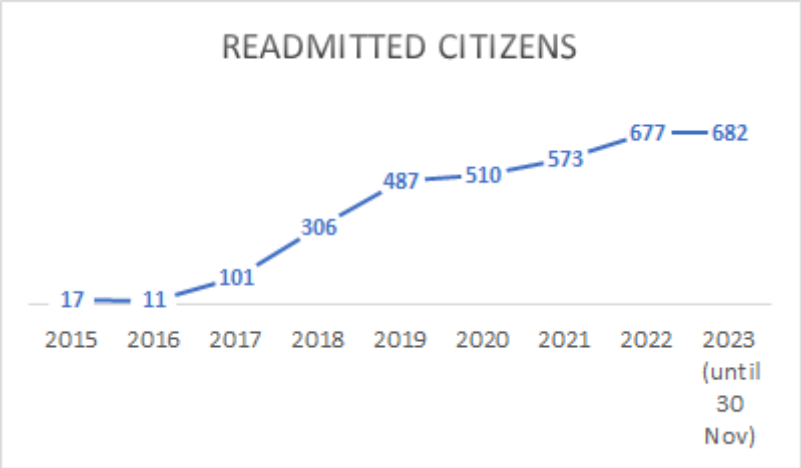

Figure 8: Readmitted Polish citizens

Source: The Border Guard (statistics obtained upon request).

2. The Political Context

From 2012 to the present, the Polish authorities have been trying to design and adopt a government policy on migration. In 2012, the document 'Polish Migration Policy: Current State of Play and Proposed Actions' was adopted by the Council of Ministers. In 2016, this document was invalidated. Since then, numerous documents, project outlines, and projects regarding migration policy have been developed, including a draft resolution of the Council of Ministers on the adoption of the document 'Poland's Migration Policy – Directions of Action 2021-2022', which was withdrawn in the fourth quarter of 2022[7]. The attempts to adopt a comprehensive migration strategy/policy failed officially due to 'the fact of rapid changes taking place in Poland's environment, affecting the characteristics of migration movements' such as the actions of the Belarusian authorities and the war in Ukraine[8]. The main reasons for the failure were the lack of defined goals and assumptions of migration policy and the differences between the declarations and the actions taken to implement them. The topic of the national migration strategy is back after the recent parliamentary elections (October 2023). The current government has started working on a new migration policy for 2025-2030[9].

The Return Directive was implemented into Polish law only in 2013 with the introduction of the new Act on foreigners[10]. The year 2015 was important for Polish migration policy due to the national parliamentary elections and the migration-management crisis in Europe. The elected right-wing, national conservative party Law and Justice (in Polish: *Prawo i Sprawidliwość*) took a negative attitude towards accepting asylum seekers under the EU temporary relocation scheme planned for 2015-2017. Between 2015 and 2023, numerous reforms in the field of return policy were introduced. The tightening of return regulations occurred mainly in 2021-2023, directly related to the humanitarian crisis on the Polish-Belarusian border that started in mid-2021[11]. The changes introduced were aimed mainly by allowing pushbacks, enforcing return decision more quickly, and restricting access to international protection[12]. The Polish authorities evacuated also Afghan collaborators of the Polish military contingent and Polish diplomacy. Out of 1,718 Afghan applicants for international protection in 2021 about 1,100 were evacuated from Afghanistan by Polish

[7] S. Łodziński and M. Szonert. Polityka migracyjna "bez polityki". Antynomie tworzenia polityki migracyjnej w Polsce w okresie 2016-2022, CMR Working Papers No 130 (188). 2023.

[8] Kancelaria Prezesa Rady Ministrów, Draft resolution of the Council of Ministers on the adoption of the document "Migration policy of Poland—directions of action 2021-2022". Accessed January 8, 2024. https://www.gov.pl/web/premier/projekt-uchwaly-rady-ministrow-w-sprawie-przyjecia-dokumentu-polityka-migracyjna-polski-kierunki-dzialan-2021-2023.

[9] Ministry of the Interior and Administration, Harmonogram prac nad stworzeniem kompleksowej, odpowiedzialnej i bezpiecznej strategii migracyjnej Polski na lata 2025-2030. Accessed March 4, 2024. https://www.gov.pl/web/mswia/harmonogram-prac-nad-stworzeniem-kompleksowej-odpowiedzialnej-i-bezpiecznej-strategii-migracyjnej-polski-na-lata-2025-2030.

[10] Act of December 12, 2013, on foreigners, Dz. U. 2013 item 1650.

[11] In fact, the Border Guard data confirm that Belarus has suspended the readmission cooperation with Poland in October 2020, dismantling the existing on Belarussian side of the border post-Soviet "sistiema". The Rule of Law Institute study shows that before the winter season in October-November 2020 the initial small groups of migrants were apprehended on this border and Belarus has not agreed to accept them back under readmission agreement. T. Sieniow, Migrants have the right to have rights – dostęp do ochrony międzynarodowej, Raport FIPP 1/2022, Lublin 2022, p. 10. Accessed January 26, 2024. https://panstwoprawa.org/wp-content/uploads/2023/01/Dostęp-do-ochrony-międzynarodowej.pdf

[12], G. Baranowska, Pushbacks in Poland: Grounding the Practice in Domestic Law in 2021, XLI Polish Yearbook Of International Law 2021. Accessed January 26, 2024. https://journals.pan.pl/dlibra/publication/ 142346/edition/125552/content.

authorities and received a special treatment with the fast-track asylum procedures[13]. The remaining part came irregularly mostly via Belarus and were detained. The double standards in receiving asylum seekers became more evident after 24 February 2022, when the Polish authorities facilitated access to Polish territory to virtually everyone trying to flee Ukraine. Poland accepted about 30% of all Ukrainian forced migrants[14]. The government introduced temporary protection for the newcomers[15] and other temporary solutions for Ukrainians who were already living in Poland.

[13] The Office for Foreigners. Informacja dot. afgańskich współpracowników i ich rodzin ewakuowanych z Kabulu. Accessed February 8, 2024. https://www.gov.pl/web/udsc /informacja-dot-afganskich-wspolpracownikow-i-ich-rodzin-ewakuowanych-z-kabulu.

[14] Council of the European Union. Infographic - Refugees from Ukraine in the EU. Last updated January 22, 2024. Accessed January 26, 2024. https://www.consilium.europa.eu/pl/infographics/ ukraine-refugees-eu/.

[15] European Union applied the temporary protection mechanism for the first time (March 2022). Currently, EU has extended the temporary protection of Ukrainian citizens to March 2025. See more: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en. Accessed January 26, 2024. However special law on the aid to the citizens of Ukraine has been amended by Polish Sejm on February 9, 2024, to provide for preferential treatment of Ukrainian citizens fleeing Ukraine after February 24, 2022, only until June 30, 2024. (ustawa z dnia 9 lutego 2024 r. o zmianie ustawy o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa, ustawy o podatku dochodowym od osób fizycznych oraz ustawy o podatku dochodowym od osób prawnych). By June 2024 polish government will have to decide what will be the social status of beneficiaries of temporary protection in Poland.

3. Relationship Between National Law/EU Law/Public International Law

Taking into account the turbulence over the general position of EU law in the Polish legal system, it should be said that since 1 May 2004 (accession to the European Union), EU law has taken precedence over national law. EU legal regulations are applied directly (including the Eurodac Regulation[16] and the Dublin III Regulation[17]), and the directives are transposed into national law (mainly into the Act on foreigners[18] or Act on granting protection to foreigners within the territory of the Republic of Poland[19]).

The unique status of the EU law in Polish legal order is decided by the provisions of the 1997 Polish Constitution[20]. Article 91 of the Constitution stipulates that a ratified international agreement after promulgation thereof in the *Journal of Laws of the Republic of Poland* (in Polish: *Dziennik Ustaw Rzeczypospolitej Polskiej, Dz.U.*), shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute. Moreover, an international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes. To facilitate Poland's membership in the EU, art. 91.3. of the Constitution provides that the laws established by an international organisation (if the agreement establishing this organisation has been ratified by Poland) shall be applied directly and have precedence in the event of a conflict of laws. This specific character of secondary EU law differs from other international law instruments, which require transposition into the Polish legal system in the form of ratification (see the discussion below).

Until 2015, the relationship between national and EU law had been (as it is the case in many other EU Member States) a matter of a delicate dialogue between the Court of Justice of the European Union (CJEU) and the Polish Constitutional Tribunal. In the past the Constitutional Tribunal engaged largely in a union-friendly interpretation[21] of the Polish

[16] Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast).

[17] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

[18] Directives relating to the matter of return and readmission are transposed into the Act on foreigners, i.a., Directive 2008/115/EC of 16 December 2008 on common standards and procedures applicable by Member States in the return of illegally staying third-country national, Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions expelling third-country nationals, Council Directive 2003/110/EU of 25 November 2003 on assistance in cases of transit for the purposes of deportation by air.

[19] Act of June 13, 2003 on granting protection to foreigners in the territory of the Republic of Poland, Dz.U. 2003 nr 128 item 1176.

[20] Constitution of the Republic of Poland of April 2, 1997, Dz.U. 1997 nr 78 item 483.

[21] Comprehensive analysis of the shift from union-friendly to a hostile interpretation is included in the European Parliament's LIBE Committee study, The Primacy of EU Law and the Polish Constitutional Law Judgment. December 2022. Available at

Constitution, ensuring the general application and validity of EU law. The non-confrontational approach ended after the Law and Justice government attempted to introduce controversial reforms of the Polish judiciary[22]. Moreover, the ruling party in the end of 2015 violated the Polish Constitution[23] by appointing new jurists in the place of those already selected by the previous parliament (but not appointed by the President). Since the end of 2015, the majority of the members of the Constitutional Tribunal were considered to be politically declared supporters of the Law and Justice party. The Polish Constitutional Tribunal since then constantly questioned well-established principles of EU law. And this institution became an internal organ to certify compliance with the constitution of governmental actions questionable from an EU law point of view. The illegality of these actions was so evident that the European Court of Human Rights (ECtHR) declared that this composition of the Constitutional Tribunal violated the right to a fair trial and to a tribunal established by law (art. 6.1. ECHR)[24].

As a consequence, the Polish Constitutional Tribunal controversially held some provisions of the Treaty on European Union (TEU)[25] and art. 6 (1) ECHR[26] as incompatible with the Polish Constitution. In its judgement of 10 March 2022 (K 7/21,), the Constitutional Tribunal found the provision of the European Convention on Human Rights (ECHR) guaranteeing everyone the right to a fair and public hearing within a reasonable time by an independent and impartial court established by law to be contrary to the Constitution of the Republic of Poland (art. 6(1) ECHR – Law to a fair trial). It ruled that 'Article 6(1), first sentence, of the Convention for the

https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734568/IPOL_STU(2022)734568_EN.pdf.

[22] These reforms have raised serious doubts about their conformity with the EU law, which has been underlined by the CJEU on multiple occasions: Case C-619/18, *Commission v Poland* (Independence of the Supreme Court), 24 June 2019, EU:C:2019:531; Case C-192/18, *Commission v Poland* (Independence of Ordinary Courts), 5 November 2019, EU:C:2019:924; Case C-791/19, *Commission v Poland*, 15 July 2021, EU:C:2021:596. Joined Cases C-585/18, C-624/18;C-625/18, A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court),19 November 2019, EU:C:2019:982; Case C-824/18, A.B. and Others (Appointment of Judges to the Supreme Court – Actions), 2 March 2021, EU:C:2021:153.

[23] Constitutional Tribunal Judgment of 3 December 2015, K 34/15.

[24] The ECtHR, in its judgement of 7 May 2021, in the case of *Xero Flor w Polsce sp. z o.o. v. Poland* (application no. 4907/18) saw 'no reason to disagree with the Constitutional Court's findings that there had been irregularities amounting to manifest breaches of domestic law in the appointment of those judges'. It found that the actions of the legislature and executive, in particular 'the authorities' failure to abide by the relevant Constitutional Court judgments, was linked to their challenging—with a view to usurping—the Constitutional Court's role as the ultimate interpreter of the Constitution and the constitutionality of the law'. It thus considered that the applicant company had been denied its right to a 'tribunal established by law' owing to the irregularities in the appointment of Judge M.M. specifically.

[25] On 7 October 2021, the Constitutional Tribunal ruled that some provisions of the Treaty of the European Union (TEU) are unconstitutional (Judgement K 3/21). The CT found that an understanding of art. 1 read in conjunction with art. 4 (3) TEU, which required or authorised Polish adjudicative bodies to issue decisions that disregarded the Polish Constitution or to apply laws that contravened the Polish Constitution, to be in breach of Arts. 2, 7, 8 (1) in conjunction with 8 (2), 90 (1) and 91 (2), as well as 178 (1) of the Polish Constitution. Second, the CT interpreted art. 19 (1), second paragraph, read in conjunction with art. 4 (3) TEU requiring or authorising Polish adjudicative bodies to apply laws which were previously declared unconstitutional by the Constitutional Tribunal to be in breach of Arts. 2, 7, 8 (1) in conjunction with 8 (2) and 91 (2), 90 (1), 178 (1) as well as 190 (1) of the Polish Constitution. Third, the CT considered art. 19 (1), second paragraph, read in conjunction with art. 2 TEU, allowing Polish courts to review the independence of judges appointed directly by the President of the Republic or by request of the National Council of the Judiciary, to be incompatible with Arts. 8 (1) in conjunction with 8 (2), 90 (1), 91 (2), 144 (3) 17 as well as 186 (1) of the Polish Constitution.

[26] The case K7/21, accessed March 6. 2024, https://trybunal.gov.pl/s/k-7-21.

Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on 4 November 1950, subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2 (Journal of Laws of 1993, No. 61, item 284, as amended) insofar as: (....) is incompatible with Article 188, paragraphs 1 and 2, and with Article 190, paragraph 1, of the Constitution'.

It is expected that after Law and Justice lost power in the 15 October 2023 elections that the influence of the politicians on the Constitutional Tribunal would diminish. The process of reinstating the rule of law in Poland after eight years of ignoring the judgements of the CJEU and ECtHR will be long and difficult. Any legislative or constitutional changes promised before the 2023 parliamentary elections by the new governmental coalition will require collaboration with the President, who is not willing to admit to committing a constitutional delict in the past.

Poland ratified acts of international law regarding human rights and refugee law in most of the second half of the 20th century. The Convention relating to the Status of Refugees (1951)[27] is directly applied in the process of granting international protection. The other most frequently used legal act is the Convention on the Rights of the Child[28]. Other international law documents (including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[29]) are often ignored when considering individual return or readmission cases. Poland generally implements judgments of international and European tribunals. Every year, the Plenipotentiary of the Minister of Foreign Affairs for proceedings before the European Court of Human Rights presents a report on the execution of judgments by Poland. At the time of preparation of the report, results for 2022 were not yet available. From 2011 to 2021, as few as 31 (2020) and as many as 357 (2014) judgments were executed annually. Since 2014, there has been a significant downward trend in the execution of judgments—in 2021, 35 judgments were executed. Currently, 97 cases are in the execution phase. The number of judgments against Poland also changed; for comparison, in 2011, 71 judgments were issued, and in 2012, as many as 72 judgments were issued. The least number of judgments was issued in 2019 – only 12. In 2021, 23 judgments were handed down[30]. Considering the number of judgments issued, their implementation and 'in implementation', Poland executes judgments with a delay. Implementing judgments regarding access to the international protection procedure is also delayed[31].

Poland joined the Council of Europe on 26 November 1991. The European Convention on the Protection of Human Rights and Fundamental Freedoms came into force on 19 January 1993, when Poland filed ratification documents to the Council of Europe.

Poland has signed and/or ratified the following UN human rights treaties:

- International Convention on the Elimination of All Forms of Racial Discrimination (signed: 1966, ratified: 1968), reservation art. 22;
- International Covenant on Civil and Political Rights (signed: 1967, ratified: 1977), no reservations;

[27] Dz.U. 1991, No. 119, items 515 and 517.
[28] Dz.U. 1991 No. 120 item 526.
[29] Dz.U. 1989 No. 63 item 378.
[30] Ministry of Foreign Affairs. Raporty rządu na temat wykonywania orzeczeń ETPC. Accessed January 8, 2024. https://www.gov.pl/web/dyplomacja/raporty-roczne-rzadu-na-temat-wykonywania-orzeczen-etpc.
[31] J. Barcik. Wykonywanie wyroków Europejskiego Trybunału Praw Człowieka przez Polskę. Justitia 2 no. 12 (2013). Accessed January 8, 2024. https://www.kwartalnikiustitia.pl/wykonywanie- wyrokow-europejskiego-trybunalu-praw-czlowieka-przez-polske,5011.

- International Covenant on Economic, Social and Cultural Rights (signed: 1967, ratified: 1977), no reservations;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (signed: 1986, ratified: 1989), no reservations;
- Convention on the Rights to the Child (signed: 1990, ratified: 1991), reservation art. 7 and art. 38;
- Optional Protocol to the International Covenant on Civil and Political Rights (signed: 2000, ratified: 2014), no reservations;
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (signed: 2004, ratified: 2005), no reservations;
- International Convention for the Protection of All Persons from Enforced Disappearance (signed: 2013, ratification: none).

Poland did not sign and refused the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The status of public international law in domestic Polish law is commonly qualified as a monist system[32]. Pursuant to art. 9 of the 1997 Constitution: 'The Republic of Poland respects international law binding on it'. Based on art. 87 of the Constitution, only ratified international agreements are a source of generally applicable law[33]; without ceasing to be a source of international law, they become a source of national law. There is a dispute as to whether the norm of customary international law is considered a source of binding law. Consequently, compliance with international law agreements will manifest mainly in their transposition into the Polish legal order. The Constitution states that the sources of generally applicable law in Poland are: the Constitution, statute (act of Parliament, in Polish: *ustawa*), ratified international agreements, and governmental ordinances (in Polish: *rozporządzenie*).

Moreover, Poland may, on the basis of an international agreement, delegate to an international organisation or an international body the competence of state organs in certain matters (art. 90 of the Constitution)[34]. The most important international acts regarding human rights and refugee law, i.e., the Convention relating to the Status of Refugees or Convention on the Child Rights, are ratified and incorporated directly into national law through publication in the official legislative journal.

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[32] M. Borski. Miejsce umów międzynarodowych w porządku prawnym Rzeczypospolitej Polskiej. Roczniki Administracji i Prawa : teoria i praktyka, Rok XIV t. II (2014) , pp. 17-32.

[33] Pursuant to art. 87 of the Constitution of the Republic of Poland, only ratified international agreements are a source of generally applicable law. International agreements are ratified and announced by the President. The ratification procedure is regulated in detail in the Act of 14 April 2000 on international agreements. According to its provisions, the choice of the method of ratification of an international agreement is decided by the Council of Ministers, adopting a resolution to submit the agreement to the President for ratification. Under the above resolution, the Minister of Foreign Affairs submits the agreement together with the ratification document to the President for ratification, provided that in the case of an agreement meeting the conditions arising from art. 89 section 1 of the Constitution or art. 90 of the Constitution, obtaining prior consent for its ratification is necessary.

[34] A law giving consent to the ratification of this international agreement shall be passed by the Sejm (Parliament) by a two-thirds majority vote in the presence of at least half of the statutory number of deputies and by the Senate by a two-thirds majority vote in the presence of at least half of the statutory number of senators. The consent to ratifying such an agreement may be passed in a nationwide referendum following the provisions of art. 125 of the Constitution. The resolution on the choice of the mode of consent to ratification shall be adopted by the Sejm by an absolute majority of votes in the presence of at least half of the statutory number of deputies.

On 21 January 2021, Polish authorities sent information to the Council of Europe on implementing individual measures. The very first judgement regarding the refusal of access to the international protection procedure in Poland is worth mentioning. In the case of *M.K. and Others v. Poland* (applications no. 40503/17, 42902/17 and 43643/17), the ECtHR ruled that Poland had violated art. 3 of the ECHR (prohibition of torture and other inhuman, degrading treatment in Chechnya), art. 4 of Protocol No. 4 to the Convention on the grounds of collective expulsion of foreigners, art. 13 of the Convention (the right to effective remedy), and art. 34 of the ECHC. On 8 December 2021, an action plan to implement the judgement was sent[35]. The Committee of ministers of the Council of Europe will return to the question of implementing this judgement in March 2024.

[35] Opinion of the Helsinki Foundation for Human Rights, Accessed January 26, 2024. https://hfhr.pl/upload/2023/03/helsinki-foundation-for-human-rights-opinion-mk-and-others-vs-poland.pdf.

4. Institutional Framework and Operational Infrastructure

Migration and border policy comes under the Ministry of the Interior and Administration (Department of International Affairs and Migration). The main authority responsible for return policy and readmission is the Border Guard. An additional authority in charge of organising voluntary return assistance is the Head of the Office for Foreigners. As a result of legislative changes in March 2023, the Border Guard took over the overall competence for processing return cases at the two-instance level.

The Border Guard is responsible for receiving applications for international protection. Also, the same authority – the Border Guard – is responsible for the return and readmission process. The Border Guard also deals with arrests and detention centres for foreigners. The detention centres are fully managed by the Border Guard posts (or units) on whose territory they are located. A foreigner is placed in a detention centre at the request of the territorially competent commanding officer of the Border Guard post (unit). The detention centre is located on the territory of the border guard post or unit. It has its own manager, a Border Guard officer. The Border Guard may decide to apply alternative measures to detention, also to foreigners who have been issued with a decision to oblige the foreigner to return (more: section 5).

As a rule, control of the legality of stay is carried out by the Border Guard and the Police. The Head of the Office for Foreigners and the Voivodes[36] may conduct control of the legality of stay to the extent necessary for their proceedings concerning foreigners. Control of the legality of stay may also be carried out by the Head of the Customs and Fiscal Office to the extent specified in separate ordinances. The Act on foreigners obliges all state authorities (governmental and self-governmental administration) to cooperate with the authorities carrying out control of the legality of stay. Tasks related to performing control of the legality of stay, issuing decisions on the obligation to return and readmission are specified in the Act on foreigners and implementing acts.

The Border Guard, in accordance with its territorial competence, carries out control of the legality of stay. Also, in accordance with its territorial competence, it accepts foreigners for readmission. Territorial competence depends on the choice of the way of transfer of foreigners—by land or by air. The tasks of the Border Guard officers, including the way of execution of a forced return, are specified in the ordinances implementing the Act on foreigners.

In the Board for Foreigners of the Border Guard Headquarters, there is the Division III for the Organisation of Voluntary Returns and Dublin Proceedings, which undertakes activities related to the implementation, supervision, and monitoring of assistance to foreigners in their voluntary return from Poland.

According to his/her territorial competence, the Border Guard post's commanding officer issues a decision to oblige the foreigner to return or to accept the foreigner under a readmission agreement. The role of the Head of the Office for Foreigners was significantly reduced in March

[36] It is 'a one-person body of the local-government administration and the constitutional representative of the council of ministers in the voivodship' – see Encyklopedia Administracji Publicznej, Faculty of Political Science and International Studies, University of Warsaw, accessed March 25, 2024, http://encyklopediaap.uw.edu.pl/index.php/Voivode.

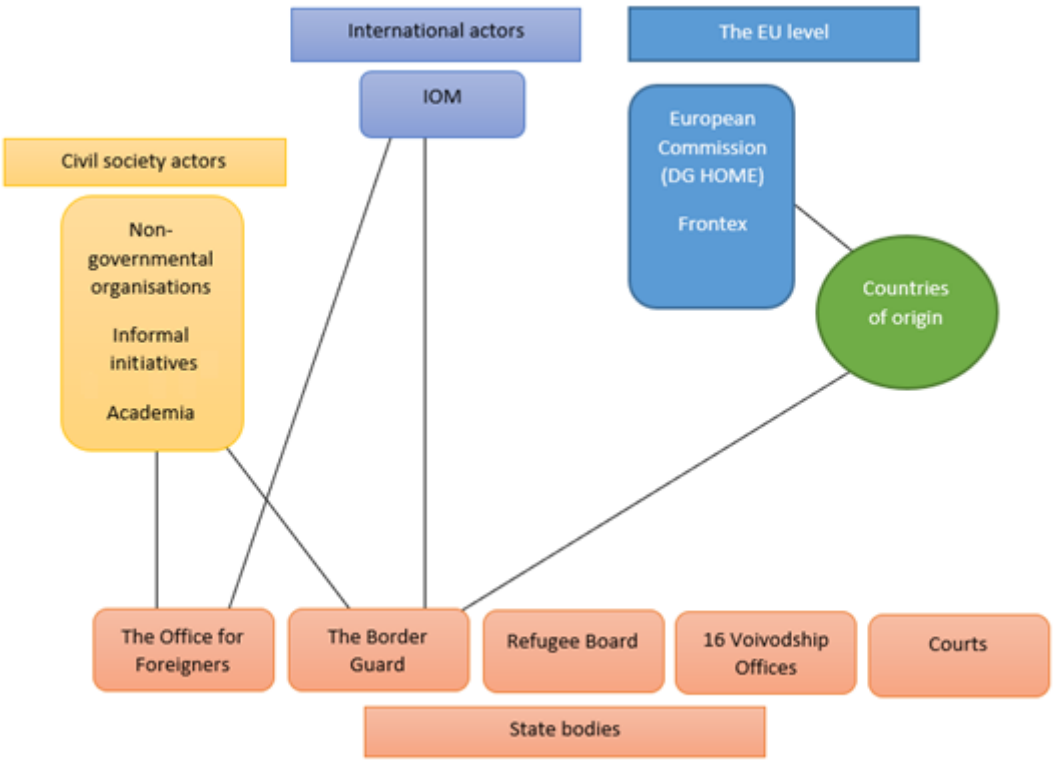
2023. As a result of the reform of the Act on foreigners in April 2023, the Border Guard is now entirely in charge of the proceedings to oblige a foreigner to return. Before the change, the Head of the Office for Foreigners conducted the appeal proceedings.

As a rule, the return of a foreigner is ordered by the relevant Border Guard post. In the case of a declaration of voluntary return – the Commander-in-Chief of the Border Guard organises assistance in voluntary return. The Act on foreigners provides for the possibility to outsource the organisation of voluntary return to another entity. Currently, this entity has been the International Organisation for Migration (IOM) since 2005 on the basis of an agreement between the Minister of the Interior and Administration and the IOM of 12 July 2005. This agreement clearly defines the tasks of the Minister, the IOM and the mode of the cooperation.

IOM is the only entity cooperating in the organisation of voluntary returns of foreigners. The Act on foreigners specifies that the Commander-in-Chief of the Border Guard may commission the organisation of a voluntary return by the IOM.

Figure 9: Flowchart of Return Migration Infrastructure in Poland

Source: Own elaboration.



5. The National Legal Framework/Return Infrastructure

5.1. Definitions and Concepts

To describe the national legal framework regarding returns, the following frequently occurring terms should be analysed. They are defined in the acts of parliament, incorporated from international/EU law, or adopted for the purpose of public statistics (e.g., Poland's Central Statistical Office or Eurostat):

- Third-country nationals – anyone who does not possess Polish citizenship (Act on foreigners art.3 point 2) or an EU Member State citizenship;

- Illegal/irregular stay – there is no legal definition of this term in Polish legislation. The stay of a foreigner should be considered illegal when it is inconsistent with the provisions regulating the stay of foreigners in the territory of the Republic of Poland, including the Act on foreigners and the Act of 13 June 2003 on granting protection to foreigners in the territory of the Republic of Poland[37]). An irregular stay is considered a situation in which a foreigner does not have a document entitling him/her to a legal stay in the country's territory, which means the lack of a visa, residence card, or overstay under visa-free travel. Irregular stay also results from entering the territory of Poland without proper documents of entry; however, there is a discrepancy in interpretation (between the government and NGOs) on how this rule applies to migrants pushed to Poland by Belarusian forces regarding the principle of non-refoulement. Also, the art. 3 point 2 of the Return Directive defines 'illegal stay';

- International protection – protection of asylum seekers granted in the form of refugee status (based on the 1951 Geneva Convention), or subsidiary protection introduced to the national law by the 2011 EU Qualification Directive[38]. It should be noted that 'asylum' (in Polish: *azyl*) in Poland is a separate kind of protection stemming only from domestic law and rarely applied[39];

- Return – the return of a foreigner to his/her country of origin, transit country, or other third country to which he/she decided to return and by which he/she was accepted (following the Act on foreigners art. 3 point 12);

[37] Dz. U. 2003 No. 128 item 1176.
[38] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).
[39] For more, see: M. Szulecka, M. Pachocka and K. Sobczak-Szelc. Poland—Country Report: Legal and Policy Framework of Migration Governance. Working Paper Series. Global Migration: Consequences and Responses, no. 2018/09. doi: 10.5281/zenodo.1418583; M. Pachocka and K. Sobczak-Szelc. Refugee Protection Poland Country Report. RESPOND Working Papers. Global Migration: Consequences and Responses. Paper 2020/35, January 2020.

- Return decision (in Polish: *decyzja o zobowiązaniu do powrotu*) – a decision issued by the competent commander of the Border Guard post or unit (Division Commander, in Polish: *Komendant Oddziału*);

- Removal order – there is no legal definition of this term in Polish legislation; however, the Act on entrance, stay and exit of the citizens of the Member States of the European Union and family members (Act on citizens of the EU[40]) in art. 65p stipulates the grounds for the expulsion from the territory of Poland of EU citizens or family members who are not EU citizens and do not have the right of residence. Moreover, art. 303b of the Act on foreigners allows the Border Guard commander to issue an order to leave (in Polish: *nakaz opuszczenia*) the territory of the Republic of Poland to the foreigner apprehended immediately after crossing the border irregularly;

- Risk of absconding – there is no legal definition, but the Act on foreigners (art. 315(3)) indicates factors to assess the 'probability of absconding' by a foreigner: It shall be taken into account, in particular, whether the foreigner:

    a) has declared his/her non-compliance with the obligations arising from the receipt of the decision on the foreigner's obligation to return, or
    b) is not in possession of documents proving his/her identity, or
    c) has crossed or attempted to cross the border in violation of the law, or
    d) has entered the territory of the Republic of Poland within the period of validity of an entry to the list of foreigners whose stay on the territory of the Republic of Poland is undesirable, or to the Schengen Information System for the purpose of refusing entry and stay;

- Voluntary departure – the Act of 9 March 2023 amending the Act on foreigners and certain other acts has changed the statutory term 'voluntary return' to 'voluntary departure'. Currently, following art. 315(1) of the Act on foreigners: 'The decision on the obligation of the foreigner to return shall specify the period of voluntary departure, which shall be from 8 to 30 days, counted from the day of delivery of the decision'.

- Assisted return – is organised by the Commander-in-Chief of the Border Guard. The Act on foreigners specifies who can benefit from assisted return (based on art. 334 of the Act on foreigners), to whom to apply and the deadline for submission of this application. Foreigners who are eligible to apply may receive multiple types of decisions, among others:

    a) a decision to oblige a foreigner to return with a deadline for voluntary departure,
    b) a decision to oblige a foreigner to return subject to compulsory execution and who, due to the circumstances referred to in art. 400 of the Act on foreigners, has not been placed in a detention centre or in respect of whom an arrest for foreigners has not been applied or who has been released from a detention centre or an arrest for foreigners when it has been established that the circumstances referred to in art. 400 of the Act on foreigners apply, and in the case referred to in art. 406(1)(3) of the Act on foreigners,

[40] Act of July 14, 2006, on entry into, stay in and departure from the territory of the Republic of Poland territory of citizens of the European Union Member States and their family members, Dz. U. Nr 144 item 1043.

c) foreigner who has been issued a decision to refuse refugee status or subsidiary protection or a decision to declare an application for international protection inadmissible,
d) foreigner who has been issued a decision to discontinue the proceedings on granting international protection,
e) foreigner whose application for granting international protection was left without consideration for formal reasons,
f) foreigner staying on the territory of the Republic of Poland on the basis of a certificate referred to in art. 170 of the Act on foreigners (certificate confirming the presumption that the foreigner is a victim of trafficking in human beings) or on the basis of a temporary residence permit referred to in art. 176 of the Act on foreigners.

Assistance in voluntary return shall be granted upon the foreigner's application. The foreigner submits the application for assistance in voluntary return to the Commander-in-Chief of the Border Guard through indicated authorities: the commanding officer of the Border Guard division (Division Commander) or the commanding officer of the Border Guard post or the Head of the Office for Foreigners[41];

- Vulnerable persons – there is no clear legal definition of vulnerable persons in the Act on foreigners, but the Act on protection in art. 68(1)[42] mentions persons that may require special treatment, and these are:

a) minors,
b) disabled persons,
c) elderly persons,
d) pregnant women,
e) single parents,
f) victims of human trafficking,
g) seriously ill persons,
h) mentally disordered persons,
i) victims of torture,
j) victims of psychological, physical and sexual violence, as well as violence due to gender, sexual orientation and gender identity;

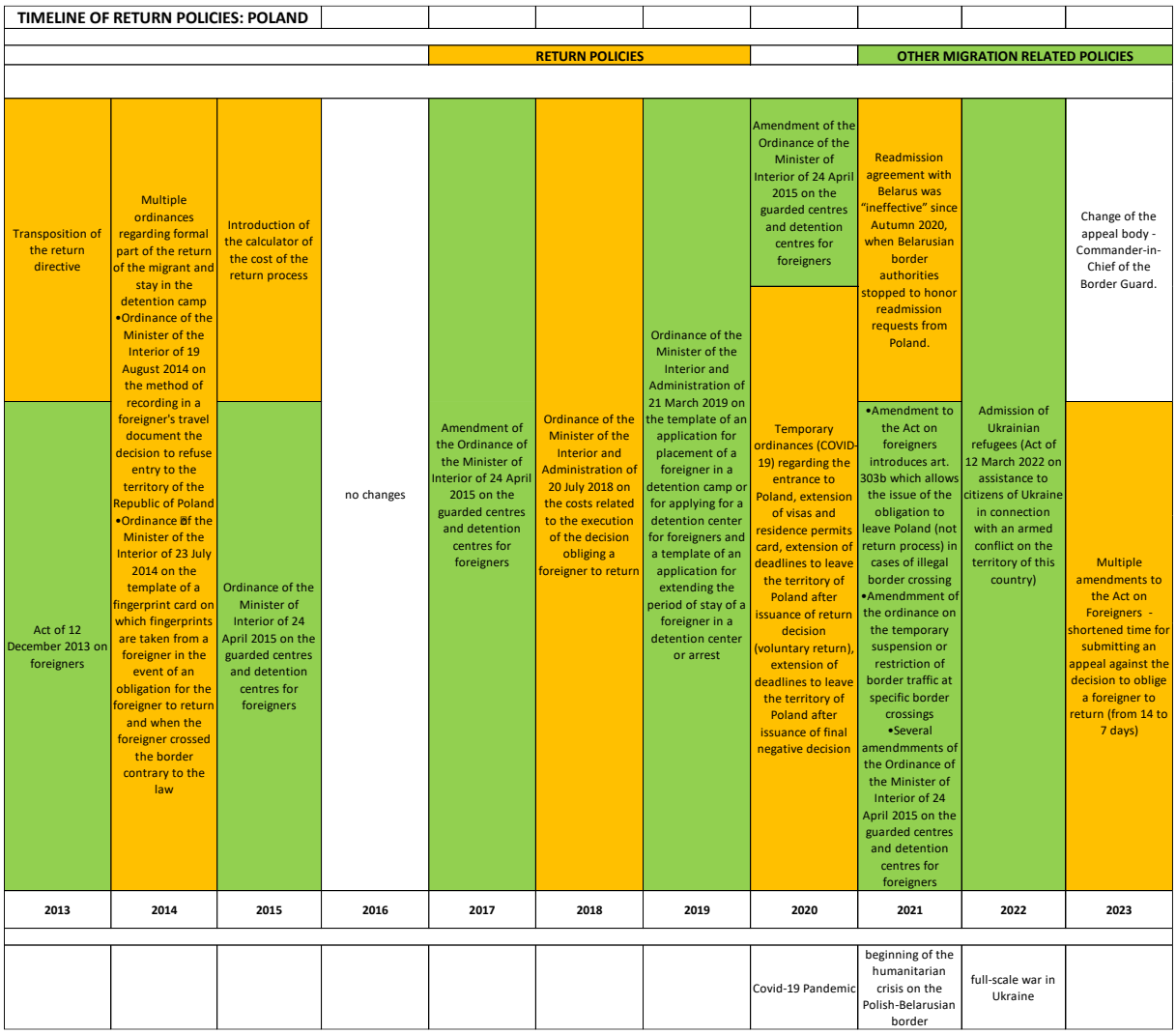
Vulnerable persons may require special assistance: medical assistance or social assistance (e.g., special time and space arrangements for the interview as well as the presence of a psychologist, reception conditions adjusted to special needs, etc., based on the Act on protection [arts. 68 and 69]). Some vulnerable persons (mentally disordered persons, victims of torture, victims of psychological, physical and sexual violence, as well as violence due to gender, sexual orientation, and/or gender identity) shall stay outside of the detention centre while waiting to be returned.

[41] The Office for Foreigners is included in these proceedings under specific conditions: in the case referred to in art. 334 of the Act on foreigners, section 2 points (3) and (4), if the foreigner benefits from social assistance and medical care referred to in art. 70 section 1 of the Act on granting protection to foreigners within the territory of the Republic of Poland of 13 June 2003, or the entity referred to in section 8.

[42] For more see: K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szałańska and M. Szulecka. From Reception to Integration of Asylum Seekers and Refugees in Poland. Routledge. 2022. Chs. 2.3.

Figure 10: Timeline of Return Policies in Poland

Source: Own elaboration.



5.2. Return at the Border

Poland's borders with Russia, Belarus, and Ukraine are the external Schengen borders. For many years the main gateway for citizens of post-Soviet Union states seeking protection in the European Union has been a train connection between Brest (Belarus) and Terespol (Poland). This connection has been used most often by the Chechens fleeing persecution of Kadyrov's regime or non-state actors[43]. According to Polish law, asylum applications are registered by the Border Guard and after this initial phase they are being transferred to the Office for Foreigners competent to examine asylum seekers' requests. Despite the lack of statutory competence, the Border Guard officers at the external border in Terespol for many years were involved in the

[43] In years 2003-2017 there were 91,500 Chechens filing application for refugee status (international protection) and 69 thousand of them have not waited for the examination of their requests and moved to other EU states, Monika Porończuk, Czeczeni mnożą się Morawieckiemu w oczach. Przeszacował ich liczbę sześciokrotnie, OKO Press, 21 of June 2018, https://oko.press/czeczeni-mnoza-sie-morawieckiemu-w-oczach-przeszacowal-ich-liczbe-szesciokrotnie, accessed 26 March, 2024.

quasi-examination of foreigners' claims and were the restricting foreigner's access to international protection[44].

As a rule, a foreigner may enter Poland under the visa-free regime (with a biometric passport and not extending the maximum period of stay) or holding a valid visa or residence card. If a foreigner does not have one of the above-mentioned documents, he/she will generally not be able to enter. The Act on foreigners specifies the reasons for refusing entry[45] as not having the right to enter or not meeting the entry conditions on a visa.

The Schengen Border Code[46] and the Act on foreigners[47] provide for exceptions for the foreigners who do not satisfy the entry conditions; application for international protection or receipt of a short-entry permit (valid for 15 days) issued by the Commander of the Border Guard Post (obtaining consent of the Commander-in-Chief of the Border Guard) to enter Polish territory on humanitarian grounds, on grounds of national interest or because of international obligations.

Collective expulsions in Terespol until 2020

Frontex data shows that the number of refusals of entry to the EU has doubled between 2015 and 2016 and that this is clearly the result of the refusals issued at the Polish-Belarussian border[48]. The Helsinki Foundation for Human Rights reported that the place of issuance of around 75% of all refusals of entry in the EU in 2016 was the Polish-Belarusian border which is an increase of 213% since 2015[49].

This change of attitude in 2016 has been confirmed by the previous Polish Minister of the Interior, Mariusz Błaszczak. It is obvious in this case that the Polish authorities were reinforcing security at the expense of individuals' rights. The anti-immigration sentiments were reflected in the administrative statements of the Minister who called the situation in Terespol 'an attempt to open another route for the influx of Muslims to Europe,' and claimed that 'as long as I am interior minister and as long as Law and Justice party is in power, we will not put Poland in danger of terrorism'[50]. Since 2016 the situation at the border has changed but rather not improved at all. However, in mid-March 2020, due to coronavirus legislation, the arrivals by a 'refugee train' from Brest to Terespol have been completely stopped. Until 2020 the main border crossing through which forced migrants[51] tried to enter Poland was the

[44] M. Kowalski, Wnioski o ochronę międzynarodową składane na granicy – uwagi na tle środków tymczasowych zarządzonych wobec Polski przez Europejski Trybunał Praw Człowieka, Europejski Przegląd Sądowy 3/2018, s. 11-17

[45] Art. 28 of the Act on foreigners.

[46] Art. 3 and art. 6. 5c of the Schengen Border Code.

[47] Art. 32.1 of the Act on foreigners.

[48] Frontex Annual Risk Analysis 2017, available at https://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2017.pdf.

[49] Helsinki Foundation for Human Rights, "Access to asylum procedure at Poland's external borders. Current situation and challenges for the future", Warsaw, April 2019, p. 10. https://hfhr.pl/upload/2022/01/doste-p-do-procedury-azylowej-na-polskich-granicach-zewne-trznych_-obecna-sytuacja-i-wyzwania-na-przyszlos-c11T, accessed 26 March 2024.

[50] This policy statement has been widely discussed also in Russian media: Fleeing Chechen Refugees Stranded on Polish-Belarus Border, The Moscow Times, Aug. 31, 2016, https://www.themoscowtimes.com/2016/08/31/chechens-running-from-kadyrov-stuck-on-polish-border-a55165.

[51] See the definition proposed by Pachocka and Wach (2023).

border crossing in Terespol[52]. The Brest-Terespol train connection between Belarus and Poland was suspended on 15 March 2020, and has not been reopened since then (currently Terespol is the only active border crossing point for travellers in vehicles at the Polish-Belarusian border). In practice, the legal pathways to apply for international protection at the Polish-Belarusian border have been greatly reduced.

For many years (even before 2015), Polish NGOs and lawyers have been alerting that passengers of the train from Brest were collectively expelled despite their declared willingness to apply for international protection[53]. Before lodging their application, they were forced to return to Belarus many times[54] receiving refusal of entry decisions on the basis of the lack of visa[55]. In the rare cases when foreigners have managed to file an appeal against the decision and even sought judicial review in administrative court the Border Guard, decisions were sometimes overturned but these judgements were normally issued long after the asylum seekers' attempts to cross the border[56].

The report prepared by the Association of Legal Intervention 'At the Border'[57] drew attention to the long-standing practice of refusing to accept applications for international protection by the Border Guard at the border crossing point in Terespol. Already in 2016, the report stated that for many years, NGOs have been approached by foreigners who were refused entry to Poland despite their willingness to apply for international protection. The peak of refusals of entry happened in July 2016 during the NATO Summit in Warsaw and the World Youth Day in Cracow. Hundreds of applicants were taking the train from Brest and Terespol

[52] A. Chrzanowska, P. Mickiewicz, K. Słubik, J. Subko and A. Trylińska. At the border. Report on monitoring of access to the procedure for granting international protection at border crossings in Terespol, Medyka, and Warszawa-Okęcie Airport, Analyses, Reports, Evaluations, No. 2/2016, Warsaw: Association for Legal Intervention. Accessed January 26, 2024. https://interwencjaprawna.pl/wp-content/uploads/2020/04/at-the-border.pdf; M. Górczyńska and M. Szczepanik. A road to nowhere: The account of a monitoring visit at the Brześć-Terespol border crossing between Poland and Belarus. Helsinki Foundation for Human Rights 2016. Accessed January 26, 2024. https://www.hfhr.pl/wp-content/uploads/2016/11/raport-droga-donikad-EN-web.pdf; M. Szczepanik. Border Politics and Practices of Resistance on the Eastern Side of 'Fortress Europe': The Case of Chechen Asylum Seekers at the Belarusian–Polish Border. Central and Eastern European Migration Review. Vol. 7, No. 2. 2018. pp. 69–89; J. Białas, M. Górczyńska and D. Witko. Access to asylum procedure at Poland's external borders. Current situation and challenges for the future (English summary), Warsaw: Helsinki Foundation for Human Rights 2019; M. Pachocka and K. Sobczak-Szelc. Refugee Protection Poland Country Report. RESPOND Working Papers. Global Migration: Consequences and Responses. Paper 2020/35, January 2020.

[53] T. Sieniow, Migrants have the right to have rights – dostęp do ochrony międzynarodowej, Raport FIPP 1/2022, Lublin 2022, p. 15. Accessed January 26, 2024. https://panstwoprawa.org/wp-content/uploads/2023/01/Raport-II-detencja.pdf.

[54] In the exemplary case Tomasz Sieniow has intervened to support Chechen applicants trying to cross this border on the train 72 times before their application has been registered on the 17th of September 2019 (Intervention letter of the Rule of Law Institute to the Commander of the Border Guard Post in Terespol of 16 September 2019, Sygn. IPP-TS-4/9/2019).

[55] Stowarzyszenie Interwencji Prawnej. Czeczeni w niebezpieczeństwie przez odmowę dostępu do procedury uchodźczej. 2018. Accessed January 26, 2024. https://interwencjaprawna.pl/czeczeni-w-niebezpieczenstwie-przez-odmowe-dostepu-do-procedury-uchodzczej/; Rzecznik Praw Obywatelskich. ETPC negatywnie ocenił praktykę polskich służb w sprawach osób poszukujących w Polsce ochrony międzynarodowej. 2020. Accessed January 26, 2024. https://bip.brpo.gov.pl/pl/content/ rpo-negatywna-ocena-etpc-braku-dostepu-do-procedur-uchodzczych.

[56] Judgement of the Provincial Administrative Court in Warsaw of 2 June 2017 (sygn. Akt IV Sa/Wa 3021/16) overturning the decision of the Commander-in Chief of the Border Guard and the Commander of the BG Post in Terespol of 3 September 2016 no. NA-TR/29014/D-ODW/2016 on the refusal of entry.

[57] A. Chrzanowska et al. op. cit.

every day just to be refused entry and try again the following morning. This border practice has been condemned by ECtHR in 2020, in *M.K. and Others vs. Poland*[58] in which the Court found that Poland had violated, among others, art. 3 of the ECHR due to the denial of access to the refugee procedure, which exposed foreigners to the risk of inhuman and degrading treatment or punishment, and due to the ill-treatment of foreigners during border checks[59]. The ECtHR ruled also that the actions of the Border Guard led to the collective expulsion of foreigners due to issuing decisions refusing entry at the border despite submitting declarations for international protection. Similar judgements were issued in other 'Terespol cases': *D.A. and Others v. Poland*[60], *A.I. and Others v. Poland*[61], *A.B. and Others v. Poland*[62], *T.Z. and Others v. Poland*[63].

In the opinion of the NGOs monitoring the situation at the Terespol border crossing point, despite the suspension of the train connection between Belarus and Poland, the situation of asylum seekers has not improved, and the judgement should not be considered implemented[64]. The main reasons for this conclusion are practices performed by the Border Guard at the Polish-Belarusian border but also legal provisions enabling the Border Guard to:

1. return foreigners to Belarus when no decision on a refusal of entry being issued (such practice has been reported in the previous communication of NGOs[65]);

2. return persons who received a decision ordering an immediate removal based on art. 303b of the Act on foreigners;

3. expel to Belarus under the Ordinance of the Ministry of the Interior and Administration of 20 August 2021 (Ordinance of August 2021);

4. push back to Belarus foreigners without any identification nor decision being issued (which is still being reported at the Polish-Belarusian border).

Pushbacks and border rejections based on the 2020 Minister of the Interior and Administration Ordinance

After suspending train connection between Brest and Terespol there were generally two routes left for the citizens of Russia and other post-Soviet states to seek protection in Poland. The first was stimulated by the Belarusian regime encouraging migrants to cross the border

[58] M.K. and Others v. Poland,. nos. 40503/17, 42902/17 and 43643/17, 23 July 2020.
[59] Rzecznik Praw Obywatelskich. Ograniczony dostęp migrantów do procedury uchodźczej w Polsce. Informacje RPO dla Specjalnego Sprawozdawcy ONZ. 2021. Accessed January 26, 2024. https://bip.brpo.gov.pl/pl/content/ograniczony-dostep-migrantow-do-procedury-uchodzczej-informacje-rpo-dla-sprawozdawcy-onz.
[60] D.A. and Others v. Poland, no. 51246/17, 21 July 2021.
[61] A.I. and Others v. Poland, no. 39028/17, 30 June 2022
[62] A.B. and Others v. Poland, no 42907/17, 30 June 2022.
[63] T.Z. and Others v. Poland, no. 41764/17, 13 October 2022.
[64] Communication of the Association for Legal Intervention of 12 February 2024 on the execution of the M.K and Others v. Poland judgment. Accessed March 1, 2024 https://interwencjaprawna.pl/wp-content/uploads/2021/01/CoE-M.K.-and-Others-vs-Poland-execution_communication-SIP_March-2024.pdf.
[65] Communication of the Association for Legal Intervention and the Rule of Law Institute of 27 February 2023 on the execution of the M.K and Others v. Poland judgement. Accessed March 1, 2024https://rm.coe.int/0900001680aa7979.

irregularly by the forest[66]. The other was to reach Poland via one of the land border crossing points by car. During the on-going humanitarian crisis on the Polish-Belarusian border on 10 February 2023 Poland has limited the number of open crossing points available for passenger transport only to Terespol[67]. This meant that persons seeking protection could only access the Polish territory via Belarus in private vehicles (since 17 September 2023 due to implementation of EU sanctions on imported Russian cars) not registered in the Russian Federation.

During the Covid-19 state of emergency, Poland, on 15 March 2020, suspended not only train connections between Brest and Terespol but also personal traffic on external and internal Schengen borders. The Ordinance of the Minister of the Interior and Administration of 13 March 2020[68] has introduced a catalogue of persons eligible to cross Polish borders. Generally speaking, it provided a list (more and more casuistic over time) of exceptions to the denial of entry to Poland. The Ordinance has been amended 34 times in less than four years and became a legal basis for the unique approach to refusals of entry during and after the state of emergency has been called off. The crucial amendment entered into force on 21 August 2021[69]. Since the entry into force of this amendment, foreigners (who did not fall into the enumerated list of persons eligible to cross the border) were instructed about the obligation to immediately leave the territory of the Republic of Poland if they came to the open border crossing point (§3 point 2a of the 13 March 2020 Ordinance). It is worth mentioning that the instruction about the obligation to leave the territory was not a decision on the refusal of entry. The Ordinance, however, has also referred to the situation of the persons disclosed at these border crossings where border traffic has been since March 2020 suspended or restricted and even outside the territorial scope of the border crossing (despite the title of the Ordinance concerning the border crossings). According to the amended version of §3 point 2b of the 13 March 2020 Ordinance such persons shall be returned to the state border line. The new term used in the Ordinance reflects the factual and legal suspension of the readmission agreement with Belarus, which has discontinued its earlier cooperation and allowed for a simplified readmission of its citizens and other foreigners arriving to Poland from Belarus' territory.

During the years when 'instruction about the obligation to leave the territory' became the option, the number of refusals of entry issued by the Border Guard in Terespol dropped. It seems like the right of access to the territory and the principle of non-refoulement are at risk. Asylum seekers arriving to Terespol by train who were subject to collective expulsions were all given the refusal of entry decisions in writing. They could (and sometimes did) seek administrative and judicial review of these refusals. According to §3 point 2a of the 13 March 2020 Ordinance, foreigners arriving to the Polish border crossing point from Belarus are now only orally instructed to leave the territory of the Republic of Poland and cannot use any remedies against these factual refusals. The post-21 August 2021 practice observations show

[66] The Polish BG statistical data shows that in 2020 there were 53 Russian citizens stopped when crossing Polish-Belarusian border outside of the border crossing points as compared to just one in 2019, see: Straż Graniczna, Informacja Statystyczna za 2020 r. Accessed March 4, 2024, https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html.

[67] Ordinance of the Minister of the Interior and Administration of February 9, 2023 amending the ordinance on the temporary suspension or restriction of border traffic at specific border crossings, Dz.U. 2023 item. 275.

[68] Ordinance of the Minister of the Interior and Administration of March 13, 2020, on the temporary suspension or restriction of border traffic at specific border crossings, Dz.U. 2020, item 435.

[69] Ordinance of The Minister of the Interior and Administration of August 20, 2021, amending the ordinance on the temporary suspension or restriction of border traffic at specific border crossings, Dz.U. 2021, item, 1536.

that they cannot even prove their arrival to the Polish Border Guard post, because the Polish border authorities do not stamp their passports[70].

Pushbacks on Polish-Belarusian green border: Return to the state border line and administrative order about leaving the territory of the Republic of Poland

The first signals that Belarus will respond to sanctions imposed by the European Union (following forged presidential elections and repressions against political opponents[71]) may be traced back to October 2020. The Border Guard data[72] confirm that Belarus has in fact suspended the readmission cooperation with Poland in October 2020, dismantling the existing on the Belarussian side of the border post-Soviet security barriers called 'sistema'. This led to an unprecedented number of irregular crossings of this border to then very secure fragment of the state border reported by the Border Guard in October-December 2020. Among 122 foreigners stopped while illegally crossing the border in 2020 were 53 citizens of Russia and 23 of Afghanistan. In 2021, Belarus started to issue visas to so-called high-migration risk countries (Iraq and Syria), facilitating irregular arrivals to the territory of the EU. The following year, the number of foreigners entering Belarus has decreased while illegally crossing the border has grown to 2,744. Many more were apprehended inside Poland and during their attempt to leave Poland and enter Germany. In 2021, the number of foreigners trying to cross the Polish-Belarusian border has increased (including irregular border crossings). The number of people trying to enter Poland (who were physically pushed by Belarusian border guards onto Polish territory) and later pushed back by the Polish border guards has increased. Independent reports show that the Polish border guards refused to accept international protection requests from those people and pushed them back to the Belarusian side multiple times[73]. While it is

[70] The Rule of Law Institute and the Association for Legal Intervention submission of the 27 of February 2023 to the Committee of Ministers of the Council of Europe includes the following observation of the border practice in Terespol: "Between July 2022 and February 2023, RLI assisted with submitting 70 applications for international protection (covering 219 persons) in Terespol. In most of these cases applicants were earlier "unofficially" returned to Belarus by the Polish Border Guard officers, who did not even put a stamp in the foreigners' passports. Decisions on a refusal of entry were issued only in cases of the third-country nationals with the SIS entry ban or foreigners using forged travel documents. Many of the asylum applicants entering Poland during this period had prima facie evidence of being victims of torture (related to forced mobilisation). Nevertheless, to access Polish territory, they often needed three or four entry attempts. RLI is also aware of a Chechen single mother with 8 children asking for international protection in Terespol, who was pushed back to Belarus at least 8 times between 13 October 2022 and 21 December 2022. Experience of this family is not different from dozens of other cases reported to RLI in the second half of 2022. Our daily border observation during this period shows that usually the Border Guard in Terespol was accepting only 1-2 asylum applications per day", Communication of the Association for Legal Intervention and the Rule of Law Institute on the execution of the M.K and Others v. Poland judgement available at https://rm.coe.int/0900001680aa7979.

[71] J. Evans. Belarus dictator threatens to 'flood EU with drugs and migrants'. The Week [online, last update: 28 May 2021]. Accessed January 26, 2024. https://theweek.com/news/world-news/europe/952979/belarus-dictator-threatens-flood-eu-with-drugs-migrants-avoid-sanctions; Reuters (2021). How Belarus became a gateway to the EU for Middle East migrants. [online, last update: 9 November 2021]. https://www.reuters.com/world/how-belarus-became- gateway-eu-middle-east-migrants-2021-11-09/.

[72] The Polish BG statistical data shows that in October-December 2020 there were 111 foreigners stopped when crossing Polish-Belarusian border outside of the border crossing points as compared to just nine persons during the first 9 months of 2020, Straż Graniczna, Informacja Statystyczna za 2020 r. Accessed March 1, 2024. t https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html.

[73] Grupa Granica. Humanitarian crisis at the Polish-Belarusian border (K. Byłów, Trans.; W. Klaus, Ed.). 2021. Accessed January 26, 2024. https://www.grupagranica.pl/files/Grupa-Granica-Report-Humanitarian-crisis-at-the-Polish-Belarusian-border.pdf, Human Rights Watch. Die here or go to Poland: Belarus' and Poland's shared responsibility for border abuses. 2021. Accessed January 26, 2024.

not known the true number of people who have died since mid-2021 due to the restricted access to the asylum procedures in Poland and the practice of pushbacks, there are at least 54 confirmed deaths on both sides of the border[74].

Poland's response to the instrumentalisation of migration by Lukashenka started with the deployment of additional Border Guard officers and the units of the Army and Police in the border area. From the growing number of asylum seekers in detention, the conclusion may be drawn that the government, for security reasons, decided to place to detention virtually every foreigner who managed to cross the border. Poland has expanded its detention capacity from 384 places in January 2021 to 2,168 in November 2021, and the total number of foreigners detained has grown from 837 in 2020 to 4,052 foreigners, including over 500 children in 2021[75].

Despite creating extra detention space by mid-August 2021, the Border Guard units started to have problems with finding places in detention for apprehended migrants. Although many were instructed not to apply for international protection in Poland, readmission to Belarus was no longer an option since 28 June 2021, when Belarus announced that it would suspend the readmission agreement with the EU[76]. This seems to be a turning point in the Polish reaction to irregular migration from the territory of Belarus. On 20 August 2021, the 13 March 2020 Ordinance amendment was introduced, becoming a legal basis for returning migrants to the state border line (pushbacks). Moreover, on 2 September 2021, a state of emergency was introduced in parts of the Lubelskie and Podlaskie voivodeships immediately adjacent to the border with Belarus. In the area covered by this order, non-residents were forbidden to enter.

The Polish government was aware that these provisions added to the Border Ordinance on 20 August 2021 lacked[77] a delegation in the Act on foreigners and were in breach of many international obligations. It was confirmed on 18 January 2024 by the Provincial Administrative Court in Białystok[78]. The court found, with reference to previous judgments on pushbacks, that the Border Guard's reliance on the Ordinance of the Ministry of the Interior and Administration of 20 August 2021 on the temporary suspension or restriction of border

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https://www.hrw.org/sites/default/files/media_2021/11/eca_migrant1121_web_0.pdf; Amnesty International. Poland: Cruelty not compassion, at Europe's other borders. 2022. Accessed January 26, 2024. https://www.amnesty.org/en/wp-content/uploads/2022/04/EUR3754602022ENGLISH.pdf; K. Czarnota and M. Górczyńska (with Białas, J., Jagura, J., Szuleka, M. and Witko, D.). Gdzie prawo nie sięga: Raport Helsińskiej Fundacji Praw Człowieka z monitoringu sytuacji na polsko-białoruskiej granicy, Helsińska Fundacja Praw Człowieka 2022. Accessed January 26, 2024. https://www.hfhr.pl/wp-content/uploads/2022/06/Raport_Gdzie_Prawo_Nie_Siega-HFPC-30062022.pdf.

74 M. Chołodowski. Tajemnicza śmierć Egipcjanina. Już co najmniej 50 ofiar na granicy polsko-białoruskiej. Gazeta Wyborcza [online, last update: 01.01.2023]. Accessed January 26, 2024. https://bialystok.wyborcza.pl/bialystok/7,35241,30048590,kryzys-na-granicy-na-granicy-polsko-bialoruskiej-juz-co-najmniej.html.

75 T. Sieniow, Migrants have the right to have rights - detencja cudzoziemców. Lublin. 2022, p. 42 and 62. Accessed January 26, 2024, https://panstwoprawa.org/publikacje/.

76 Council of the EU Press release of the 9th of November 2021, available at https://www.consilium.europa.eu/en/press/press-releases/2021/11/09/belarus-council-suspends-visa-facilitation-provisions-for-officials-of-the-belarus-regime/

77 The illegality of pushbacks based on the ministerial Ordinance has been declared by many courts' rulings, i.e. Judgement of the Provincial Administrative Court in Białystok of 15 September 2022 (II SA/Bk 492/22).

78 As concluded by Regional Court in Hajnówka (Sąd Rejonowy w Bielsku Podlaskim VII Zamiejscowy Wydział Karny w Hajnówce) in its judgment of 28 March 2022 (VII Kp 203/21) , see also Judgement of the Provincial Administrative Court in Białystok of 18 January 2024 (II SA/Bk 664/23).

traffic at certain border crossing points as the legal basis for the act of returning to the border line is invalid and violates art. 92 (1) of the Constitution, which sets out the procedure for issuing ordinances. The court also found that the Ordinance is incompatible with EU law, international agreements and applicable national legislation[79].

In order to remedy the situation of illegality, the Parliament, on 14 October 2021, adopted amendments to the Act on foreigners[80]. According to the added art. 303b of the Act on foreigners, a foreigner may be issued an administrative order to leave the territory of Poland If he/she is apprehended immediately after crossing the border contrary to the law. This statutory provision became a new legal basis for border rejections and pushbacks. The case law concerning the interpretation of this provision imposes on the Border Guard organs a duty to document the procedures leading to the issuance of the order to leave the territory with proper diligence and respecting the principle of non-refoulement[81].

The duty of the Border Guard officers conducting this procedure is also to provide information about the right to file an international protection application. This last duty interpreted by the courts seems to contradict the Polish legislator's intention. On 14 October 2021, Polish Sejm limited the right to seek asylum in Poland, changing art. 33 of the Act on granting protection to the foreigners on the territory of the Republic of Poland. According to the new provision of art. 33 (1a), the Head of the Office of Foreigners may leave without consideration an application for international protection that was submitted by a foreigner apprehended immediately after crossing the border contrary to the provisions of law, unless the foreigner came directly from the territory where his life or freedom was threatened by persecution or risk of causing serious harm, and presented credible reasons for illegal entry into the territory of the Republic of Poland and submitted an application for international protection immediately after crossing the border. In the Belarusian context, this provision may become a way of limiting the scope of protection against the refoulement (including the chain refoulement) and is not in line with the well-established UNHCR doctrine concerning the right of reaching the territory of the safe state via a short stay in the transit stay[82].

The Polish authorities implemented the measures introduced in relative secrecy. Access to public information regarding 'activities carried out in the area covered by a state of emergency in connection with protecting the state border and preventing and counteracting illegal migration' was restricted. Due to the expiry of the deadlines for the possible extension of the state of emergency provided for in the Constitution, a no-entry zone was introduced in the same area (made possible by an amendment to the Act on the protection of the state border) on 2 March 2022. These restrictions were lifted only after 30 June 2022. According to various sources of persons actively providing support to migrants in need at the border , migrants were left without any assistance (including shelter, food, water, or medical assistance) while the Polish Border Guard continued to push them back. There were reports about issuing orders to

[79] See the case report published by the Helsinki Foundation of Human Rights https://hfhr.pl/en/news/the-border-guard-cannot-effectively-invoke-a-ministerial-regulation-as-a-legal-basis-for-pushbacks-.

[80] Act of 14 October 14 2021 amending the Act on foreigners and certain other acts, Dz. u. 2021 item 1918.

[81] Judgement of the Provincial Administrative Court in Warsaw of 27 April 2022 (sygn. akt IV SA/Wa 471/22); Judgement of the Supreme Administrative Court of 10 May 2023 (II OSK 1735/22); Judgement of the Supreme Administrative Court of 9 January 2024 (II OS K 165/23).

[82] E. Feller, V. Türk, F. Nicholson (eds), Refugee Protection in International Law, Cambridge 2003, p. 187-188.

leave the territory of Poland to the injured foreigners, including taking patients from the hospital. In the opinion of the activists working within NGO collective of Border Group (Grupa Granica), the Polish Border Guard and the Army used intimidation, threats to use firearms, use of gas, destruction of smartphones and sim cards, and deliberate deception[83]. In July 2022, the Polish government constructed the first physical barrier on the Polish-Belarusian border (approx. 187 km long). Through late 2023, many people were trying to enter from the Belarusian side every day and asking for international protection in Poland or travelling to other EU countries to seek protection there. According to the information provided by the Border Guard, migrants are not asking for international protection and are not willing to wait for their claims to be examined in Poland. It is hard to find reliable data on the proportion of migrants declaring their willingness to apply for international protection at the Polish-Belarusian border.

According to the Helsinki Foundation of Human Rights information note on legal developments regarding pushbacks[84], between October 2021 and December 2022, the ECtHR granted nearly 100 interim measures under Rule 39 of the Court's Rules of Procedure, ordering the Polish authorities to refrain from returning the applicants to Belarus, considering that this could constitute a violation of art. 3 of the European Convention on Human Rights[85].

Although Poland has welcomed Ukrainian forced migrants since 24 February 2022, some of them complain of difficulties in entering back to Poland (after visiting their country during the time of war). Based on the Act of 12 March 2022 on assistance to Ukrainian citizens in connection with the armed conflict on the territory of this state[86], every Ukrainian citizen who is a holder of temporary protection needs to use the online system DIIA.pl[87] to re-enter Poland. Also, if the holder of the temporary protection stays in Ukraine for longer than 30 days, his/her protection in Poland will be cancelled. Many Ukrainian beneficiaries of the Polish form of temporary protection have complained that, despite staying in Ukraine for fewer than 30 days, they could not return to Poland. According to the position of the Border Guard, this happens if Ukrainian citizens do not declare they want to be covered by temporary protection when re-entering Poland. UNHCR and NGOs are monitoring the situation.

The Penal Code and bilateral agreements concluded by Poland regulate the extradition of foreigners from Polish territory. The obstacles to extradition are specified in the Penal Code. Submitting an application for international protection or having a residence permit are not listed in this group. In practice, the extradition judgment is not enforced before the foreigner's claim for international protection is fully examined. The Authors of this report were informed by one of the experts that there were incidents when the court refused to extradite the person, but the same person was deported based on the return decision.

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[83] Grupa Granica. Humanitarian crisis at the Polish-Belarusian border op. cit.; K. Czarnota and M. Górczyńska. Gdzie prawo nie sięga: Raport Helsińskiej Fundacji Praw Człowieka z monitoringu sytuacji na polsko-białoruskiej granicy, op. cit.

[84] Helsinki Foundation for Human Rights, Legal brief on judgements in cases involving expedited returns of migrants to Belarus, December 2022. Accessed March 4, 2024, https://bit.ly/3L2vWAz.

[85] AIDA/ECRE Country Report: Access to the territory and push back. Accessed March 4, 2024. https://asylumineurope.org/reports/country/poland/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/#_ftn14.

[86] Act of 12 March 2022 on assistance to citizens of Ukraine in connection with an armed conflict on the territory of this country, Dz. U. 2022 item. 583.

[87] Stowarzyszenie Interwencji Prawnej. Diia—an electronic document for war refugees from Ukraine. 2023. Accessed January 26, 2024. https://ukraina.interwencjaprawna.pl/diia-an-electronic-document-for-war- refugees-from- ukraine/.

5.3. Obligation to Issue a Return Decision

A foreigner staying in the Schengen area is subject to passport control. If, during the inspection, it is revealed that the foreigner was staying illegally in the territory of the Republic of Poland, the Border Guard officer generally initiates proceedings to oblige him/her to return (leave Poland) and impose an entry ban. The reasons for initiating return obligation proceedings are broad, i.e. staying for a purpose inconsistent with the declared one[88]. If, during passport control at the airport or land border, a Border Guard officer finds that the foreigner may have been staying in Poland illegally, he/she is subjected to a second-line check. The officer prepares an inspection report. If justified conditions are met, the officer prepares and initiates proceedings to oblige the foreigner to return. The foreigner is interrogated to verify the circumstances in which the length of the permitted stay was violated. The decision to oblige the foreigner to return, along with the entry ban, is issued after the procedures are completed, even if the foreigner has left the country[89] (airport). The decision is not delivered to the foreigner's foreign address but is included in the case file in Poland (unless the foreigner leaves a Polish correspondence address). Based on the professional experience of the project team members, we know that a foreigner applying via email for a duplicate of a decision usually receives a scan of it relatively fast (the maximum deadline is 30 days). If the foreigner leaves the border by land, the decision on the obligation to leave and the entry ban are issued immediately. Some Border Guard posts initiate return proceedings and issue return decisions on the same day.

5.4. Special Cases and their Relation with the Obligation to Issue a Return Decision

Holders of a return decision issued by another Member State

Chapter 5 of the Act on foreigners sets out the conditions for implementing a decision imposing the return obligation issued by another Member State. Arts. 380-393 of the Act on foreigners specify in detail the conditions for implementing the decision, the possible withdrawal of residence titles held in Poland and the costs of implementing the decision. The Commander-in-Chief of the Border Guard verifies the feasibility of the final decision on the return obligation via the SIRENE Office[90]. It can also be done by using other available means of cooperation and exchange of information with the authorities of the Member State that issued the decision on the return obligation and the Member State that granted the residence permit to the foreigner.

Irregularly staying third-country national holding a right to stay in another Member State

If a third-country national does not apply for a residence permit within 90 days, then in case he/she will apply, his/her application will be rejected because of irregular stay. Then, after

[88] Art. 302 of the Act on foreigners.
[89] Art. 302 of the Act on foreigners.
[90] European Commission. SIRENE cooperation. n.d. Accessed January 26, 2024. https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-information-system/sirene-cooperation_en; Policja. Co to jest Biuro SIRENE? n.d. Accessed January 26, 2024. https://policja.pl/pol/sirene/biuro-sirene/ 7842,Co-to-jest-BIURO-SIRENE.html.

receiving the final decision, he/she will have 30 days to leave the territory of Poland without any consequences[91].

Pursuant to art. 314 of the Act on foreigners, return obligation proceedings shall not be initiated, or the proceedings initiated shall be discontinued, if the foreigner has a residence permit or another permit entitling him/her to stay granted by another country applying EU Return Directive and this is not opposed for reasons of state defence or security or protection of public safety and order. Proceedings will be initiated if the foreigner – after being instructed on the obligation to leave the territory of the Republic of Poland immediately – fails to do so. The authority competent to issue a decision obliging the foreigner to return, i.e., the Border Guard, records the instruction in the appropriate register. The instruction is given in writing in a language understandable to the foreigner. There are no control mechanisms regarding departure after warning. In practice, if the foreigner's stay is rechecked, proceedings will be initiated against him/her to oblige him/her to return. Information is exchanged via SIRENE or other sources, including liaison officers.

Irregularly staying third-country national benefitting from humanitarian (or other) permit/authorisation

The Act on foreigners allows foreigners with an irregular stay to apply for any type of temporary stay[92]. However, in most cases, he/she will receive a refusal decision due to irregular stay[93]. The exception is a temporary residence permit on the basis of marriage to a Polish citizen or due to respect for family life or respect for children's rights or family reunification[94]. A foreigner may also submit an application due to the so-called special circumstances requiring his/her short-term stay[95].

After initiating the proceedings for the obligation to return, in the course of the proceedings, the authority considers the conditions for granting a residence permit for humanitarian reasons or a tolerated stay permit (if there are circumstances preventing the granting of a residence permit for humanitarian reasons). If the proceedings for granting a residence permit for humanitarian reasons or tolerated stay were initiated after the decision on the obligation to return was issued, the return decision shall not be executed. A foreigner is refused a residence permit for humanitarian reasons or a tolerated stay permit if his/her stay on the territory of the Republic of Poland may threaten the state's defence or security or the protection of public safety and order[96].

No regulations prevent the initiation of return obligation proceedings during ongoing proceedings for granting a temporary residence permit. The Voivode or the Head of the Office for Foreigners may control the legality of stay to the extent necessary for these authorities to conduct proceedings. Voivodeship offices and Border Guard posts cooperate in controlling the legality of stay. Therefore, the mere submission of an application for residence exposes the foreigner to the initiation of proceedings for the obligation to return[97]. Moreover, during the

[91] Art. 299 point 6(1) of the Act on foreigners.
[92] There is no prohibition to submit such an application.
[93] Art. 100 (1 point 9) of the Act on foreigners.
[94] Art. 98 of the Act on foreigners.
[95] Art. 181 of the Act on foreigners.
[96] Art. 158, 159, 161, 187, 351 of the Act on foreigners.
[97] Also, in practice, in some cases, employees of voivodeship offices, when submitting an application for stay or correcting formal deficiencies in the application by appearing in person, contact the Border

proceedings for granting a residence permit, the inspector handling the case directs an inquiry to the following state agencies: the Police, the Internal Security Agency, and the Border Guard. This is the moment when these agencies can check the legality of the stay and, if the conditions are met, initiate proceedings for an obligation to return.

It is worth mentioning the example of the Masovian Voivodeship Office based in Warsaw, where the Border Guard has its own room. As learnt from the participatory observation and the professional activity of the project team members, Border Guard officers conduct random checks on the legality of the stay of foreigners visiting the Office and if the purpose of the visa issuance matches the reason for the stay mentioned in the application form. Officers walk along the corridor. If a foreigner is waiting to submit fingerprints or a residence application and if he/she is checked beforehand by the Border Guard, he/she cannot complete the stay legalisation procedure because he/she is apprehended from the Office[98]. If necessary, direct coercive measures are used, e.g., handcuffs. This practice is used in some other voivodeship offices (e.g., Lublin). For this reason, foreigners without legal stay are afraid to appear in person at the Office to submit an application for residence or leave fingerprints.

A decision on the obligation to return may be issued to a foreigner waiting for a residence permit decision. If a positive decision granting a residence permit is received, the return obligation proceedings are discontinued (unless the return decision has previously become final).

Special rules in legal migration directives on readmission between Member States in cases of intra-EU mobility

There are no special rules regarding apprehensions and return of holders of EU Blue Cards[99]. Pursuant to the Act on foreigners (art. 127-139), return obligation proceedings are not initiated, and initiated proceedings are discontinued in some, indicated cases, for example, if the person is temporarily delegated to provide services in the territory of the Republic of Poland, if the decision would be issued due to the lack of a valid visa or residence permit or as a result of crossing or attempting to cross the border contrary to the law. Proceedings for the obligation to return in a situation where the foreigner exceeds the period of 180 days entitling him/her to stay without the need for a visa shall not be initiated in relation to:

- a foreigner who stays in the territory of the Republic of Poland in connection with the use of short-term mobility of a managerial employee, specialist or employee undergoing an internship as part of an intra-corporate transfer under specified conditions;
- a foreigner who stays in the territory of the Republic of Poland in connection with the use of student mobility under specified conditions;
- a foreigner who stays in the territory of the Republic of Poland in connection with using the short-term mobility of a scientist under specified conditions and a member of the scientist's family using the short-term mobility of a member of the scientist's family under specified conditions.

Guard and ask them to come to the office to check the legality of the stay. In some cases, officers arrive directly after submitting the application to the foreigner's home address.

[98] There is no legal basis for this practice.

[99] Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC was not implemented yet into Polish law.

Suppose the decision to oblige a foreigner to return is issued to a foreigner who stayed in the territory of the Republic of Poland based on a temporary residence permit in connection with having a long-term EU resident permit in another EU country. In that case, the decision to oblige the foreigner to return indicates the destination country, the EU Member State, where the foreigner has a long-term EU resident permit.

5.5. Voluntary Return

The period of voluntary return is defined by law (art. 315, Act on foreigners). Under the amendment of the Act on foreigners from March 2023, it ranges from 8 to 30 days (before the reform, the minimum period for voluntary return was 15 days) counted from the date of delivery of the decision. The deadline to return depends on the discretion of the Border Guards. The foreigner has a right to depart to the country of return before the expiration of the deadline specified in the decision. The application for assisted voluntary return (AVR) must be submitted within the deadline specified in the Act that applies to a given case, which may be 5 or 7 days, or in the case of a deadline for voluntary return – a deadline not exceeding it.

The authority responsible for AVR is the Commander-in-Chief of the Border Guard. The IOM performs tasks assigned to them by the Border Guard. Foreigners who want to use AVR must submit an application for assistance within a specified period, depending on the decision issued, i.e., between 5 days and the time of voluntary departure specified in the decision. The Act on foreigners contains a closed list of foreigners who may benefit from assistance in voluntary return (art. 334 par 2). It applies to the specific cases:

- a decision was issued imposing the obligation to return, specifying the date of voluntary departure;
- a decision obliging him/her to return was issued and is subject to compulsory execution and who, due to a threat to his/her health or life or his psychophysical condition, justifies the presumption that he/she has been subjected to violence or other circumstances, but has not been placed in a detention centre or has not been subjected to detention foreigners;
- a decision was issued to refuse to grant refugee status or to grant subsidiary protection or a decision to recognise an application for international protection as inadmissible;
- a decision was issued to discontinue the proceedings for granting international protection;
- the application for international protection was left without examination for formal reasons;
- staying in the territory of the Republic of Poland on the basis of a certificate confirming the existence of the presumption that he/she is a victim of trafficking in human beings, or staying on the basis of a temporary residence permit for victims of trafficking in human beings.

According to the Act on foreigners, the proceedings to oblige a foreigner to return may be discontinued in part relating to determining the date of voluntary departure if the decision to oblige the foreigner to return is issued to a foreigner who voluntarily crosses the border, leaving the territory of the Schengen countries. It is possible to extend the deadline for voluntary departure once, up to a maximum of 1 year. The foreigner should request an extension. The circumstances justifying an extension are listed in the Act. These are: the obligation to appear in person before the Polish public authority or his/her presence on the Polish territory is required by the interests of or due to exceptional personal situation of a foreigner (particularly because of the length of his/her stay, family or social ties or the need of continuing education

by a minor child of foreigner)[100]. The deadline for voluntary return is not set if there is a risk of absconding or if it is required to defend or protect public security and order.

If the foreigner does not leave within the deadline for voluntary return, the decision waiving the ban on re-entry into the territory of the Republic of Poland and other Schengen countries additionally rules on this ban and determines its period in the event that the foreigner, within the period of voluntary departure: will not leave the territory of the Schengen countries; crosses or attempts to cross the border contrary to the law[101].

Neither the Act on foreigners nor the Agreement between the Minister of the Interior and Administration of the Republic of Poland and the International Organisation for Migration on the co-operation in the field of voluntary returns of foreigners leaving the territory of the Republic of Poland regulates the issue of voluntary return monitoring.

5.6. Forced Return/Removal/Exit

The return decision is issued by the Border Guard. Foreigners have a right to appeal within 7 days against the decision. The Commander-in-Chief of the Border Guard issues the second-instance decision (the final decision). The returnee has a right to submit a complaint to the Voivodeship Administrative Court, but since April 2023, filing a complaint no longer produces a suspensory effect[102].

Enforcement of the return decision shall be suspended if a foreigner files for international protection or, in his/her case, the procedure for granting a humanitarian or tolerated stay is launched by the Border Guard. The Border Guard initiates proceedings (humanitarian or tolerated stay) ex officio. A foreigner may submit an application to initiate proceedings, but this does not mean automatic initiation. These procedures may be initiated following the application of the foreigner, the Commissioner for Human Rights (Ombudsman) or the Commissioner for the Rights of the Child. NGOs specialising in protecting migrants' rights can also petition to initiate proceedings leading to granting humanitarian stay, but in their case, the Border Guard does not have a duty to launch the procedure.

Poland is cooperating with Frontex in collecting return operations (CROs) or joint return operations (JROs) organised by Frontex[103]. The Agency's return operations may be monitored by Polish return monitors appointed by NGOs in cooperation with the Border Guard and Frontex. The Border Guard mostly uses commercial flights, but some charter flights are organised, and Polish authorities may participate in Frontex operations.

Four Polish NGOs have a right to monitor the forced return: The Helsinki Foundation for Human Rights, The Rule of Law Institute Foundation, The Halina Nieć Legal Aid Centre, and The MultiOcalenie Foundation[104]. The monitoring organisations are, in principle, notified a

[100] Art. 316 par. 1 of the Act on foreigners.
[101] Art. 329 of the Act on foreigners.
[102] Art. 321 of the Act on foreigners.
[103] ICMPD. Human Rights Monitoring of Forced Returns in Europe Forced-Return Monitoring Projects – Cooperation with the European Border and Coast Guard Agency, the European Union Agency for Fundamental Rights and Member States. 2021. Accessed January 26, 2024. https://www.icmpd.org/content/download/56831/file/FReM%20III_Final%20Publication_Quart_WEB.pdf.
[104] Fundamental Rights Agency. Forced return monitoring systems - 2022 update. Accessed January 26, 2024. https://fra.europa.eu/en/publication/2022/forced-return-monitoring-systems-2022- update.

minimum of 7 days before the planned return operation and can submit interest to participate in the monitoring mission. Representatives of some of those NGOs complain that they do not receive information on monitoring. No state funding is available to cover the monitoring costs, so most operations are organised by the NGOs on an ad hoc basis, a couple of times a year, and the monitoring is conducted mostly only during the Warsaw airport phase of the operation[105]. Within two weeks after the operation, the monitoring institution has the duty to submit a monitoring report to the Commander-in-Chief of the Border Guard. The monitors may evaluate the treatment of the returnee (dignity and safety), the behaviour of the escorts, and means of restraint. However, in operations concerning individual returnees, the NGOs are not invited to the phase of the procedure started in the detention centres, where the fitness for travel and medical examinations are supposed to be performed[106].

5.7. Return of Unaccompanied Minors

The return decision issued to a minor foreigner shall be enforced if the child is provided with the care of parents, other adults, or care institutions in the country to which he/she was obliged to return. The care should be provided in accordance with the standards set out in the Convention on the Rights of the Child. The child can return as well if the return takes place under the care of the statutory representative, or the child will be handed over to his/her statutory representative or a representative of the country's competent authorities to which the return will take place.

The child will get his/her official representative within the return process and, who should represent the child's best interest. In practice, there are multiple obstacles. There is a lack of qualified representatives. For several years (until 2016), there was a list of employees of NGOs whom the Border Guard could contact regarding the establishment of guardianship of an unaccompanied minor[107]. Persons who are available at the moment are appointed as curators. There are no regulations regarding the requirements that candidates for curators must meet. According to the experience of the authors of this report, curators were appointed between court employees and border guard officers due to a lack of people. There are difficulties in communicating with unaccompanied minors due to the lack of free availability of an interpreter. The interpreter is available only during the interview with the Border Guard. If a curator wants to communicate with a child, he/she needs to find an interpreter of his/her own. Employees of NGOs were looking for translators, i.e. among their volunteers or friends. In practice, even if the decision on the obligation to return is issued to the unaccompanied minor, it is not executed due to the absconding of the minor[108].

[105] On 11 August 2023 a member of the Polish GAPs project team participated in the first-ever monitoring of a land return operation from the detention centre in Kętrzyn to the Bezledy border crossing point (Russian Federation. Kaliningrad District).
[106] Ordinance of the Minister of the Interior and Administration of April 18, 2014, regarding the presence of representatives of non-governmental organisations in the course of activities related to bringing a foreigner to the border or to the airport or sea port of the country to which he is brought, Dz. U. 2014 item 534.
[107] In 2016, funding for non-governmental organisations decreased significantly. The list has stopped functioning.
[108] Art. 397, Act on foreigners; A. Trylińska. Małoletni bez opieki ubiegający się o ochronę międzynarodową. Rola kuratora [Unaccompanied minor asylum seeker. The role of the curator]. Studia Prawnicze 1(213) 2018. Accessed March 4, 2024, https://czasopisma.inp.pan.pl/index.php/sp/article/view/394.

A very important problem is the issue of examining the age of minors. The age of the minor is determined based on an x-ray of the wrist. This test is imprecise (the error may be up to 2-3 years). Therefore, it sometimes happens that unaccompanied minors are placed in detention centres with adult foreigners. This problem became especially visible during the ongoing humanitarian crisis on the Polish-Belarusian border and overcrowded detention centres.

Officially, the Convention on the Rights of the Child is fully recognised in Poland. In practice, the Convention is not always respected. The Convention is often violated in return proceedings and in cases regarding the detention of children. NGOs indicate that the biggest problem is the lack of attention paid to the child's best interest[109].

5.8. Entry Bans

According to art. 318 of the Act on foreigners, the entry ban (to Poland and Schengen zone) is a part of the decision on the obligation to return. After amendments to the Act on foreigners following the Polish-Belarusian border crisis, the entry ban is also a part of the order to leave the territory of the Republic of Poland following the irregular entry[110]. A person against whom an entry ban has been issued in the form of an order to leave has the right to appeal, but the appeal does not suspend enforcement of the order.

An entry ban is generally the prohibition of re-entry, issued based on the decision obliging return. The Act on foreigners specifies the circumstances when the entry ban may be waived, or the entry ban into the territory of the Republic of Poland may be narrowed[111].

The entry ban, depending on circumstances[112], may be issued for a period of 6 months to a maximum of 10 years. Issuing an entry ban for a period exceeding 5 years (up to 10 years) may be justified by reasons of state defence, state security, protecting public order, the interest of the Republic of Poland[113], or grounds for believing that the foreigner might be involved in terrorist or espionage activities[114].

The authority that issued the decision in the first instance obliging the foreigner to return may withdraw the prohibition referred to in art. 318 of the Act on foreigners at the request of the foreigner. If the foreigner demonstrates that he/she has fulfilled the obligations arising from the decision obliging the foreigner to return or his/her re-entry into the territory of the Republic of Poland or other Schengen countries is to take place due to justified circumstances, especially for humanitarian reasons or has been granted assistance for voluntary return, as referred to in art. 334 of the Act on foreigners. - entry ban will be waived. In practice, the entry

[109] In 2023 there were a couple of incidents concerning the repatriation of Ukrainian orphan children from Poland to the territory of Ukraine. It has raised concerns of Polish stakeholders providing temporary care to them, but the return of minors has been demanded by the Ukrainian authorities. See: Alternative report to the Committee on the Rights of the Child, August 2020 r., p. 7-8, accessed March 6, 2024, na: https://interwencjaprawna.pl/wp-content/uploads/2020/09/ RAPORT-ALTERNATYWNY-WERSJA-POLSKA.pdf.
[110] Art. 303b of the Act on foreigners.
[111] Art. 320 of the Act on foreigners.
[112] Art. 319 of the Act on foreigners.
[113] Art. 302(1)(9) of the Act on foreigners.
[114] Art. 329a of the Act on foreigners.

ban is usually waived at the request of the foreigner after half of the time of the specified ban has passed[115].

When considering the application to withdraw the ban referred to in art. 318, the authority, takes into account in particular: the circumstances in which the decision obliging the foreigner to return was issued and circumstances due to which the foreigner is to re-enter into the territory of the Republic of Poland or other Schengen countries.

In the return decision, which specifies the deadline for voluntary departure or in which the procedure to oblige the foreigner to return is discontinued, in part concerning determining the deadline for voluntary departure under art. 315 section 4b of the Act on foreigners, the ruling on the ban on re-entry into the territory of the Republic of Poland and other Schengen countries may be waived if the evidence or circumstances available to the authority indicate a high probability that the foreigner, in the event of re-entry into the territory of the Republic of Poland, will comply with the legal order, including legal provisions specifying the principles and conditions of entry of foreigners into the territory of the Republic of Poland, their passage through this territory, their stay there and their departure from it. The decision waiving the ban on re-entry into the territory of the Republic of Poland and other Schengen countries shall additionally rule on this ban and specify its period in the event that the foreigner, within the period of voluntary departure: 1) does not leave the territory of the Schengen countries; 2) crosses or attempts to cross the border contrary to the law.

The legal entry of the foreigner to Polish/Schengen territory during the validity of the entry ban is possible only on humanitarian grounds. If a foreigner re-enters the country during his/her entry ban, he/she will receive a decision to return with a longer period of the entry ban.

5.9. Procedural Safeguards

Generally, procedural safeguards are guaranteed in the Act on foreigners and the Code of Administrative Procedure applicable in all immigration procedures. An administrative process to oblige the foreigner to return is initiated by the local unit of the Border Guard. The officer interrogates the foreigner before the issuance of the return decision. It is conducted with the assistance of an interpreter arranged by the Border Guard (if necessary). A foreigner has the right to see the case file before the issuance of a decision and submit motions and requests[116]. This right is somewhat limited in practice. The foreigner is not able to see the files located in different units. The Border Guard unit responsible for the return procedure is determined territorially, based on where the legality of the foreigner's stay was checked. Sometimes, the responsible office is hundreds of kilometres away, and the deadline to see the case file is too short. Moreover, foreigners in the detention centre are not allowed to leave only to see the case file, and it is rather exceptional to be represented by an attorney.

The return decision is issued in Polish in writing. It includes reasons for the decision and information concerning the remedies. Sometimes, the information on legal remedies is translated into a language that the foreigner understands[117]. Unlike in international protection

[115] See, art 320 sec. 2, point 4 of the Act on foreigners.
[116] Art. 10 of the Code of Administrative Procedure.
[117] According to the study presented on 14 December 2023 by the Rule of Law Institute at the UNHCR-organised seminar on legal assistance to refugees and migrants, in return procedures in the years 2016-

procedures, the state guarantees no free legal assistance in return cases (improper implementation of art. 13 of the EU Return Directive)[118].

Under special circumstances (for instance, the need for a child to finish school) mentioned in the Act on foreigners (art. 316), it is possible to postpone return up to one-year maximum only once in case the foreigner does not submit an appeal. Submission of the appeal prolongs the process for a couple of months. There are still two appeals systems. The first one regards the cases initiated before April 2023 when the Head of the Office for Foreigners conducts the appeal proceedings. The other system concerns cases when foreigners may appeal against the return decision with which they disagree. The appeal proceeding is considered by the Commander-in-Chief of the Border Guard (authority of the second instance), who issues the final administrative decision. A foreigner has a right to appeal it to the Voivodeship Administrative Court in Warsaw. Due to recent changes in the Act on foreigners (March 2023), the submission of the claim will not suspend the return process.

Form of decisions, translation, written confirmation

The return decision is issued and delivered to the foreigner in most cases. At land borders, foreigners leaving Poland after staying in the country without legal title will receive a decision before they leave the territory of Poland. In case of exit by plane after the interrogation of the returnee, the decision may be issued and posted by mail to the Polish address provided by the foreigner or left in the case file[119]. It is possible to receive a decision scan after a request is sent by email. This decision has not been fully translated (just the title and entry ban)[120].

The decisions issued in Poland are in writing, and, in most cases, they include written translations of information about the legal basis, the country of return, and the length of the entry ban. As indicated above, the information about the legal remedies is not always translated. If the foreigner is detained, the detention centre personnel should provide an oral translation of the decision, but it might be difficult outside the more popular foreign languages. If the decision is delivered in person, the returnee shall sign the confirmation of receiving the decision. Due to rumours, some foreigners refuse to sign the confirmation to receive the decision. They believe the decision will not be valid if they do not sign it. Some foreigners refuse to sign anything written in Polish, being afraid that they might consent to deportation. This might be reasonable since, in practice, foreigners are often asked to sign a declaration (in Polish) of waiving their right to appeal[121]. In such a situation, a Border Guard officer writes a

2020 just 39% of examined decisions (sample of 100 cases) included a translation of the information about legal remedies.

[118] In fact, the state-funded legal aid is available upon request before the administrative Court, but only 80 foreigners out of 60,000 obliged to return in 2019-2022 were granted this assistance. Since there is no suspensory effect during the 30 days for filing a complaint against second-instance Border Guard return decision it may not be considered an effective legal remedy [the data provided by the study presented by the Rule of Law Institute: https://www.linkedin.com/pulse/do-migrants-return-procedures-have-right-rights-15th-tomasz-sieniow-jdm5f%3FtrackingId=b6lCQIbQR22PLqijFeNNvQ%253D%253D/?trackingId=b6lCQIbQR22PLqijFeNNvQ%3D%3D, accessed 19 March, 2024.

[119] It is worth noting that the return process, starting at the airport, is usually completed after the foreigner leaves Poland (unless the foreigner is detained and does not want to be returned to the country of origin).

[120] Art. 327 of the Act on foreigners.

[121] Only in the first half of 2023 in the Division of the Border Guards, 272 first-instance return decisions out of 592 became enforceable immediately after the foreigners declared that they were waiving their right to appeal [data provided by the Podlaski Division Border Guard in the correspondence PD-OI-

short note about the refusal of signature (the second officer cosigns it as a witness). Some detainees report that Border Guard officers try to convince them not to submit an appeal as an ineffective way of preventing deportation. Some foreigners, once they receive the decision to return, sign the form where they waive their right to submit an appeal. Such a decision becomes effective immediately. It is not sure if they understand what they have signed or at least can take such a decision when they receive a decision—sometimes after many hours of an interview. Sometimes, they sign the resignation from appeal, and just a few hours later, after consultation with a lawyer, they want to appeal against the decision. Some persons, despite translation, do not understand what it means to submit an appeal and the consequences of not doing it. It is worth mentioning that some foreigners feel pressured or forced to sign a resignation from the appeal.

There are also two additional contexts where we may examine the remedies against the 'decisions related to return' (in Polish: *postanowienie o opuszczeniu*). The first one concerns the orders to leave the territory of Poland issued by the Border Guard in a situation of apprehension immediately after irregularly crossing the border. They are enforced immediately, and challenging these decisions does not suspend their enforcement. According to the data provided by the Border Guard, in just the first half of 2023, 1,010 of these orders were issued against 1,015 foreigners (5 children). In none of these situations, despite available remedies (art. 303(b.1.) of the Act on foreigners guarantees the right to appeal to the Commander-in-Chief of the Border Guard), were the foreigners able to file appeals[122]. A second context relates to the border crossing point with Belarus in Terespol, where asylum seekers in the past were issued a standardised form of refusal of entry based on the lack of a visa[123]. Since the pandemic, they have been returned without any indication of their attempt to cross the Polish border. The claims of asylum seekers were repeatedly ignored, and they were not even-handed a standardised form with the refusal of entry decision against which they could file an appeal[124].

Access to linguistic assistance, free legal aid, representation

The authority conducting the proceedings to issue a decision obliging a foreigner to return informs the foreigner about NGOs providing assistance to foreigners[125], including legal support. This information is provided in writing, although the contact information is sometimes not precise (old contact details, non-existing organisations or the entities not

V.0180.26.2023 of 31.10.2023]. The Podlaski Division controls the border with Belarus, where all of the crossing points were closed, so these waivers were not signed by the Belarusian citizens willing to be returned immediately to the country of origin.

[122] Data provided by the Podlaski Division Border Guard to the Rule of Law Institute in the correspondence PD-OI-V.0180.26.2023 of 31.10.2023.

[123] *M.K. and Others v. Poland* (applications no. 40503/17, 42902/17 and 43643/17).

[124] An example case: the requests of a family fleeing mobilisation to the Russian Army fighting in Ukraine was received in December 2022 only after the 10th attempt to cross the border (international protection case DPU.420.6410.2022). On the first nine attempts, there are only stamps of the border service of Belarus in the family's passports. The foreigners have never received a written refusal of entry despite three months of attempts to legally cross the border and request for international protection according to the arts. 3 and 4 of the Border Schengen Code. In practice, they were always coerced to turn the van around and go back to Belarus.

[125] Urząd do Spraw Cudzoziemców. Bezpłatna pomoc prawna. nd. Accessed January 26, 2024. https://www.gov.pl/web/udsc/bezplatna-pomoc-prawna.

providing help to returnees). In practice, the access to free legal help is also limited due to the small number of lawyers in NGOs.

Access to interpreters is provided by the state during the initial interview. During the later stages of the procedure, all correspondence and evidence provided in the return case must be sent to the Border Guard in Polish. Evidence in the foreigner's original language must be accompanied by a sworn translation paid for by the foreigner.

The foreigner has a right to be represented in this administrative procedure by a proxy, who does not have to be an attorney or even a person with a law degree. The foreigner covers the costs of this representation. It is possible to get free legal advice from organisations supporting migrants, but there is a high probability that they will not be able to handle the case. During the last four years, only the Voivodeship Administrative Court in Warsaw has granted free legal aid in only 80 cases of complaints against final return decisions. During this time, 60,000 foreigners were obliged to return. This may not be considered an effective legal remedy. The petition for granting free legal aid before the court is a rather complicated legal form that requires a thorough understanding of the Polish language and law, so it is unlikely that the foreigner will fill out this motion without the help of a Polish lawyer.

Safeguards pending return

The Commander-in-Chief of the Border Guard provides foreigners with help in their voluntary return. The assistance includes medical care, travel costs, accommodation, and meals before the return[126]. There is no information about the family unity rule. Access to psychological care is limited. Foreigners placed in detention centres have access to a psychologist hired by the Border Guard.

Situations of protracted irregularity ('non-removability') and the rights of non-removable persons

In a situation in which, during the return procedure, the Border Guard discovers that the decision on the obligation of return may not be issued against irregularly staying foreigners due to the protection of the rights of the foreigner, he/she may be granted a humanitarian stay[127], or when the decision is not enforceable, the foreigner may be granted a tolerated stay. (art. 351 of the Act on foreigners).

The conformity of the return procedures/policies with the non-refoulment principle

There are two types of residency that may be granted to non-returnable people: a residence permit on humanitarian grounds[128] and consent for a tolerated stay[129]. Chapter 3 of the Act on foreigners states that a residence permit for humanitarian reasons may be granted if the foreigner may be expelled only to a state in which (within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms): a) his/her right to life, liberty and security of person would be at risk, or b) he/she would be liable to be subjected to torture or to inhuman or degrading treatment or punishment, or c) he/she would be liable to be forced

[126] Art. 335 of the Act on foreigners.
[127] Art. 348 of the Act on foreigners.
[128] Art. 348 of the Act on foreigners.
[129] Art. 351 of the Act on foreigners.

to work, or d) he/she would be deprived of the right to a fair trial or punished without legal basis. This permit can also be granted if the return would violate the foreigner's right to family or private life, or the child's rights, as defined in the Convention on the Rights of the Child, to the extent that it would significantly endanger his/her psychophysical development.

Based on art. 351 of the Act on foreigners, a permit for a tolerated stay on the territory of the Republic of Poland shall be granted to a foreigner under the circumstances listed above (a-d), or if the return is impracticable for reasons beyond the control of Poland. Also, the return can be decided to be inadmissible by a court or the Minister of Justice.

The foreigner's stay in the return procedure is considered illegal. A person waiting for the decision or the final decision does not have the right to work or state-funded accommodation and food. Access to state-funded medical care is available only if the foreigner is detained or in emergency cases. Since the appeal procedure against the return decision could last even a couple of years (old rules, there is no data about the current system), foreigners during this time tend to file applications for international protection, having access to some life-saving services of the state. Most universities will consider foreigners ineligible to study while awaiting the final decision on their return.

According to art. 400a of the Act on foreigners, the Commander-in-Chief of the Border Guard shall provide assistance to foreigners who must not be detained due to the fact that their detention may be detrimental to their health or life or who are presumed to be victims of violence[130]. So, individuals with this alternative to detention (especially after they were released from the detention centre) are eligible for social, medical, and psychological assistance. In the past (2020), the Border Guard subcontracted an NGO (Fundacja Dialog) to assist this most vulnerable group[131]. The majority of foreigners (also vulnerable) in the return procedures are not eligible for this assistance[132]. The persons with vulnerabilities (single parents, pregnant women, persons with disabilities) use repeated asylum procedures when they are covered by medical insurance and can use accommodation facilities available for asylum seekers. Lack of assistance is often an argument for fleeing to another EU Member State.

There is a particular solution for people with special needs, including medical assistance, which is provided within the help in the voluntary return. They may receive medicines or additional needed medical exams before the return. Based on the professional experience of the project team members, we know that there are some cases of ill persons who were obliged to return without the assistance of a doctor. Generally, Poland lacks a support system for persons with vulnerabilities during the return procedures. If this is available in detention centres, it contradicts the principle of not detaining vulnerable migrants.

5.10. Detention

There are six detention centres for foreigners in Poland. They are used to detain both asylum seekers and foreigners awaiting their return. Detention centres are located on the

[130] Art. 400 of the Act on foreigners specifies these two categories of foreigners who are non-detainable.
[131] Assistance covers i.a.: food, shelter, medical and psychological assistance.
[132] Fundacja Dialog, Pomoc instytucjonalna cudzoziemcom. Accessed March 4. 2024. https://fundacjadialog.pl/projekt-fami/pomoc-instytucjonalna-cudzoziemcom/.

premises of Border Guard[133] units or divisions in Biała Podlaska, Białystok, Kętrzyn, Krosno Odrzańskie, Lesznowola, and Przemyśl. During the period of the intense humanitarian crisis on the Polish-Belarusian border in 2021, an additional temporary detention centre for foreigners was established in Wędrzyn (August 2021 - August 2022), located on the premises of a military training ground. During 2021-2022, the buildings of two (open) reception centres for refugees in Czerwony Bór and Biała Podlaska were also used as additional detention facilities[134]. The only existing detention centre for male foreigners is located in Przemyśl, next to the detention centre for foreigners at the Bieszczadzki Division of the Border Guard seat.

Detention is legally possible only based on a local court order issued on the motion of the Border Guard. A foreigner has a right to submit an appeal against the court order on placing him/her in detention or extending detention. This may be done within 7 days from the day of receiving the translation of the court order. In practice, the review procedure typically lasts about a month, but there are also cases when the higher court has not managed to review the detention order within 60 or 90 days (the period of detention). Only a few courts have experience in detention cases. Most judges automatically accept the Border Guard's requests to place or extend detention. Detention cases are dealt with quickly (a couple of minutes), often without the participation of a representative or a foreigner. In most cases, the courts do not consider the foreigner's situation individually and are unfamiliar with the asylum regulations. It is relatively rare to be represented by a lawyer in these procedures because of the isolation of the foreigner. It happens, though, that the courts appoint, upon request (public) defence lawyers (penal procedure code is applicable), who represent foreigners in detention appeal procedures. Since the basis for detention is the application of the Act on foreigners, not many attorneys can apply this law. The representation is then rather ineffective. Unlike general practitioners (advocates or legal advisors), the NGOs specialising in asylum and migration law are better prepared to argue against administrative detention. However, there are few NGO lawyers admitted to practising in criminal courts as defence attorneys, so they normally prepare complaints to the court that the detained foreigners themselves are signing. During the humanitarian crisis at the Polish-Belarusian border in 2021, courts burdened with requests for placement and extension of stay did not inform attorneys of court dates or informed them so late (e.g., 30 minutes before the hearing) that an attorney could not reach them[135].

The foreigner can also file a motion to be released from the detention centre. This motion is examined by the Commander of the Border Guard unit/division responsible for the detention centre. If the release is not granted, the detainee has a right to file an appeal against it to the local court.

In the return context, a foreigner shall be detained for the reasons specified in art. 398a of the Act on foreigners. According to this provision, a foreigner is placed in a detention centre if:

[133] There was no discussion in Poland about the privatisation of detention facilities for foreigners, which is the case of open reception centres for asylum seekers.
[134] More about the practices of detention during the 2021 crisis: T. Sieniow. Migrants have the right to have rights - detencja cudzoziemców. Lublin. 2022. Accessed January 26, 2024 https://panstwoprawa.org/publikacje/.
[135] Straż Graniczna. Nowoczesny budynek mieszkalny dla cudzoziemców w Lesznowoli. 2022. Accessed January 26, 2024. https://www.strazgraniczna.pl/pl/aktualnosci/10746,Nowoczesny- budynek-mieszkalny-dla-cudzoziemcow-w-Lesznowoli.html.

- there is a probability that a decision to oblige the foreigner to return without specifying a deadline for voluntary departure has been issued and this is due to a circumstance[136] referred to in art. 315(2)(2) of the Act on foreigners,

  or

- a decision to oblige the foreigner to return without specifying a deadline for voluntary departure has been issued and there is a need to secure its enforcement and the issuance of this decision is due to a circumstance referred to in art. 315(2)(2),

  or

- there is a need to secure the transfer of the foreigner to a third country on the basis of an international agreement on the transfer and reception of persons and his immediate transfer to that country is not possible,

  or

- at least one of the cases referred to in art. 398(1) has occurred[137] and: a) the application of the measures referred to in art. 398(2) (alternatives to detention) is not possible, b) the foreigner fails to comply with the obligations set out in the decision to apply to him/her the alternatives to detention referred to in art. 398(2).

According to art. 315(2) of the Act on foreigners, the decision obliging the foreigner to return without a possibility of a voluntary departure (not specifying the deadline for voluntary departure), shall be issued when: 1) there is a risk of the foreigner's absconding or 2) this is required for reasons of national defence or state security or the protection of public security and public order.

The risk of absconding is established, taking into account whether the foreigner: 1) has declared non-compliance with obligations arising from the receipt of a decision obliging a foreigner to return, or 2) does not possess any documents confirming his/her identity, or 3) has crossed or has attempted to cross the border illegally, or 4) entered the territory of the Republic of Poland during the period of validity of the entry in the list of foreigners whose stay in the territory of the Republic of Poland is undesirable, or in the Schengen Information System for the purpose of refusing entry and stay (art. 315.3. of the Act on foreigners).

It must be stressed that even if there is a risk of absconding, the legislator has imposed on the Border Guard and the courts the consideration of first imposing the measures alternative to detention (art. 398 of the Act on foreigners). The catalogue of available alternatives includes: 1) reporting at specified intervals to the Border Guard body indicated in the decision, 2) paying cash security (bail) in the amount specified in the decision, not lower than twice the minimum wage provided for in provisions on minimum wages, 3) depositing the travel document with the authority indicated in the decision, 4) residing at the place indicated in the decision (art. 398.3. of the Act on foreigners). Theoretically, detention should be considered only when the application of the alternatives is not possible or the foreigner has failed to comply with them (art. 398a.4. of the Act on foreigners). In practice, though, the courts consider the risk of absconding as an argument against applying these alternative measures.

[136] 'Reasons of national defence or state security or the protection of public security and public order'.
[137] Act on foreigners.

Detention should safeguard the smooth adoption of the return decision and facilitate the enforcement of it. It starts with the Border Guard motion to the district court to place a foreigner in a detention centre for foreigners or in the arrest for foreigners (a detention facility with the stricter regime used for foreigners who do not respect the rules of the detention centre). The district court decides to place the foreigner in a detention centre for up to 90 days. A foreigner participates in the initial court hearing when the court decides to place him/her in detention. This is usually the only moment when the foreigner sees a judge during his/her detention – a period lasting a maximum of 24 months (including a maximum of 18 months during the return procedure and 6 months if he/she lodges an application for international protection). There is no legal duty of the foreigner's presence in any subsequent court hearings and in practice, the foreigner is not brought to the court even if he/she expresses the will to participate in the court's hearing deciding about prolonging the detention.

The stay in a detention centre for the purpose of return can last up to 18 months (the maximum period according to EU Return Directive). The court reviews the necessity of continuing the detention every 90 days when the court examines the Border Guard motion for the subsequent extension. Pursuant to art. 403 point 3a of the Act on foreigners, after a 6-month stay in a detention centre, the stay may be extended for a specified period, not longer than another 12 months, if there is a justified assumption that the period of enforcement of the decision obliging the foreigner to return will be extended, and when: 1) a foreigner who has been issued a decision obliging the foreigner to return does not cooperate with the Border Guard authority in the implementation of this decision, or 2) the execution of the decision obliging the foreigner to return is temporarily impossible due to delays in obtaining the documents necessary for this purpose from third countries. This means the maximum stay period can be as long as 18 months. In practice, this stay may be even longer, because, in accordance with art. 403 point 4 of the Act on foreigners the periods referred to in section 1-3a, the period of stay of a foreigner in a detention centre or a detention centre for foreigners in connection with the application for international protection submitted by him/her (maximum 6 months) is not included.

Detention conditions are stipulated in the Act on foreigners (art. 410-427) and in the Ministry of the Interior Ordinance[138]. The technical conditions generally meet European standards, but at the peak of the 2021 border crisis, the Minister of the Interior and Administration[139] reduced the space per detained person in the detention centre from 4m^2 to 2m^2. This was much below ECtHR standards for penitentiary facilities. The ad hoc detention facility for men at the Wędrzyn military training ground has not met any standards and was finally closed in August 2022. It was sometimes described as 'the Polish Guantanamo'[140].

The detention centres for foreigners are not penitentiary facilities for convicted individuals or ones awaiting a criminal trial. Foreigners waiting for deportation are placed together with asylum seekers in detention centres dedicated to foreigners, but the character of this detention and the conditions of deprivation of liberty are not much different from punitive detention.

[138] Ordinance of the Minister of the Interior of April 24, 2015, on detention centres and detention centres for foreigners, Dz. U. 2023, item 719.
[139] Ordinanceof the Minister of the Interior and Administration of August 13, 2021, amending the ordinance on detention centres and detention centres for foreigners, Dz. U. 2021, item 1482.
[140] Amnesty International. Witamy w Guantanamo. Okrutne traktowanie na granicy polsko-białoruskiej i w ośrodkach dla cudzoziemców. 2022. Accessed January 26, 2024. https://www.amnesty.org.pl/okrutne-traktowanie-na-granicy-polsko-bialoruskiej-i-w-osrodkach-dla-cudzoziemcow.

The detention centres are also used to detain foreigners after they are released from prison and before their deportation to their country of origin. Very often, the residence status of the convicted foreigners expires during their imprisonment. So, they continue to be detained based on immigration, not criminal law.

Poland is infamous for detaining families and children. Numerous judgments of the European Court for Human Rights confirm it[141]. Pursuant to art. 397(3) of the Act on foreigners, an unaccompanied minor who has attained the age of 15 may be placed in a detention centre. Accompanied minors are placed in detention together with their guardians. All family members should be placed in detention together, usually in the same room. However, during the 2021 crisis, there were many situations when bigger families were divided, and adult children ended up in detention centres different from those of their parents and siblings. There were also cases of dividing spouses. Six existing detention centres in Poland have specific profiles. As a rule, they either are used for single men only or for families, single women, and unaccompanied minors. The number of detention centres for families, women, and UAMs is changing every year. During the peak of the humanitarian crisis at the Polish-Belarusian border, families and children were placed in all but one detention centre (Krosno Odrzańskie/Wędrzyn). In October 2023, there was only one detention centre for families, single women, and unaccompanied minors: the detention centre for foreigners in Lesznowola. The profiles of detention centres have changed over the years. Many detention centres were not suitable for families with children. The detention centre for families with children in Lesznowola has a well-developed infrastructure adapted to families with children since 2022.

The rights, obligations, and restrictions towards foreigners are defined in detail in the Act on foreigners and the ordinance[142] of the Minister of the Interior and regulations of individual centres[143]. The regulations vary and are not generally available (one should request their content from the Border Guard). Upon admission to the detention facility, the foreigner signs that he/she has familiarised himself/herself with the regulations (art. 411 of the Act on foreigners). A foreigner admitted to a detention centre or arrest for foreigners is instructed in a language which he/she understands about the rights and obligations and is familiarised with the regulations governing the stay in a detention centre or arrest for foreigners. The foreigner confirms the instruction with his/her own signature.

Based on the Act on foreigners (art. 410-427), a foreigner placed in a detention centre or arrest for foreigners has the right to contact Polish state authorities, a diplomatic representation or a consular post of a foreign state, non-governmental or international organisations providing assistance to foreigners, and his/her representative. Also, these foreigners are entitled to social assistance and medical care. They can access the internet at the computer workstations and a library and are allowed to meet relatives in specially designated rooms, with the consent of the Border Guard. Foreigners in detention have a right to take at least a two-hour walk in the open air daily unless otherwise prescribed by a doctor. Finally, they can have contact with other foreigners in custody, with the permission of an officer on duty in the custody, at a specified place and time, and play day-room games at a time and place

[141] *Bistieva and Others v. Poland*, Application no. 75157/14; *Bilalova and others v. Poland*, Application no. 23685/14; A.B. and Others v. Poland Application no. 15845/15 i 56300/15; *Nikoghosyan and Others v. Poland*, Application no. 14743/17.
[142] Ordinance of the Minister of the Interior of April 24, 2015, on detention centres and detention centres for foreigners, Dz. U. 2023, 719.
[143] A model regulation of the detention centre is published as an appendix to the Ordinance of the Minister of the Interior of 24 April 2015.

specified by an officer on duty in the custody. The regulations also stipulate more detailed rights, such as using sports equipment or buying tobacco and newspapers. In practice, the most burdensome restriction for foreigners is the prohibition of having telephones with an image-recording function.

The incidents of medical and psychological problems after long detention are very common in Poland[144]. On many occasions, foreigners undergoing detention are transferred back and forth from the detention centre for foreigners in Przemyśl to the psychiatric hospital in Jarosław. Some incidents of suicide or the death of foreigners in detention have been reported[145]. The detention of pregnant women sometimes leads to miscarriages[146].

5.11. Emergency Situations

As a result of the humanitarian crisis on the Polish-Belarusian border, the Minister of the Interior and Administration issued the Ordinance of 13 August 2021 amending the ordinance on arrests and detention centres for foreigners[147]. Poland has referred to the emergency situation[148] as justifying the derogation of the established space standard per a detained foreigner in the detention centre for foreigners. According to §11 point 1a of the Ordinance, if it is necessary to place a large number of foreigners in a detention centre or arrest at the same time, and in the absence of vacancies in rooms for foreigners or residential cells, a foreigner may be placed in detention, for a specified period of time. In August 2021, the Polish Border Guard not only started using the military training ground in Wędrzyn as an ad hoc detention centre for men but also announced it would use 'registration centres' in Połowce and Dubicze Cerkiewne for the short-term detention of foreigners apprehended while crossing the border[149].

5.12. International Cooperation

Readmission agreements are initiated and negotiated at the level of the Border Guard Headquarters in cooperation with representatives of the Ministry of the Interior and the

[144] Rzecznik Praw Obywatelskich. Sytuacja cudzoziemców w ośrodkach strzeżonych w dobie kryzysu na granicy Polski i Białorusi. June 2022. Accessed January 26, 2024. https://bip.brpo.gov.pl/pl/content/kmpt-cudzoziemcy-strzezone-osrodki-raport.

[145] A. Gorczyca, D. Maliszewski. Zagadkowa śmierć w ośrodku dla uchodźców. Rodzina dowiedziała się od dziennikarza. Gazeta Wyborcza 12.04.2023. Accessed January 26, 2024. https://rzeszow.wyborcza.pl/rzeszow/7,34962,29656134,w-strzezonym-osrodku-dla-uchodzcow-zmarl-28-letni-syryjczyk.html.

[146] *V.M. and Others v. Poland*, Application no. 40002/22.

[147] Ordinance of 24 April 2015.

[148] According to Article 18.1. of the Directive 2008/115, in situations where an exceptionally large number of third-country nationals to be returned places an unforeseen heavy burden on the capacity of the detention facilities of a Member State or on its administrative or judicial staff, such a Member State may, as long as the exceptional situation persists, decide to allow for periods for judicial review longer than those provided for under the third subparagraph of Article 15(2) and to take urgent measures in respect of the conditions of detention derogating from those set out in Articles 16(1) and 17(2).

[149] Dziennika Gazeta Prawna. Straż Graniczna: Uruchamiamy nowe ośrodki dla cudzoziemców. 19 August 2021. Accessed January 26, 2024. https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/8228840,osrodki-cudzoziemcy-staz-graniczna.html.

Ministry of Foreign Affairs[150]. Poland has signed over 35 readmission agreements, including recent ones with Armenia and Vietnam. Some agreements concern just readmission. Some agreements are international agreements with a readmission clause. However, the readmission agreement with Belarus was suspended in October 2021[151].

[150] Instytut na Rzecz Państwa Prawa. Acquis Return. Doświadczenia implementacji i rozwój polityki powrotowej Unii Europejskiej. 2015. Accessed January 26, 2024. https://panstwoprawa.org/wp-content/ uploads/2015/10/Acquis-return.pdf.
[151] See the Annex.

6. Funding Return (Budget) and Related Programmes

The return policy is co-financed from EU funds and Norway funds in majority. The single return process is financed from the state funds (through the Border Guard). Foreigners placed in detention centres finance their stay there during the return process (from their private budget). The Polish IOM office is financed by among others EU funds, Polish government, Polish-Switzerland cooperation program and Norway funds.

The Act on foreigners determines which entities finance the return procedure. These are mostly state funds (through the Border Guard) and private funds of the foreigner. Pursuant to the Act on foreigners, the Border Guard is responsible for financing assistance in voluntary return and organising forced return. Moreover, the Commander of the Border Guard unit or the commanding officer of the Border Guard post is competent for the compulsory execution of the decision obliging a foreigner to return, and if the foreigner is staying in a detention centre or a detention centre for foreigners – the Border Guard authority to which this centre or detention centre is subordinate, determines, by way of decision, the amount of the costs referred to the cost of stay in the detention centre and return, and entities obliged to cover these costs. As a rule, these costs are borne by the foreigner, but they may also be borne by the entity inviting or entrusting the job or internship to a foreigner.

The EU funds used in return policy include the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF)[152]. The ISF can finance, e.g., the development of the Schengen Information System (SIS), the Secure Information Exchange Network Application (SIENA) system or transborder control. Under the AMIF, the return procedure costs about EUR 8 million, averaging EUR 4 million; return and expulsion cost more than EUR 8 million; vulnerable persons and UAMs are about EUR 3 million; and there is about EUR 8 million for measures to prevent irregular migration[153].

[152] Department of European Funds of the Ministry of the Interior and Administration. Fundusz Bezpieczeństwa Wewnętrznego 2021-2027. n.d. Accessed February 8, 2024. https://www.gov.pl/web/dfe-mswia/program-funduszu-bezpieczenstwa-wewnetrznego-2021-2027.
[153] Ministry of the Interior and Administration. Fundusz Azylu Migracji i Integracji 2021-2027. n.d. Accessed January 26, 2024. https://www.gov.pl/web/dfe-mswia.

7. Gaps

Based on our research and analysis, we have identified several gaps in Poland's return policy in a few working areas of the legal and institutional framework and infrastructure. In addition, a significant gap is limited public access to comprehensive databases regarding returns and readmissions. After a request, some data can be received from the public institutions (Border Guard, Office for Foreigners). In addition, the Return Directive is improperly implemented. Poland is also not honouring some CJEU judgements.

Legal gaps

Gaps in the legal framework are linked with improper implementation of the Return Directive. Foreigners have limited access to legal remedies, including appeals. A foreigner against whom return proceedings have been initiated is not entitled to free legal assistance. He/she may seek help from NGOs providing free assistance to foreigners, which depends on received state funding, but it is not certain whether they will be able to deal with his/her case in a comprehensive manner (i.e., full representation before the authority) due to the large number of people in need of help. Moreover, some foreigners indicate that Border Guard officers discourage them from appealing and suggest the foreigner sign a waiver of the right to appeal (suggesting the pointlessness of filing an appeal). The reform of the Act on foreigners of 2023 has significantly changed return proceedings, accelerating the proceedings and sharply limiting migrants' rights (shortening the deadline for filing an appeal against the decision to oblige them to return, abolishing the suspensive effect of a complaint filed with the court). The most important change, however, is the transfer of the return obligation proceedings entirely to the Border Guard. For the procedures started before 7 April 2023, the appeal body continues to be the Head of the Office for Foreigners. The time of examining appeals against return decisions in Poland was (in cases started before April 2023) very long (even 2-3 years). The inspectors applied the provisions regarding, among others, integration in Polish society or the special interest of a foreigner. There are no statistics on appeal proceedings conducted under the new rules. It should be noted that Poland has not decided to establish special immigration courts responsible only for migration and asylum matters. All complaints in these matters go to the same court: the Voivodeship Administrative Court in Warsaw, which deals with all administrative cases.

Border Guard officers are stationed permanently in some voivodeship offices and randomly check foreigners applying for temporary residence. This practice is incomprehensible, especially since foreigners who are staying illegally and may receive a positive decision as a result of initiated proceedings are often spouses of Polish citizens, foreigners leading a family life, or having a child in Poland.

There is no particular support for vulnerable foreigners regulated by Polish law. It must be noted that foreigners in the return process (except for some of them being released from detention and directed to stay in the Fundacja Dialog facility) do not have access to medical assistance, psychologists, interpreters, or the right to work. There are also no accommodation facilities provided, except the detention centres. Vulnerable persons placed in the detention centre may leave it due to poor physical or mental health (reasonable suspicion of being subjected to torture) and be placed in the only facility in Poland run by an NGO (Fundacja Dialog) where they can wait for their return. The Polish authorities abuse the use of detention, which can last up to two years (in the case of a foreigner whose application for international

protection was not approved and proceedings for return obligation were later initiated). Detention should be used as a measure of last resort[154], not only during the pre-return period but also during the entire proceedings (in some cases). The chances of a foreigner leaving the detention centre are low if proceedings obliging him/her to return have been initiated. Various district courts issue decisions regarding the application of detention or its extension. Courts do not conduct their own evidentiary proceedings and do not consider applications submitted by foreigners. This was especially visible in 2021-2022 during the peak of the humanitarian crisis on the Polish-Belarusian border. This includes cases of the detention of foreigners applying for international protection who are placed in a detention centre under the pretext of a lack of financial resources or lack of a place of residence and when[155], according to the law, a person applying for international protection is covered by social assistance and receives monthly benefits and can live in an open reception centre for foreigners.

Unaccompanied minor foreigners against whom return obligation proceedings have been initiated must have a representative (curators) in the case. In practice, finding curators is difficult because there is a lack of qualified personnel knowing immigration and asylum procedures. It is not uncommon for Border Guard officers (not involved in the return procedure) or court staff to become a curator. This raises some questions about a conflict of interest. There was a list of NGO employees expressing readiness to become curators for some time. However, these declarations could not be kept when the government limited EU funding of these organisations after 2016.

Poland does not seem to promote effective monitoring of the return operations. Indeed, identifying four NGOs to perform these tasks may seem like a policy choice promoting transparency. However, since it is not accompanied by any financial incentives (it is not a delegated task supported by subsidies or grants), the monitoring is a facade, probably masking unwillingness to be monitored.

Institutional gaps

The number of authorities and other bodies involved in returns is strictly limited. These are mainly the Border Guard, the IOM, and four NGOs allowed to run the monitoring.

The Border Guard is the body that deals comprehensively with return proceedings but is not effectively controlled by external stakeholders or courts, which raises doubts about the correctness of the decision control in appeal proceedings.

After prior training, NGO employees have the right to monitor returns (currently, there are four organisations). However, there is no independent body monitoring the return. The Ombudsman applied for such a right, but his request was not accepted[156].

[154] Stowarzyszenie Interwencji Prawnej, Prawa cudzoziemców w Polsce w 2020 roku. Accessed March 6, 2024. https://interwencjaprawna.pl/wp-content/uploads/2021/01/raport_SIP_w_dzialaniu_2020.pdf.

[155] Numerous judgments regarding unfair detention. i.a. Court of Appeal in Warsaw (judgement of March 1, 2023, II AKa 487/21), The Supreme Court in its judgement of April 12, 2023, II KK 149/22.

[156] Rzecznik Praw Obywatelskich. Rzecznik powinien monitorować deportacje cudzoziemców. Marcin Wiącek prosi MSWiA o wyjaśnienia. 2022. Accessed January 26, 2024. https://bip.brpo.gov.pl/pl/content/rpo-deportacje-cudzoziemcow-monitoring-mswia.

In practice, sometimes, the information about the enforcement of some return decisions is provided to the monitoring NGOs too late, thus making monitoring impossible (information provided a couple of minutes before the return).

Infrastructure gaps

There are also no accommodation facilities provided for foreigners subject to return proceedings, except the detention centre and only one facility for returnees released from detention run by an NGO (financed by Border Guard funds). Foreigners awaiting a decision to oblige them to return (or granting them a humanitarian stay) or for their case to be considered after submitting an appeal are not guaranteed a place to stay. The argument of not having a place of residence is often used by the court in cases of an extension of stay in detention centres. Therefore, foreigners waiting to return from the IOM are provided with accommodation in Warsaw.

In 2021-2022, the number of people staying in detention centres increased significantly due to the humanitarian crisis on the Polish-Belarusian border. Temporary detention centres were established, including the infamous centre in Wędrzyn[157]. This centre was established on the territory of a military base. Foreigners staying at the centre heard gunshots every day. This centre did not meet basic conditions of stay, including sanitary conditions. Foreigners remained crammed into a very small area. For several months, NGO representatives (lawyers) could not visit the foreigners staying there. The centre was monitored by national bodies[158] The foreigners staying there were frequently protesting and on one occasion there were serious riots[159]. The centre was closed on 19 August 2022[160].

Implementation of the Return Directive

The Return Directive has not been implemented properly in Poland. Undoubtedly, the returnees have been deprived of access to effective legal remedies. The Act on foreigners does not provide for free legal assistance, apart from generally available assistance provided by NGOs offering free assistance to foreigners. Moreover, a complaint to the court no longer has a suspensive effect, which means that the only independent body will not have time to issue a judgement before the return. The deadline for filing an administrative appeal has been shortened to 7 days, which prevents the effective implementation of this right. In case of issued return decisions, entry bans are applied automatically.

[157] Najwyższa Izba Kontroli, Wystąpienie pokontrolne zmienione zgodnie z treścią uchwały nr KPK-KPO.443.045.2022 Zespołu Orzekającego Komisji Rozstrzygającej w Najwyższej Izbie Kontroli z dnia 18 maja 2022 r. D/21/506 – Przygotowanie organów państwa na wypadek masowego napływu cudzoziemców do Polski. 2021. Accessed January 26, 2024. Retrieved from https://bip.nik.gov.pl.

[158] Rzecznik Praw Obywatelskich. Ośrodek dla cudzoziemców w Wędrzynie nie spełnia standardów ochrony ich praw. Wnioski po trzeciej wizytacji BRPO. 2022. Accessed January 26, 2024. https://bip.brpo.gov.pl/pl/content/rpo-wedrzyn-cudzoziemcy-osrodek-standardy.

[159] Rzecznik Praw Obywatelskich. Bunt w ośrodku dla cudzoziemców w Wędrzynie. Straż Graniczna podała szczegóły. 2021. Accessed January 26, 2024. https://bip.brpo.gov.pl/pl/content/ rpo-kmpt-bunt-cudzoziemcy-wedrzyn-sg-pytania.

[160] Polska Agencja Prasowa. Straż Graniczna: zamknęliśmy wszystkie dodatkowe ośrodki strzeżone dla cudzoziemców. 2022. Accessed January 26, 2024. https://www.pap.pl/aktualnosci/news%2C1426073%2Cstraz-graniczna-zamknelismy-wszystkie-dodatkowe-osrodki-strzezone-dla.

Pushbacks

The policy of pushbacks on border crossing point Terespol, which the European Court of Human Rights has condemned, should be scrutinised and the pushbacks practices should be ended. The 2021-2023 amendments to the Act on foreigners reducing the procedural safeguards in access to protection, allowing for expulsion without access to effective legal remedies, seem to contradict the Border Schengen Code, the Return Directive, and the EU Charter of Fundamental Rights[161]. Introducing some procedural safeguards in the Act on foreigners has no real consequence for foreigners irregularly crossing the border. It is worth mentioning that judgments of the European Court for Human Rights confirmed that there were numerous violations of art. 3 of the ECHR (applicants' treatment by the Polish authorities during border checks exposing them to the risk of inhuman and degrading treatment in the countries of origin, and repeating instances of collective expulsions at the Terespol/Brześć crossing point.

[161] Numerous judgments of Polish courts stating that pushback acts are illegal, i.a. Provincial Administrative Court in Białystok (ref no. II SA/Bk 492/22),judgement of the Provincial Administrative Court in Warsaw of April 26, 2022, ref. no. IV SA/Wa 420/22, judgement of the Provincial Administrative Court in Warsaw of April 27, 2022, ref. no. IV SA/Wa 471/22, judgement of the Provincial Administrative Court in Warsaw of 20/05/2022, ref. no. IV SA/Wa 615/22, judgement of the Provincial Administrative Court in Warsaw of May 27, 2022, ref. no. IV SA/Wa 772/22, Supreme Administrative Court: ref. no. II OSK 165/23, II OSK 2749/22, II OSK 2750/22, II OSK 2751/22.

8. Policy Suggestions

Poland's return policy has become more and more restrictive over the years. Considering several gaps regarding the return governance in the country, we have formulated some recommendations in this field, including legal, institutional and infrastructure ones.

Legal policy suggestions

They include:

- restoring the 14-day period for filing an appeal against the return decision;
- restoring the effect of suspending the execution of the return decision as a result of submitting a complaint to the court;
- fully implement the Return Directive to introduce a system of state-funded legal assistance in return appeal procedures (similar to the one available in asylum appeal procedures);
- broadening access to translation and interpretation services to underprivileged foreigners who are not able to afford providing sworn translations of their crucial evidence;
- considering the transfer of competences of the appeal body to different authorities then Border Guard meeting the criteria of art. 13 of the Return Directive ('competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence');
- introducing an amendment to the Act on foreigners, under which it will not be possible to initiate return proceedings against a foreigner who has already submitted an application for a temporary residence permit and leads family life in Poland with a Polish citizen, an EU citizen or a foreigner;
- introduction of mandatory professional representation before district courts in matters relating to placement and extension of stay in a detention centre;
- assessment of the health and psychological condition of a foreigner staying in detention before each court session on placement or extension of stay in detention; the assessment should be made by independent specialists not employed/paid by the Border Guard;
- enabling the Ombudsman Office to monitor the enforcement of the return decision and provide necessary funds for that;
- greater transparency in the scope of monitoring of return operations, including observing the law obliging the Border Guard to inform monitoring bodies in advance;
- conducting training for judges issuing decisions on placing and extending the detention of a foreigner and judges of the District Administrative Court in Warsaw on the Return Directive guarantees;
- repeal of the Ordinance amending the ordinance on the temporary suspension or restriction of border traffic at specific border crossings being a basis of by-passing Schengen Border Code and the Return Directive obligations[162];
- regulating the situation of people belonging to vulnerable groups in terms of special assistance also when they appeal the return decision;
- taking steps to shorten and eliminate detention of children in return procedures (especially unaccompanied minors);

[162] Dz.U. 2022, item 423.

- creating a state-financed system of support to unaccompanied minors who are facing return (special reception facility being an alternative to detention, a list of curators for unaccompanied minors, training, reimbursement of travel costs);
- increasing use of alternatives to detention in return procedures;
- regulating the situation of access to medical services and psychological care for all foreigners in the lengthy return procedures.

Institutional policy suggestions

They encompass:

- increasing cooperation with Frontex (including extending Frontex's mandate to monitor national detention and return practices);
- increasing the transparency of the national return operations by allowing monitoring by Frontex, the Ombudsman, next to current monitoring NGOs;
- increasing cooperation between the Border Guard, the Office for Foreigners and NGOs, the Ombudsman for Children and the Ombudsman restoring the abandoned (in 2016) practice of annual consultative forums;
- introducing the state funding of return operations' monitoring;
- dissemination among foreigners considering a voluntary return an accurate knowledge about it and post-return reintegration support by the IOM or Frontex partners;
- creating an interinstitutional council or advisory body responsible for oversight of compliance with EU and national safeguards in return proceedings; it should include representatives of public institutions and international and non-governmental organisations.

Infrastructure policy suggestions

They include:

- making sure that the construction of the barrier on the Polish-Belarusian border (or Polish-Russian border) next to state sovereignty over its territory takes into account imperatives of human security and does not violate state obligations in the fields of respecting the principle of non-refoulement and guaranteeing access to asylum procedures;
- making sure that the national reception facilities for foreigners are sufficient to host not only asylum seekers but also returnees; considering extending the eligible group of residents of reception centres for asylum seekers to the foreigners awaiting judicial decisions on refusal of granting them international protection and to the foreigners whose return procedures have been initiated (who are currently forced to file consecutive asylum applications just to receive shelter and medical assistance during their return procedures).

9. Conclusions

This report on Poland's return governance analyses the law and practice and should be treated as a guideline that will enable changes to be made to improve compliance with migrants' rights while respecting the law of the receiving country. The report analyses the legal, institutional and infrastructure frameworks regarding the return proceedings from Poland for foreigners. The report covers the years 2015-2023 (and 2024 in some contexts).

The Authors of the report presented in detail the legal regulations and practices in the field of return proceedings. The procedures regarding the principles of return proceedings and the execution of decisions were explained. The report discussed the relationship of EU law to Polish law, Poland's compliance with EU law and the implementation of judgments of European tribunals. Reference was made to cooperation between national institutions and organisations as well as international cooperation. The Authors also elaborated on the detention policy and migrants' rights in this context. The report indicated specific examples of practices that raise doubts as to their legality. The report identified several legal gaps (including those in the field of the implementation of the Return Directive) as well as institutional and infrastructural ones. The Authors pointed to changes in the national law that were and are inconsistent with the Return Directive. The report also presented pushbacks as illegal practices at the Polish land borders.

Even though Poland is very effective in the enforcement of return decisions (70%), migrants' rights need to be protected. Indeed, one of the reasons for this result has been the possibility of returning migrants with irregular stay via land borders (with Ukraine, Belarus or the Russian Federation). Restrictive changes in the law since 2021, which began with the humanitarian crisis on the Polish-Belarusian border, have limited the rights of foreigners (reducing the procedural safeguards against arbitrary expulsion).

The humanitarian crisis has had a significant impact on the relations between the Border Guard and organisations working for foreigners, as well as on the inhabitants of border regions and Polish society. It is hard to accept the policy of pushbacks on the Polish-Belarusian border that has been condemned by the European Court of Human Rights and the new amendments to the Act on foreigners reducing the procedural safeguards against arbitrary expulsion without access to effective judicial remedies.

10. Appendices

***Table 1*. Standard Readmission agreements signed**

Title	Signatory State/Target Third Country	Date		Link to the document
		Signature	Entry into force	
Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation	Albania (EU)	2005	2006	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22005A0517%2802%29
Agreement between the European Union and the Republic of Armenia on the readmission of persons residing without authorisation	Armenia (EU)	2013	2014	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22013A1031(02)
Agreement between the Government of the Republic of Poland and the Federal Government of the Republic of Austria on the reception of persons staying without permission	Austria	2002	2005	https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20060510373
Agreement between the European Union and the Republic of Azerbaijan on the readmission of persons residing without authorisation	Azerbaijan (EU)	2014	2014	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22014A0430%2801%29
Agreement between the European Union and the Republic of Belarus on the readmission of persons residing without authorisation	Belarus (EU)	2020	2020 (suspended by Belarus 2021)	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22020A0609%2801%29
Agreement between the European Community and Bosnia and Herzegovina on the readmission of persons residing without authorisation - Joint Declarations	Bosnia and Herzegovina (EU)	2007	2008	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22007A1219%2804%29
Agreement between the Government of the Republic of Poland and the Government of the Republic of Bulgaria on the transfer and reception of persons staying without permission	Bulgaria	1993	1994	
Agreement between the European Union and the Republic of Cape Verde on the readmission of persons residing without authorisation	Cape Verde (EU)	2013	2014	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22013A1024%2802%29
Agreement between the Government of the Republic of Poland and the Government of the Republic of Croatia on the transfer and reception of persons staying without permission	Croatia	1994	1995	
Agreement between the Government of the Republic of Poland and the Government of the Czech Republic on the transfer of persons across a common state border	Czechia	1993	1993	
Agreement between the Government of the Republic of Poland and the Government of the Republic of Greece on the transfer and reception of persons staying without permission	Greece	1994	1996	
Agreement between the European Union and Georgia on the readmission of persons residing without authorisation	Georgia (EU)	2010	2011	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22011A0225%2803%29

Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation	Hong Kong (EU)	2001	2004	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22004A0124%2801%29
Agreement between the Government of the Republic of Poland and the Government of the Republic of Hungary on the transfer and reception of persons staying without permission	Hungary	1994	1995	
Agreement between the Government of the Republic of Poland and the Government of Ireland on the transfer and reception of persons staying in the territories of their countries without authorization	Ireland	2001	2002	https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WMP20020310498
Agreement between the Government of the Republic of Poland and the Government of the Republic of Kazakhstan on the readmission of persons	Kazakhstan	2016	2017	https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20170001623
Agreement between the Government of the Republic of Poland and the Government of the Republic of Latvia on the transfer and reception of persons staying without permission	Latvia	2006	2007	https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20080150093
Agreement between the Government of the Republic of Poland and the Government of the Republic of Lithuania on the transfer and reception of persons	Lithuania	1998	2000	https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WMP20060900940
Agreement between the European Community and the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation	Macau (EU)	2003	2004	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22004A0430%2801%29
Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorisation	Moldova (EU)	2007	2008	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22007A1219%2810%29
Agreement between the European Community and the Republic of Montenegro on the readmission of persons residing without authorisation	Montenegro (EU)	2007	2008	https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A1219(02)
Agreement between the European Community and the former Yugoslav Republic of Macedonia on the readmission of persons residing without authorisation	North Macedonia (EU)	2007	2008	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22007A1219%2801%29
Agreement between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation	Pakistan (EU)	2009	2010	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A22010A1104%2802%29
Agreement between the European Community and the Russian Federation on readmission	Russia (EU)	2006	2007	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22007A0517%2803%29
Agreement between the Government of the Republic of Poland and the Government of Romania on the mutual transfer of persons staying without authorization in the territory of one of the countries of the Contracting Parties	Romania	1993	1994	
Agreement between the European Community and the Republic of Serbia on the	Serbia (EU)	2007	2008	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22007A1219%2803%29

readmission of persons residing without authorisation				
Agreement between the Government of the Republic of Poland and the Government of the Republic of Slovakia on the transfer of persons across a common state border	Slovakia	1993	1993	
Agreement between the Government of the Republic of Poland and the Government of the Republic of Slovenia on the transfer and reception of persons staying without permission	Slovenia	1996	1998	https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WMP20070340388
Agreement between the Republic of Poland and the Kingdom of Spain on the admission of persons staying without permission	Spain	2002	2003	https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20042282300/O/D20042300.pdf
Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation	Sri Lanka (EU)	2004	2005	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22005A0517%2803%29
Agreement between the government of the Republic of Poland and the government of the Kingdom of Sweden on the admission of persons staying without permission	Sweden	1998	1999	
Agreement between the Government of the Republic of Poland and the Federal Council of the Swiss Confederation on the transfer and reception of persons staying without permission	Switzerland	2005	2006	https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20061621147
Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation	Turkey (EU)	2013	2014	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A22014A0507%2801%29
Agreement between the European Community and Ukraine on the readmission of persons	Ukraine	1993 (2007 EU)	1994 (2008 EU)	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22007A1218%2801%29
Agreement between the Government of the Republic of Poland and the Government of the Socialist Republic of Vietnam on the transfer and admission of citizens of both States	Vietnam	2004	2005	https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20051561306

Source: The Border Guard (statistics obtained upon request).

Table 2. EU migration partnerships including a clause on the readmission/removal of irregular foreigners

Title	Signatory State/Target Third Country	Date		Link to the document
		Signature	**Entry into force**	
Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed at Cotonou on 23 June 2000	African, Caribbean and Pacific countries (ACP)	2002	2003	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22000A1215%2801%29
Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part	Algeria	2002	2005	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22005A1010%2801%29

Political Dialogue and Cooperation Agreement between the European Community and its Member States, of the one part, and the Andean Community and its Member Countries (Bolivia, Colombia, Ecuador, Peru and Venezuela), of the other part	Andean Community (Bolivia, Colombia, Ecuador, Peru)	2003	pending	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016JC0004
Framework agreement EU-Australia	Australia	2003	pending	https://eur-lex.europa.eu/EN/legal-content/summary/framework-agreement-eu-australia.html
Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part	Egypt	2001	2004	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22004A0930%2803%29
Cooperation Agreement between the European Community and the Kingdom of Cambodia	Cambodia	1997	1999	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A21999A1019%2801%29
Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada, of the other part	Canada	2016	pending	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.329.01.0045.01.ENG
Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part	Chile	2002	2005	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22002A1230%2801%29
Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China on visas and other matters relating to tour groups from the People's Republic of China	China	2004	2004	https://home-affairs.ec.europa.eu/memorandum-understanding-between-european-community-and-national-tourism-administration-peoples_en
EU-Central America political dialogue and cooperation agreement	Costa Rica	2003	2014	https://eur-lex.europa.eu/EN/legal-content/summary/eu-central-america-political-dialogue-and-cooperation-agreement.html
Political Dialogue and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Cuba, of the other part	Cuba	2016	pending	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22016A1213%2801%29
EU-Central America political dialogue and cooperation agreement	Guatemala	2012	pending	https://eur-lex.europa.eu/EN/legal-content/summary/eu-central-america-political-dialogue-and-cooperation-agreement.html
EU-Central America political dialogue and cooperation agreement	Honduras	2012	pending	https://eur-lex.europa.eu/EN/legal-content/summary/eu-central-america-political-dialogue-and-cooperation-agreement.html
Framework Agreement on Comprehensive Partnership and cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part	Indonesia	2009	2014	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52013PC0230
Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part	Iraq	2012	2018	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22012A0731%2801%29
EU-Japan Strategic Partnership Agreement	Japan	2018	pending	https://eur-lex.europa.eu/EN/legal-content/summary/eu-japan-strategic-partnership-agreement.html
Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part	Jordan	1997	2002	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22005A1026%2802%29
Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part	Kazakhstan	2015	2020	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22016A0204%2801%29
Framework Agreement between the European Union and the Republic of Korea	South Korea	2010	2014	https://eur-lex.europa.eu/EN/legal-content/summary/framework-agreement-between-the-european-union-and-the-republic-of-korea.html
Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo*, of the other part	Kosovo	2015	2016	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22016A0316%2801%29
Cooperation Agreement between the European Community and the Lao People's Democratic Republic	Laos	1997	1997	https://ec.europa.eu/assets/near/neighbourhood-enlargement/ccvista/mt/21997a1205(01)-mt.doc
Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part	Liban	2002	2006	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22006A0530%2801%29

Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and Mongolia, of the other part	Mongolia	2013	2017	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22017A1209(01)
Partnership Agreement on Relations and Cooperation between the European Union and its Member States, of the one part, and New Zealand, of the other part	New Zealand	2016	pending	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22016A1129%2801%29
EU-Central America political dialogue and cooperation agreement	Nicaragua	2012	pending	https://eur-lex.europa.eu/EN/legal-content/summary/eu-central-america-political-dialogue-and-cooperation-agreement.html
EU-Central America political dialogue and cooperation agreement	Panama	2012	pending	https://eur-lex.europa.eu/EN/legal-content/summary/eu-central-america-political-dialogue-and-cooperation-agreement.html
Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines	Philippines	2012	2018	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22017A1222%2801%29
EU-Central America political dialogue and cooperation agreement	El Salvador	2012	pending	https://eur-lex.europa.eu/EN/legal-content/summary/eu-central-america-political-dialogue-and-cooperation-agreement.html
Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part	Singapore	2018	2020	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014PC0070
Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Tajikistan, of the other part	Tajikistan	2004	2010	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22009A1229%2801%29
Proposal for a Council and Commission Decision on the conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States and Turkmenistan	Turkmenistan	1998	pending	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:51997PC0693
Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Uzbekistan, of the other part, to take account of the accession of the Republic of Croatia to the European Union	Uzbekistan	1996	1999	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22017A0916%2801%29
Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part	Vietnam	2012	2016	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22016A1203%2802%29

Source: The Border Guard (statistics obtained upon request).

Table 3. Deals

Title	Signatory State/Target Third Country	Date		Link to the document
		Signature	**Entry into force**	
Joint Declaration on Migration Cooperation between Afghanistan and the EU	Afghanistan	2021	2021 (suspended the same year by Afghanistan)	https://www.eeas.europa.eu/eeas/eu-afghanistan-joint-declaration-migration-cooperation_en?s=234
EU-Bangladesh Standard Operating Procedures for the identification and return of persons without a residence permit	Bangladesh	2017	2017	https://arts.unimelb.edu.au/__data/assets/pdf_file/0009/3409830/Bangladesh-1.pdf
Admission procedure for the return of Ethiopians from European Union Member States	Ethiopia	2018	2018	https://www.statewatch.org/media/documents/news/2018/jan/eu-council-regugees-return-ethiopians-15762-17.pdf
Good practices between the Government of the Republic of The Gambia and the European Union in carrying out effective identification and return of unauthorized persons	Gambia	2018	2018	

EU-Guinea: Code of Good Practice for the Efficient Handling of Returns	Guinea	2017	2017	
Joint document of the Government of the Republic of Côte d'Ivoire and the European Union on procedures for the identification and readmission of immigrants suspected of being Côte d'Ivoire nationals illegally staying in the European Union	Cote d'Ivoire	2018	2018	

Source: The Border Guard (statistics obtained upon request).

***Table 4*. Ongoing standard readmission agreement negotiations**

No.	Country	State of play
1.	Philippines	Permission was sought to start the negotiation process
2.	Kyrgyzstan	The first round of contract negotiations June 12-16, 2023
3.	Tajikistan	The first round of contract negotiations May 8-12, 2023
4.	Uzbekistan	The first round of contract negotiations May 22-26, 2023

Source: The Border Guard (statistics obtained upon request).

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Act of 14 July 14 2006 on entry into, stay in and departure from the territory of the Republic of Poland territory of citizens of the European Union Member States and their family members, Dz. U. Nr 144 item 1043.

Act of 14 October 14 2021 amending the Act on foreigners and certain other acts, Dz. u. 2021 item 1918.

Act of December 12, 2013 on foreigners, Dz. U. 2013 item 1650.

Act of June 13, 2003 on granting protection to foreigners in the territory of the Republic of Poland, Dz.U. 2003 nr 128 item 1176.

Constitution of the Republic of Poland of April 2, 1997, Dz.U. 1997 nr 78 item 483.

Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC was not implemented yet into Polish law.

Directive 2008/115/EC of 16 December 2008 on common standards and procedures applicable by Member States in the return of illegally staying third-country national, Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions expelling third-country nationals, Council Directive 2003/110/EU of 25 November 2003 on assistance in cases of transit for the purposes of deportation by air.

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

Ordinance of the Minister of the Interior and Administration of April 18, 2014, regarding the presence of representatives of non-governmental organisations in the course of activities related to bringing a foreigner to the border or to the airport or sea port of the country to which he is brought, Dz. U. 2014 item 534.

Ordinance of The Minister of the Interior and Administration of August 20, 2021, amending the ordinance on the temporary suspension or restriction of border traffic at specific border crossings, Dz.U. 2021, item, 1536.

Ordinance of the Minister of the Interior and Administration of February 9, 2023 amending the ordinance on the temporary suspension or restriction of border traffic at specific border crossings, Dz.U. 2023 item. 275.

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Annex I: Statistics

Year	Stock of irregular migrants and/or # TCNs found to be illegally present (data in Eurostat)	# Asylum applications	# TCNs/foreign nationals* refused entry at the border	# pushbacks (if available) (unofficial data by NGOs also acceptable; please indicate the data source)	# Dublin returns	# TCNs/foreign nationals* ordered to leave	# Third country unaccompanied minors returned following an order to leave	# assisted 'voluntary' return	# Readmitted citizens
2015	12 557	12 325	41 580 (EU-13)		21 (from PL); 897 (to PL)	13 797	NA	321	17
2016	18 493	12 319	103 986 (UK-1; EU-12)		9 (from PL); 1408 (to PL)	20 252	NA	436	11
2017	22 558	5 078	72 140 (EU-6)		16 (from PL); 1433 (to PL)	24 882	NA	507	101
2018	26 547	4 135	76 900 (EU-17)		80 (from PL); 886 (to PL)	29 733	NA	450	306
2019	26 625	4 096	95 735 (UK-3; EU-35)		55 (from PL); 685 (to PL)	29 072	NA	380	487
2020	9 823	2 803	34 945 (Swiss-1; EU-11)		30 (from PL); 222 (to PL)	12 003	NA	169	510
2021	6 812	7 699	34 125 (UK-15; EU-7)	at least 50 000 cases between August 2021 and the end of 2022	120 (from PL); 221 (to PL)	10 177	NA	110	573
2022	7 166	9 933	28 272 (UK-55; Swiss-1; EU-220)		95 (from PL); 410 (to PL)	8 412	1	100	677
2023					82 (to PL), 696 (to PL) until 30 November		1 until 30 November	183	682 (until 30 Nov)
Data sources:	Border Guard	Office for Foreigners	Office for Foreigners	Border Guard	Office for Foreigners	Office for Foreigners	Border Guard (obtained upon request)		

Source: Own elaboration based on available data sets and data received upon request.

Annex II: List of Authorities Involved in the Migration Return Governance

Authority (English and *Polish*)	Type of organisation	Area of competence in the fields of return	Link
Ministry of the Interior and Administration – Department of International Affairs and Migration *Ministerstwo Spraw Wewnętrznych i Administracji – Departament Spraw Międzynarodowych i Migracji*	governmental	Developing and coordinating migration policy, coordination of European and international cooperation, internal security policy coordination.	https://www.gov.pl/web/mswia/departament-spraw-miedzynarodowych-i-migracji
Ministry of the Interior and Administration – Department of Public Order *Ministerstwo Spraw Wewnętrznych i Administracji – Departament Porządku Publicznego*	governmental	Responsible for overseeing Police and Border Guard. Competence in the field of strategic analysis and public order.	https://www.gov.pl/web/mswia/departament-porzadku-publicznego
Border Guard Headquarters – Board for Foreigners *Komenda Główna Straży Granicznej – Zarząd do Spraw Cudzoziemców*	governmental	Responsible (since 7 April 2023) for examining of appeals against return decisions. Organizing and coordinating activities related to the forced return of foreigners, the transfer of foreigners under the Dublin III Regulation and voluntary returns. Supervising the operations of local divisions and units of the Border Guard related to the foreigners and detention centers for foreigners. Conducting appeal proceedings against decisions of the Border Guard authorities (the decision to refuse entry to the territory of the Republic of Poland, determining the amount of costs related to the issuance and execution of the decision obliging to return, imposing a penalty on the carrier, withdrawing or invalidating a visa).	https://strazgraniczna.pl/pl/straz-graniczna/struktura-sg/komenda-glowna-sg/komorki-organizacyjne-k/zarzad-do-spraw-cudzozi/1909,Zarzad-do-Spraw-Cudzoziemcow-Komendy-Glownej-Strazy-Granicznej.html

		Preparing positions for complaints filed by foreigners before the European Court of Human Rights. Cooperation with European Union bodies and agencies, in particular with the European Commission and Frontex. Cooperation with UNHCR and NGOs. Cooperation with the authorities of the USA in the exchange of border and migration information related to border security and legalization of stay. Obtaining and using foreign funds to perform administrative activities towards foreigners. Preparing cyclical and periodic statistical, information and analytical materials in the area of illegal migration, in particular in the field of migration movements of foreigners as well as returns of foreigners. Developing ICT solutions to improve the implementation of activities performed towards foreigners by the Border Guard authorities. 24/7 implementation of tasks and powers related to the management and operation of the return alert (Article 3) of the Schengen Information System.	
Border Guard Divisions and local Units *Oddziały i Placówki Straży Granicznej*	governmental	Organizational units of the Border Guard in the field of return migration governance are responsible for conducting the immigration procedure and issuing return decisions and decisions on humanitarian or tolerated stay. They are responsible for registering requests for international protection. In the structures of divisions or local units of the BG operate six detention centres for foreigners. The border guard officers are assisting detained migrants in voluntary returns.	www.strazgranicz na.pl
Border Guard Detention Centres for Foreigners *Strzeżone Ośrodki dla Cudzoziemców Straży Granicznej*	governmental	Six places of administrative detention of foreigners (asylum seekers and returnees). They are located in the seats of BG Divisions (Krosno Odrzańskie, Białystok, Kętrzyn and Przemyśl) or local BG Units (Biała Podlaska and Lesznowola). In these detention facilities migrants stay during return proceedings and during the time before return. The border guard officers (return assistants) are assisting detained migrants in voluntary returns.	www.strazgranicz na.pl
Office for Foreigners *Urząd do Spraw Cudzoziemców*	governmental	Examines appeals against decisions of voivodes in matters of legalization of stay - residence permits for foreigners, visas and invitations, registration of stay and	https://www.gov.pl/web/udsc

		permanent residence rights of European Union citizens and their family members, and controls voivodes in this respect; conducts visa consultations and exchanges data between Member States on visas; handles matters related to granting and depriving foreigners of protection – international protection (refugee status, subsidiary protection), asylum, temporary protection and conducts 'Dublin' proceedings; provides social and medical assistance to foreigners applying for international protection; runs IT systems. In return context the Office for Foreigners was responsible for examining appeals against BG return decisions (in procedures started until 6 April 2023).	
Commissioner for Human Rights (Ombudsman) *Rzecznik Praw Obywatelskich*	Independent Authority	Within the equal treatment team of the Commissioner's office there is a unit responsible generally for the rights of the foreigners in Poland. Commissioner may join or initiate legal procedure concerning foreigners. .Commissioner is a national body responsible for National Preventive Mechanisms. Thus Commissioner is visiting detention facilities and prepares relevant reports on the treatment of detainees. One of the competences of the Commissioner is to initiate the procedure leading to issuing the returnee by the Border Guard the consent on humanitarian stay.	https://bip.brpo.gov.pl/en
Commissioner for the Right of the Child *Rzecznik Praw Dziecka*	Independent Authority	Independent authority intervening in the legal proceedings concerning (migrant) children. In practice is able to demand information about minors access to territory (protection), denying entry, detention or other matters when rights of the child may be endangered. One of the competences of the Commissioner is to initiate the procedure leading to issuing the returnee by the Border Guard the consent on humanitarian stay (to protect human rights of children).	https://brpd.gov.pl
General Courts (criminal divisions of District and Regional Courts) *Sądy powszechne (wydziały karne w*	governmental	Place foreigners in detention based on the border guard motions. Decide about extension of detention. Appoint curators in cases of UAMs in return procedures. Examine motions for compensation in case of arbitrary detention.	

Sądach Rejonowych i Okręgowych)			
Administrative Courts (Provincial Administrative Court in Warsaw and Supreme Administrative Court) Sądy administracyjne (Wojewódzki Sąd Administracyjny w Warszawie i Naczelny Sąd Administracyjny)	governmental	Judicial review of return decisions after a returnee submits a complaint against them. The administrative courts may suspend enforcement of return decisions until the final judgment is issued.	www.warszawa.wsa.gov.pl www.nsa.gov.pl
The European Border and Coast Guard Agency (Frontex)	international (EU)	Return and reintegration of foreigners is one of the activities of Frontex. In practice Frontex supports the Border Guard in organizing return operations. Next to joint and collective flights, it may also finance operations organized on the commercial flights. Frontex Fundamental Rights Officer may monitor compliance of Frontex officers operation with Fundamental Rights.	www.frontex.europa.eu/
International Organisation for Migration (IOM) Poland	international	Organises and implements AVRR. Delegates cultural assistants in the detention facilities.	https://poland.iom.int/pl
NGOs authorised to participate in return operations monitoring	non-governmental	Four Polish NGOs have a right to monitor the forced return: The Helsinki Foundation for Human Rights, The Rule of Law Institute Foundation, The Halina Nieć Legal Aid Centre, and The MultiOcalenie Foundation. Despite the authorisation and training of monitors by the Border Guard, the monitoring institutions do not receive funding to perform monitoring mandate.	www.panstwoprawa.org https://hfhr.pl/en https://www.pomocprawna.org/ https://www.multiocalenie.org.pl/
Other civil society actors	non-governmental	The Border Guard when initiating the return procedures is providing the foreigner with the short list of organizations assisting migrants in Poland. This list includes Caritas services in different parts of Poland (specializing in humanitarian aid). The main task of other organizations is predominately integration and psychological support (Ocalenie Foundation, MultiOcalenie Foundation, Foundation 'Civic Perspective'). Finally the list includes four organizations that are providing legal aid to foreigners (The Helsinki Foundation for Human Rights, The Rule of Law Institute Foundation, The Halina Nieć Legal Aid Centre, Association for Legal Intervention). The list of the	various websites

		providers of integration assistance should be extended to other civic society actors: Polish Migration Forum, Nomada Association, Polish Humanitarian Action, Volunteers Centre in Lublin.	

Source: Own elaboration.

Annex III: Overview of the Legal Framework on Return Policy

The title of the policy/legislation in English	The title in the original language	Policy Type/Area	Date AnnouncedYear	Active Period (note down if it is expired or repealed)	Desciption of Policy or short Overview
Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland	Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (t.j. Dz. U. z 2023 r. poz. 1504.)	protection	13 June 2003	Amendments - last 2023	Regulations regarding granting international and national protection to foreigners
Act of 12 December 2013 on foreigners	Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach	border management, residence	12 December 2013	Amendments - last 2023	Regulations regarding entrance and residence of foreigners in Poland
Ordinance of the Minister of the Interior of 24 April 2015 on the guarded centres and detention centres for foreigners	Rozporządzenie Ministra Spraw Wewnętrznych z dnia 24 kwietnia 2015 r. w sprawie strzeżonych ośrodków i aresztów dla cudzoziemców	detention	24 April 2015	Amendments - last 2021	Regulations regarding: conditions to be met by guarded centers and detention centers for foreigners; organizational and order regulations for the stay of foreigners in a guarded center and detention center for foreigners; conditions for receiving meals and drinks by foreigners placed in a guarded center or detained in a detention center for foreigners and the value of a daily food standard
Ordinance of the Minister of the Interior and Administration of July 20, 2018 on the costs related to the execution of the decision obliging a foreigner to return	Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 20 lipca 2018 r. w sprawie kosztów związanych z wykonaniem decyzji o zobowiązaniu cudzoziemca do powrotu		20 July 2018	Active	The ordinance specifies: a detailed method of calculating the costs associated with bringing a foreigner to the border or to the airport or sea port of the country to which he is brought; the amount of the flat-rate daily costs of a foreigner's stay in: a) a room of the Border Guard or Police intended for detained persons, b) a guarded center or arrest for foreigners.
Ordinance of the Minister of the Interior and Administration of 21 March 2019on the template of an application for placement of a foreigner in a detention camp or for applying for a detention center for foreigners and a template of an application for extending the period of stay of a foreigner in a detention center or arrest	Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 21 marca 2019 r. w sprawie wzoru wniosku o umieszczenie cudzoziemca w strzeżonym ośrodku albo o zastosowanie wobec niego aresztu dla cudzoziemców oraz wzoru wniosku o przedłużenie okresu pobytu cudzoziemca w strzeżonym ośrodku albo areszcie	technicalities	21 March 2019	Active	The ordinance regulates document templates
Act of March 12, 2022 on assistance to citizens of Ukraine in connection with an armed conflict on the territory of this country	Ustawa z dnia 12 marca 2022 r. o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa	Ukrainian Crisis	12 March 2022	Amendments - last 2023	The Act specifies specific rules for legalizing the stay of citizens Ukrainians who came to the territory of the Republic of Poland from the territory of Ukraine in connection with hostilities carried out on the territory of this country, and citizens of Ukraine holding the Pole's Card who, together with their immediate family, arrived on the territory of the Republic of Poland due to these hostilities

Source: Own elaboration.

About the Authors

Anna Trylińska is a Researcher at the Centre of Migration Research, University of Warsaw, a PhD candidate at The Institute of Law Science, Polish Academy of Science, and an immigration lawyer.

Tomasz Sieniow (PhD) is an Assistant Professor at the Centre of Migration Research, University of Warsaw and The John Paul II Catholic University of Lublin, and a President of the Board of The Rule of Law Institute Foundation in Lublin.

Marta Pachocka (PhD) is an Assistant Professor at the Centre of Migration Research, University of Warsaw and SGH Warsaw School of Economics, and a Principal Investigator in GAPs in Poland.

Mateusz Krępa is a Researcher at the Centre of Migration Research, University of Warsaw and a PhD candidate at the University of Warsaw.

Dominik Wach is a Researcher at the Centre of Migration Research, University of Warsaw and a PhD candidate at the University of Warsaw.

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GAPS

Decentring the Study of Migrant Returns and Return Policies

Legal and Policy Infrastructures of Returns in the Netherlands

Country Dossier (WP2)

Authors

Sherry Ebrahim and Tineke Strik

Radboud University Nijmegen

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List of abbreviations

AMIF	Asylum, Migration and Integration Fund	
AVIM	Aliens Police	Vreemdelingen Politie
AZC	Asylum Seekers Reception Centre	Asielzoekers Centrum
CJEU	Court of Justice of the European Union	
COA	Central Agency for the Reception of Asylum Seekers	Centraal Orgaan voor opvang van Asielzoekers
DGM	Directorate General for Migration	Directoraat Generaal Migratie
DJI	Judicial Institutions Service	Dienst Justitiële Inrichtingen
DV&O	The Transport and Support Service	Dienst Vervoer en Ondersteuning
ERRIN	European Return and Reintegration Network	
E&S	The Dutch Information System "Implementation and Detection"	Executie & Signalering
ECHR	European Convention on Human Rights	
ECtHR	European Court of Human Rights	
INS	Immigration and Naturalisation Service	Immigratie en Naturalisatie Dienst (IND)
IOM	International Organisation of Migration	
KMar	Royal Military Police	Koninklijke Marechaussee
MS	Member State	
NP	National Police	Nationale Politie
REAN	Return and Emigration Assistance from the Netherlands	
R&DS	Repatriation and Departure Service	Dienst Terugkeer en Vertrek (DT&V)
RvS	Council of the State	Raad van State
TCN	Third-country national	Derdelander
The Minister	The Minister of Justice and Security	
UAM	Unaccompanied Minor	Alleenstaande minderjarige vreemdeling (Amv)
VB	The Aliens Decree of 2000	Vreemdelingenbesluit
VC	The Aliens Act Implementation Guidelines	Vreemdelingencirculaire
VV	Regulation for Aliens 2000	Voorschrift Vreemdelingen
VW	The Aliens Act of 2000	Vreemdelingenwet
ZHP	Sea Port Police	Zeehaven Politie

Summary

This report has mapped out the legislative, institutional and procedural frameworks and infrastructures concerned with returning the unauthorised migrants from the Netherlands. A focus on the period 2015-2023 was maintained. An overview on the return statistics is provided. Furthermore, the policy and legislative developments were tracked down. The relation between the Dutch national legislation, the European and international law has been explained. The procedures regarding return both at the border and from within the national territory, return of the unaccompanied minors, forced and voluntary return have been explained in detail in section 4. In addition to special cases regarding the obligation to return, entry bans, detention and safeguards. The institutional framework has been outlined where the organisations and involved actors in implementing returns were enlisted as well as the dynamics of their collaboration within the so-called "Migration Chain". The report has included the readmission efforts of the Netherlands both with EU and non-EU countries, regarding the readmission of the undesirable and the unauthorised migrants in sections 4 and 6. Additionally, the fundings allocated to the return efforts and programs are included under section 7. Finally, the gaps in the legislative, institutional and international cooperation frameworks were highlighted under section 8.

It is concluded that, there has been an increased interest in return enforcement in the last two decades during which the return policy became a priority on the Dutch migration agenda. At the same time, the policy discretion in this area was increasingly constrained with the adoption of the EU Return Directive in 2008, and the CJEU caselaw developed since then. Regarding relevant issues, the Dutch policy tends to implement the EU obligations in a very limited way, for instance regarding the principle of detention as a measure of last resort, including the narrow judicial scrutiny of detention measures, and the detention regime, which does not reflect the nature of immigration detention as an administrative measure. Thus, the immigration detention policy is at odds with the principles of necessity and proportionality. Although regarding the return of unaccompanied minors, the Dutch policies have been found in violation of the Return Directive. The Dutch government still seeks or stretches the limits of that judgment by retaining a different treatment between UAMs of 15 years old and those who are younger than 15. Also, by leaving room for a legal limbo after the issuance of a return decision to UAMs. This renders the Dutch policy and its latest amendments non-compliant with the EU legislation and principles, in particular, the principal of the best interest of the child. The active role of national courts, however, has brought these gaps to light with preliminary questions, and enforced improvements.

Litigation by NGOs has led to shelter, healthcare and basic needs for rejected asylum seekers who stay irregularly at the Dutch territory. They had filed collective complaints on the basis of the European Social Charter, after the Dutch government had decided in 2001 to withdraw all support to rejected asylum seekers who had exhausted their judicial means, and at the same time introduced the so-called Linking Act, which excluded irregular migrants from public services. Since the decisions of the European Committee on Social and Economic Rights that this policy is against the ESH and the principle of human dignity, the government offers shelter to them, however on a temporary basis and under the condition that they cooperate with their return. Individual regularisation of rejected asylum seekers or other irregular migrants who face obstacles to be returned, takes place scarcely, and the last group regularisation for rejected asylum seekers happened in 2007, followed by a regularisation specifically for irregular

children in 2013 (with a review of those who initially were rejected in 2019).[1] The lack of regularisation leaves many irregular migrants in legal limbo, homeless, and deprived of basic care, provisions and rights.[2] Also in this case, the government implemented the ECSER decision, but partially. Since these decisions, the Dutch government has refused to ratify any optional protocol to human rights treaties, impeding NGOs and lawyers to invoke human rights obligations towards the state.

Based on these findings, this report proposes the following policy recommendations to the Dutch migration authorities, which also serve as points of attention for the European Commission while supervising the Netherlands' compliance with the Union Law:

I- Better implementation of the Return Directive and the EU case law by adhering to the principles of necessity and proportionality, anchoring the best interest of the child and respecting the fundamental rights of migrants.

II- Structurally practice less coercive enforcement measures instead of using detention to avoid absconding. Detention must be a measure of last resort and implemented for the shortest term possible and only if no other measures are possible. Also, migrants must have the opportunity to be heard before the decision of detention and its extension.

III- Detention must be held as an administrative measure where the restrictions and duration are reduced to the minimum while taking into consideration the needs and vulnerabilities of the migrants held in detention.

IV- The protection of the child's rights and best interest should be emphasised in the national legislation (Aliens Act, Decree and Implementation Guidelines). Clear guidelines and criteria on the assessment of the availability of adequate reception for unaccompanied minors in the countries of return must be provided and uncertainty must be avoided.

V- There must be independent bodies that monitor the return and detention practices. The recent intention to transfer the National Prevention Mechanism to the National Institute for Human Rights is strongly encouraged.

VI- Given the success of the LVV scheme, the government should consider renewing the agreement with the Dutch Municipalities Association (VNG) and turn it into an improved and sustainable structure.

VII- Finally, there will always be immigrants who cannot be returned: no return policy can guarantee a 100% success rate. Instead of leaving those who cannot be returned in a legal and humanitarian limbo, which is currently the case, they should be entitled to a residence permit. The current threshold for in-country applications on this ground is far too high and regularisations are rare in the Dutch context. In sum, the absence of options for legal residence renders the overall migration management policy ineffective.

Keywords: return, deportation, detention, unaccompanied minors, return policy, return migration governance.

[1] "Generaal pardon," Amnesty Int., https://www.amnesty.nl/encyclopedie/generaal-pardon; Kamerbrief over uitvoering motie Van Dijk, March 14, 2022, https://www.rijksoverheid.nl/documenten/kamerstukken/2022/03/14/tk-uitvoering-motie-van-dijk-sp.

[2] See also the publication of Lisa Berntsen, Tesseltje de Lange and Conny Rijken, *Migranten zonder verblijfsvergunning: Rechten en sociaaleconomische positie in Nederland* (Amsterdam: Amsterdam University Press, 2022), www.aup.nl/en/book/9789462989740/migranten-zonder-verblijfsvergunning.

The GAPs Project

GAPs is a Horizon Europe project that aims to conduct a comprehensive multidisciplinary study on the drivers of return policies and the barriers and enablers of international cooperation on return migration. The overall aim of the project is to examine the disconnects and discrepancies between expectations of return policies and their actual outcomes by de-centring the dominant, one-sided understanding of "return policymaking." To this end, GAPs:

- examine the shortcomings of EU's return governance;
- analyse enablers and barriers to international cooperation, and
- explore the perspectives of migrants themselves to understand their knowledge, aspirations and experiences with return policies.

GAPs combines its decentring approach with three innovative concepts:

- a focus on return migration infrastructures, which allows the project to analyse governance fissures;
- an analysis of return migration diplomacy to understand how relations between EU Member States and with third countries hinder cooperation on return; and
- a trajectory approach that uses a socio-spatial and temporal lens to understand migrant agency.

GAPs is an interdisciplinary 3-year project (2023-2026), co-coordinated by Uppsala University and the Bonn International Centre for Conflict Studies with 17 partners in 12 countries on 4 continents. GAPs' fieldwork has been conducted in 12 countries: Sweden, Nigeria, Germany, Morocco, the Netherlands, Afghanistan, Poland, Georgia, Turkey, Tunisia, Greece and Iraq.

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1. Statistical Overview regarding Returns and Readmissions at the National Level

In the Netherlands, the statistics on return and readmissions are provided by the Repatriation and Departure Service (DT&V). The statistics are generated through the aggregate numbers of returns provided by the cooperating organisations working on the asylum procedure, reception and return of the migrants who do not or no longer have the right to stay in the Netherlands.[*] The existing data are disaggregated into two categories of return, namely the demonstrated departures from the Netherlands and the category of people that are assumed to have left the country. The category of demonstrated returns include both forced and assisted/voluntary returns. The ones that are assumed to have returned are TCNs who have left on their own, without supervision. As they are not registered anymore, the authorities tend to report that they have departed 'independently'.

The data on the demonstrated returns are also disaggregated based on the nationality of the returnees and country of return which can be a non-EU country or a MS under the Dublin regulation.[3] Forced return is counted by the DT&V through aggregating the numbers of returns from the immigration and criminal detention. Independent return is calculated through aggregating the numbers of migrants who have received basic departure or reintegration support from the IOM or from one of the NGOs working on returns.[4]

Furthermore, there are data available on the top five nationalities that return from the Netherlands and on the return numbers from migration detention. These data are publicly accessible on the DT&V website. It is important to mention there are great variances between the return statistics provided by the DT&V and those provided by the European Migration Network which draws on statistics provided by Eurostat. Also, the statistics provided in EMN reports and factsheets do not match the statistics provided by the Eurostat for the years 2015, 2016 and 2017 specially the numbers of migrants refused entry at the borders, found to be illegally staying, ordered to leave and returned following an order to leave. In addition to that, in the years 2016, 2017 and 2018 the EMN provides different forced return figures than the DT&V, EMN provides 5520, 5510 and 5470 for these three years,[5] while the DT&V provides 2220, 3390 and 2650.

[*] IND, DT&V, COA, KMar, IOM, NP, Aliens Police, DJI, DVO.
[3] Ministerie van Justitie en Veiligheid, "Instroom- en vertrekcijfers," *Dienst Terugkeer en Vertrek*, August 1, 2023, https://www.dienstterugkeerenvertrek.nl/over-dtv/cijfers.
[4] Ibid
[5] European Migration Network, "The Netherlands EMN country factsheet, main developments in migration and international protection including latest statistics," *European Commission* (2018), 8.

2. The Political Context/Framework

This section focuses on the policy developments since 2015. However, it is of great importance to outline the policy context and general framework starting with the Aliens Act 2000, by which the government departed from its policy to continue offering rejected asylum seekers reception facilities as long as they cooperated with their return. This policy had been introduced in 1997, which led to a procedure aiming to receive travel documents from the embassy of the country of origin. The rejected asylum seeker was under the obligation to cooperate with the immigration authorities to receive a laissez passer to return.

In case the immigration authorities concluded that he/she insufficiently cooperated, the person would no longer be entitled to reception facilities.[6] As in the same period, the government introduced the Benefit Entitlement Act, (often called the Linking Act, referring to the Dutch term *Koppelingswet*), which conditioned entitlement to social rights to legal residence, these rejected asylum seekers ended up in the streets without any access to services, except education for minors, necessary health care and legal aid.[7] The deprivation from reception facilities led to initiatives from churches and civil society organisations offering shelter to those rejected asylum seekers and contesting that they had not cooperated with their return. This was followed by a parliamentary debate about the criteria determining the actual cooperation, leading to the instalment of an independent committee tasked to review the criteria for non-cooperation.[8]

In 1999 the government introduced a new policy, based on the principle that rejected asylum seekers must take their own responsibility to return and that it is therefore not the responsibility to assess the level of cooperation.[9]According to the government, the interaction between the returnee and the embassy is a 'black box', which makes the attitude of the returnee difficult to verify. In the new reasoning of the government, rejected asylum seekers have in principle always the possibility to return. Since then, reception facilities automatically end 28 days after the decision in appeal, or in case no appeal has been submitted, 28 days after the rejection decision. This new exclusion policy is called the 'no-fault policy', referring to the exception made for migrants who prove that they cannot return due to external, objective circumstances. For instance, if authorities of their state of residence are not responsible, or in case of a failed state. As the risk of refoulement has already been assessed in the asylum procedure, these criteria don't play a role at this stage. Migrants who can prove such objective obstacles would keep their entitlement to reception and would be issued a temporary residence permit. If after three years they would still be unable to return, their permit would become permanent. However, a residence permit has only been issued in very few cases, mainly to stateless people, for instance stateless Palestinians. In 2005, this criterion was extended to migrants with a nationality, who could prove the existence of objective obstacles to return.[10]

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[6] Letter of 3 June 1997, Notitie over het terugkeerbeleid, *Kamerstukken II* 1996/97, 25386, no. 1.
[7] Staatsblad, 1998, no. 203. See also Joanne van der Leun, "Excluding illegal migrants in The Netherlands: Between national policies and local implementation," *West European Politics*, no. 29:2 (2006): 310-326, https://doi.org/10.1080/01402380500512650.
[8] *Handelingen II* 1996/97, p. 655-685; for the final advice see *Kamerstukken I* 1997/98, 19637, no. 322.
[9] Letter of the Secretary of Justice of 6 July 1999, Notitie over het terugkeerbeleid, *Kamerstukken II* 1998/99, 26646, no. 1.
[10] *Kamerstukken II* 2010/13, 29344, no. 109.

Since the so-called no-fault policy, most rejected asylum seekers were forced to leave the reception centres in which they resided, without an alternative accommodation at their disposal. These practices, which were heavily contested by parts of society, led to local initiatives by civil society and municipalities developing alternative housing and support to them.[11] Two main developments have significantly reduced the number of people without shelter. The first happened in 2007, when a newly elected coalition of Christian Democrats (CDA), Social Democrats (PvdA) and a small Christian party (CU) agreed to regularise rejected asylum seekers who already filed an asylum application before the entry into force of the Aliens Act 2000.[12]

This decision was coupled with the aim to reach an agreement with municipalities to dismantle their local shelters and to refrain from accommodating rejected asylum seekers under the Aliens Act 2000. The second development was the outcome of a collective complaint filed in 2008 by the Dutch department of Defence for Children with the European Committee on Social Rights, a Council of Europe body that supervises compliance by Member States with the European Social Charter.[13]

In its decision of October 2009, the Committee concluded that the policy to deprive children from all basic needs, was a violation of Articles 31(2) and 17(1) of the European Social Charter, and that the Dutch government has to provide adequate shelter and basic care to children who are unlawfully present in the Netherlands.[14] As Dutch courts recognised this decision and ordered the government to implement it, the government appealed to the highest civic court. The *Gerechtshof* ruled in 2011 that depriving children of basic needs is inhuman and unlawful and that children, with their parents, have to be provided with adequate shelter and care.[15] This ruling was confirmed by 2012 the *Hoge Raad* decision.[16] Since then, the government provided closed family centres (*gezinslocaties*) for rejected asylum seeker families and children, with the aim to return them.[17] According to the DT&V, detention for families with minor children is considered as a "last resort and might not last for longer than two weeks".[18]

A complaint to the ECSR* by the Conference of European Churches (CEC) followed in January 2013, requesting the provision of these basic needs for adults. In October 2013, the European Committee invited the Dutch government to take immediate measures to ensure that basic needs (shelter, clothes and food) are met for undocumented migrants.[19] In its decision on the merits, the ECSR decided that denying irregular migrants the right to necessary food, water, clothing and shelter constitutes a breach of the right to human dignity. According to the ECSR,

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[11] Katie Kuschminder and Talitha Dubow, "Moral Exclusion, Dehumanisation, and Continued Resistance to Return: Experiences of Refused Afghan Asylum Seekers in the Netherlands," *Geopolitics*, no. 28:3 (2023): 1057-1078, https://doi.org/10.1080/14650045.2022.2055462.
[12] Coalition agreement Christen Democratisch Appel (CDA), Partij van de Arbeid (PvdA) en ChristenUnie (CU), "Samen werken, samen leven," 7 February 2007, p. 43.
[13] ECSR, 14 January 2008, Complaint: Defence for Children International (DCI) v. the Netherlands, compliant no. 47/2008.
[14] ECSR, 20 October 2009, Decision on the merits: Defence for Children International (DCI) v. The Netherlands, complaint no. 47/2008, www.coe.int.
[15] *Kamerstukken II* 2010/11, 29344, no. 79.
[16] HR 21 September 2012, no. 11/01153, ECLI:NL:HR:2012:BW5328.
[17] *Kamerstukken II* 2011/12, 29344, no. 85.
[18] European Migration Network. "Annual Policy Report 2015 Migration and Asylum in the Netherlands," (June 2016): 71.
* European Committee of Social Rights.
[19] ECSR, 25 October 2013, Decision on Immediate Measures: Conference of European Churches (CEC) v. the Netherlands, complaint no. 90/2013.

the equal treatment provision regarding social and medical assistance of Article 13(4) of the RESC [*] (which refers to lawfully present migrants), is also applicable to migrants in an irregular situation. It concluded that the right to shelter, as enshrined in Article 31(2) RESC must unconditionally apply to adult migrants in an irregular situation, "even when they are requested to leave the country".[20] The highest administrative court ruled in December 2014 that, based on the ECSR decision, municipalities are obliged to offer adequate shelter (bed, bread and bath) to irregular migrants.[21]

The government decided to finance the implementation of this ruling by the municipalities. The Council of Europe Committee of Ministers' resolution upheld the validity of the ECSR, but also echoed the concerns expressed by the Dutch government that, as irregular migrants are explicitly excluded from the scope of the Charter, ECSR's 'unwarranted interpretation' could discourage Member States from accepting the collective right of complaint.[22] The Dutch government decided to only partially implement the decision, by providing reception facilities to irregular migrants, but under the condition that they cooperate on their return. In April 2015, the governing coalition parties, the conservative liberals (VVD) and social democrats (PvdA), finally reached an agreement to implement the ECSR decision by providing reception facilities to irregular migrants, but for a limited period and under the condition that they cooperate on their return.[23] These two restrictions were not in accordance with the ECSR's decision and the national case-law. This policy measure was confirmed in the 2017 coalition agreement of the conservative liberals (VVD), Christian democrats (CDA), social liberals (D66) and the Christian party (CU), where the number of the LVV's was extended to eight facilities, and the reception was offered under the condition of cooperation with return.[24] It led to an agreement between the Ministry of Justice and Security and the Duch Association of Municipalities (VNG) in 2018 and was implemented as a pilot project from 2019 until 2022.[25] The evaluation report of the LVV-project, concluded that for 60 percent of the irregular migrants hosted and supported in these facilities a (semi-) sustainable solution was found in the form of legal residence, return or migration to another country.[26]

The evaluation makes clear the high burden of proof for meeting the objective 'no-fault' criterion impedes a solution for rejected asylum seekers. Another political development impedes a solution for this category of irregular migrants as well, which is the decision to abolish the possibility for the Secretary of State for Immigration to make use of his 'discretionary competence' to regularise a person on humanitarian grounds, who had

[*] Revised European Social Charter.
[20] ECSR, 1 July 2014, Decision on the merits: Conference of European Churches **(**CEC) v. the Netherlands, complaint no. 90/2013, report to the Committee of Ministers, published 10 November 2014.
[21] CRvB 17 December 2014, ECLI:NL:CRVB:2014:4178.
[22] ECSR, 15 April 2015, Resolution CM/ResCHS(2015)5 of the Committee of Ministers: Conference of European Churches (CEC) v. the Netherlands, complaint no. 90/2013.
[23] Ibid.
[24] Coalition Agreement VVD, CDA, D66 and Christen Unie, "Vertrouwen in de Toekomst," 2017-2021, 10 October 2017, https://www.rijksoverheid.nl/documenten/publicaties/2017/10/10/regeerakkoord-2017-vertrouwen-in-de-toekomst.
[25] European Migration Network. "Annual Policy Report 2018 Migration and Asylum in the Netherlands," (April 2019).
[26] Annemieke Mack, Laura Buimer, Johanneke Rog, Miranda Witvliet, "Eindevaluatie Landelijke Vreemdelingenvoorziening," *Regioplan*, (October 2022).

exhausted all legal remedies to achieve legal residence.[27] The Advisory Board for Migration Affairs advised the government to re-introduce this competence, however without any result.[28] Yet, many of the group of approximately 90 failed asylum seekers who lived in Amsterdam and had organised themselves in the 'We are here' group did eventually get a residence permit on individual humanitarian grounds.[29]

Criminalisation of irregular stay as a deterrence measure, has often been the topic of proposals and discussions in the political arena. In 1999, as part of a new return policy, irregular migrants who repeatedly had not complied with their reporting obligation, could be subjected to an entry ban.[30] The consequence of the entry ban is that they cannot (re)gain legal residence (unless the length of the entry ban does not exceed 2 years) and that remaining on the Dutch territory can be penalised with a fine of 3900 euros or imprisonment of six months maximum.[31] In 2010, the coalition agreement of a right-wing government (a minority government of CDA and VVD, supported by the populist party PVV) included the announcement to criminalise irregular stay in general.[32] This led to a legislative proposal submitted to the parliament in 2013 (by the centre-left coalition (VVD and PvdA), formed in 2012.[33] The bill was criticised by the Advisory Department of the Council of State, and led to heightened resistance within the coalition party of the social-democrats. One year later, it was withdrawn as a result of a package deal within the coalition.[34]

In 2015, the government proposed a uniform regime for the immigration detention in the context of forced returns, through the Repatriation and Detention of Aliens Act. [35] This bill aimed to finally implement the obligation of the Return Directive by enshrining the principle that detention is a measure of last resort and by ensuring that the regime of immigration detention (which was still prison-like in the Netherlands) is proportionate, reflecting the nature of administrative detention. It included for instance the obligation to take into account vulnerabilities of the TCNs. However, this legislative proposal is still pending in the Senate, because of severe criticism which reflects doubts about conformity with the Return Directive.[36] This criticism is concerned with the lack of safeguards, including to ensure that detention is used as a measure of last resort and to protect vulnerable people (including children), the lack of alternatives to detention and of a tailor-made approach, as well as the broad interpretation of the risk of absconding.[37] Experts also criticised the proposed regime of immigration

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[27] Regeling van de Staatssecretaris van Justitie en Veiligheid van 26 April 2019, no. 2570168, houdende wijziging van het Voorschrift Vreemdelingen 2000 (honderddrieënzestigste wijziging), Stcr. 2019, nr. 24697, April 30, 2019.
[28] Adviescommissie voor Vreemdelingenzaken, "Wetadvies: Afschaffing van de algemene discretionaire bevoegdheid," (July 2019).
[29] See for instance Tom Kieft, "Woordvoerder krijgt na 16 jaar verblijfsvergunning," *Het Parool*, July 18, 2018,https://www.parool.nl/nieuws/we-are-here-woordvoerder-krijgt-na-16-jaar-verblijfsvergunning~b7a7df8c/?referrer=https://www.google.com/; http://wijzijnhier.org/.
[30] Letter of the Secretary of Justice of 6 July 1999, Notitie over het terugkeerbeleid, *Kamerstukken II* 1998/99, 26646, no. 1.
[31] See Articles 67 (1) sub a and 108 Aliens Act 2000.
[32] *Kamerstukken II* 2010/11, 32 417, no. 15.
[33] Coalition agreement VVD-PvdA, "Bruggen Slaan", 29 October 2012, https://www.rijksoverheid.nl/documenten/rapporten/2012/10/29/regeerakkoord; See the legislative proposal *Kamerstukken II* 2012/12, 33512, no. 2.
[34] *Kamerstukken II* 2013/14, 33512, no. 3 and 13.
[35] *Kamerstukken II* 2015/2016, 34309, no. 2.
[36] *Kamerstukken II* 2015/2016, 34309, no. 2.
[37] See *Kamerstukken I* 2018/2019, 34309, nos. B, D, and E; see also Annemarie Busser, Revijara Oosterhuis and Tineke Strik, "Vreemdelingendetentie (I): Detentie-omstandigheden onder huidig

detention, which implied that returnees would start their detention in a very restrictive regime, where they could be awarded with more freedoms if they show 'good behaviour'. According to experts the regime does not sufficiently reflect the administrative nature of the detention, by using excessive restrictions of the liberties of detainees and by the possibility for the director of the detention centre to isolate people on very broad grounds.

Based on this criticism and other new developments, the government announced in 2019 that it would propose amendments to the legislative proposal.[38] As a consequence, the Senate decided to further await the proposed amendments, among them an amendment to the rules towards immigrants causing nuisance and hindrance which has been submitted to the parliament in June 2020.[39] In February 2023, the government informed the Senate again that it intended to submit another amendment to the legislative proposal, regarding measures to be made in case of security incidents in detention, for instance by exceeding the maximum period of isolation, and regarding a legal ground for immigration detention for categories not falling under EU law. The government therefore requested further postponement of the adoption of the initial legislative proposal (which had already been submitted in 2015).[40]

In 2022, the VC was amended regarding the return of UAMs whose asylum application had been rejected, but where their access to adequate reception facilities in the country of origin was not yet verified. Through this amendment UAMs were provided with a legal right to stay in the Netherlands pending the period of the investigation.[41] This amendment was the result of the CJEU ruling in the T.Q. case, in which the Court ruled that the differentiation made in the Dutch return practices and rules between UAMs younger than 15 and UAMs aged 15 or older, was in breach of Article 10 of the Return Directive.[42] The EU Return Directive prescribes that before taking a return decision for an UAM, the MS shall determine whether the child is returned to a family member, a nominated guardian or adequate reception facilities in the country of origin (Article 10(2)). In the Dutch Aliens Circular, this was only investigated for children who are younger than fifteen years old (see VC B8/6). For an UAM whose asylum claim had been rejected and who is aged 15 or older at the date of applying for asylum, a return decision was taken without the verification of adequate reception. In practice, children were often not returned until they reached adulthood. This left them in a legal vacuum, with no perspective to integrate at all.[43] The CJEU ruled that this distinction based on age was not in line with the Return Directive. To offer children perspective for the future, the MS needs to determine whether there is adequate protection in the country of origin for each UAM (para. 57). If not, the child must be granted legal residence. The Court denounced the legal vacuum that the Dutch policy leaves and emphasised that Member States have only two options: either to issue a return decision and enforce it, in case of available adequate reception in the country of origin. Or make use of Article 6(4) Returns Directive and allow for residence. In its ruling, the Court refers to the best interests of the child, as enshrined in Article 24(2) CFR and Article 5(a) EU Returns Directive, emphasising that a long period of insecurity harms the interests of

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regime en onder wetsvoorstel getoetst aan internationale normen," *A&MR*, no. 8 (2019) and Annemarie Busser, Revijara Oosterhuis and Tineke Strik, "Vreemdelingendetentie (II): Gronden getoetst aan wetsvoorstel en aan Europees en internationaal recht," *A&MR*, no. 9 (2019).

[38] *Kamerstukken I* 2018/2019, 34309, no. I.

[39] *Kamerstukken II* 2019/2020, 35501. See also *Kamerstukken I* 2021/22, 34309 / 35501, no. M.

[40] *Kamerstukken I* 2022/2023, 34309, no. N.

[41] European Migration Network, "Annual Report on Migration and Asylum 2022," July 2023.

[42] CJEU 14 January 2021, C-441/19, ECLI:EU:C:2021:9 (TQ v Staatssecretaris van Justitie en Veiligheid).

[43] Ministerie van Justitie en Veiligheid, "Buiten schuld," (July 19, 2020).

the child. For a further explanation on the policies towards UAMs whose asylum claims were rejected, see section 4.7 of this report.

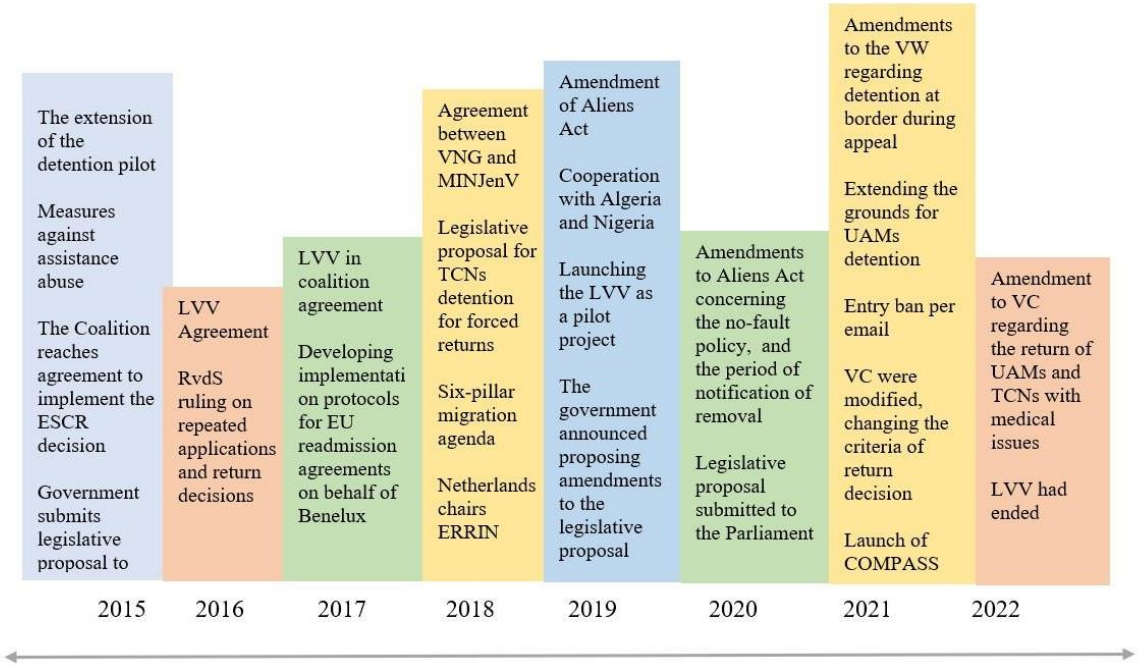

Figure (1) Return Policy Developments Timeline

3. Relationship between national law/EU law/public international law

The Netherlands has a moderately monist legal system that is characterised by relative openness towards international law which means that the national and international legal orders are complementary, and that national authorities are bound by the national and international obligations and international law can be invoked before national courts, also, that treaties automatically become binding for the state and constitute a part of the national legal order.[44] Article 93 of the Dutch constitution provides that international law becomes part of the national legal order when it enters into force.[45] Article 94 prohibits the application of national legislation if it conflicts with treaties' provisions.[46] Both articles provide for the direct effect and primacy of international law. These provisions not only refer to international law but also to the binding decisions of international organisations, including the ECtHR and the CJEU.[47] Furthermore, a yearly report is provided by the minister of foreign affairs to the parliament on the judgements made against the Netherlands and against the state parties which might affect the Dutch legal system.[48]

The Netherlands has signed and ratified 12 human rights treaties, and the United Nations treaties such as the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of the Child (ICRC), International Covenant on Civil and Political Rights (ICPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), the 1951 Refugee Convention (RC) and its 1967 Protocol and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (ICRPD). It is important to mention that the Netherlands has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW).[49] The Netherlands has ratified the optional protocols to the CAT (OPCAT), the ICPR and CEDAW. However, the OPCAT is only applicable at the European territory of the Kingdom of the Netherlands, not on the islands overseas.

The government signed the optional protocols to the ICESCR and the ICRC (on a communications procedure) in 2009, but it remained reluctant to ratify these protocols,

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[44] European Commission for Democracy Through Law (Venice Commission), "Comments on the Implementation of International Human Rights Treaties in Domestic Law and the Role of Courts," (Council of Europe, September 30, 2014), accessed August 1, 2023.
[45] European Commission for Democracy Through Law (Venice Commission), "Report on the Implementation of International Human Rights Treaties in Domestic Law and the Role of Courts," (Council of Europe, December 8, 2014), accessed August 1, 2023.
[46] The Constitution of the Kingdom of the Netherlands 2002 https://www.rechtspraak.nl/SiteCollectionDocuments/Constitution-NL.pdf.
[47] European Commission for Democracy Through Law, "Report on the Implementation of International Human Rights Treaties in Domestic Law and the Role of Courts," (Council of Europe, December 8, 2014), accessed August 1, 2023.
[48] See for the latest report "Jaarbericht 2022. Procesvertegenwoordiging Hof van Justitie van de EU: Inbreng van de Nederlandse regering," Ministerie van Buitenlandse Zaken, 1 May 2023, https://ecer.minbuza.nl/ecer/hof-van-justitie/jaarverslagen-procesvoering-nederland.html.
[49] OHCHR, "View the Ratification Status by Country or by Treaty," United Nations Human Rights Treaty Bodies, accessed August 3, 2023, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=123&Lang=EN.

despite several calls from the Senate to do so.[50] The Dutch government even failed to sign the optional protocol to the ICRPD. As a result, citizens or NGOs are not able to file a complaint if in their view, the Dutch policy breaches the obligations stemming from the convention concerned. This reluctance seems to be related to the decisions of the supervisory committee to the European Social Charter (ECSER), in response to collective complaints on the exclusion of basic rights regarding irregular migrants (see further chapter 2).[51] Apart from the lack of collective complaints, the supervisory committees of the treaties provide evaluations with recommendations, which have a non-binding but authoritative status. The government either implements them, or argues why it doesn't. In addition to the UN instruments, the Council of Europe has a number of binding or normative instruments, of which the most relevant is the European Convention of Human Rights (ECHR) with the right of individual complaints at the ECtHR. The Committee against Torture (CPT), which acts based on the ECHR and the prison rules, monitors the situation of people deprived of their liberty, including in transit zones or immigration detention centres. Its recommendations are taken seriously, but are not binding. The ECSER, monitoring the application of the European Social Charter, is also part of the normative framework of the Council of Europe.

Treaty provisions that are self-executing, can be applied directly by the court. As an EU Member State, the Netherlands is not allowed to take measures that conflict with or fail to satisfy the obligations arising from the EU treaties and laws.[52] EU Directives have to be transposed through national legislation, but during the transposition period, the state is not allowed to change its policy in a way that contradicts the EU directive. Self-executing provisions can be invoked from the moment that the directive has entered into force. EU Regulations are immediately binding and invokable, as they need not to be transposed into national law. Concerning EU law, the Netherlands transposed the Return Directive end of 2011, exceeding the deadline for implementation with one year.[53] The EU legal instruments on return, asylum and legal migration are transposed into national legislation through amendments of the Aliens Act (Vreemdelingenwet, Vw) or Aliens Decree (Vreemdelingenbesluit, Vb). Further detailed guidelines are laid down in the Aliens Circular (Vreemdelingencirculaire, Vc).

[50] Motion Strik c.s. adopted 18 March 2014, *Kamerstukken I* 2013–2014, 33750, no. VI, M.
[51] ECSR, 20 October 2009, Decision on the merits: Defence for Children International (DCI) v. The Netherlands, complaint no. 47/2008, www.coe.int. ECSR, 1 July 2014, Decision on the merits: Conference of European Churches **(**CEC) v. the Netherlands, complaint no. 90/2013, report to the Committee of Ministers, published 10 November 2014.
[52] Netherlands Court of Audit https://english.rekenkamer.nl/publications/frequently-asked-questions/european-union/how-do-the-netherlands-comply-with-eu-law.
[53] Staatsblad 2011, no. 663.

4. The Institutional Framework

In the field of migration governance in the Netherlands there are multiple organisations cooperating on managing admissions, reception and return. Also, on developing and coordinating policies and their implementation.[54] These organisations exist on the national and local levels and their cooperation is known as the "Migration Chain".[55] There are two migration chains in which organisations collaborate, the small chain consists of the IND, DT&V and COA, which are the bodies that focus exclusively on admission, reception and return of foreign nationals and have close collaboration and consultation moments during the return procedures and removability checks,[56] while the large chain is more diverse and consists of governmental, intergovernmental, and non-governmental organisations that have a role in the return process such as the IOM.

The main organisation responsible for conducting the returns is the DT&V which has various partners with whom there is close collaboration, for example, the DT&V receives case files from the IND, AVIM and KMar, while the collaboration with the COA entails that COA focuses on removing the factors hindering the departure and prepare the individuals for the "future".[57] In addition to that, there is the DJI and its support department DV&O, the first is responsible for implementing the detention of TCNs in case the DT&V or a public prosecutor issues a detention order while the second is responsible for providing the logistical support. This includes transport to the detention facility or to the airport from which the TCN would be removed whether on a regular commercial flight that is booked by a contracted travel agent or on a state charter flight coordinated by Frontex and other MSs. The KMar provides escorts to accompany the returnee in case of forced removal. In the wider migration chain there is the Ministry of Foreign Affairs which is a major partner to the DT&V and the vital point of contact between the Dutch government, foreign governments and international organisations as it is responsible for creating and negotiating return and readmission agreements with the countries of origin and funding the readmission and reintegration activities of the IOM and DT&V.

In the field of assisted returns, IOM is the main partner to DT&V. The DT&V refers to individuals who want to return voluntarily or require and are eligible for return assistance to the IOM which is subsidised by the Ministry of Justice and Security, Ministry of Foreign Affairs and the EU. There are also various NGOs that work on the return and readmission of TCN such as Goedwerk Foundation, Solid Road, Stichting Wereldwijd, Stichting ROS and the Dutch Council for Refugees.[58]

In case of returning UAMs, the Guardianship Organisation (NIDOS) is the main contact point for the DT&V, while the Dutch Council for Refugees helps in providing information and in drawing a return plan and connect the returnees to partner organisations where they can receive support in their countries of origin.[59] To a lesser extent the Association of Dutch Municipalities is also a partner to the DT&V and collaborates on providing relevant information for the implementation of the return policy and to whether migrants are departing

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[54] Ministerie van Justitie en Veiligheid, "Samen regelen we terugkeer," Migratieketen, June 27, 2018, https://magazines.rijksoverheid.nl/jenv/migratieketen/2018/01/samen-regelen-we-terugkeer.
[55] See Appendix III
[56] Repatriation and Departure Service corporate brochure, "The Repatriation and Departure Service the professional implementer of the return policy," Ministry of Justice and Security, 2020, p. 22.
[57] COA, "Reception Centres for Return".
[58] "Refugee Help – Return to Nigeria," n.d.
[59] Ibid.

the Netherlands or ending up homeless. This cooperation is managed by the Migration Chain Management Directorate (DRM) which falls under the Directorate General for Migration within the Ministry of Justice and Security. The DRM focuses on enabling the organisations in the migration chain to quickly and accurately implement the provisions of the VW and migration policies.[60] Furthermore, the DRM formulates clear and feasible goals and agreements to achieve them, monitor their implementation and their effects on the whole chain.[61]

DT&V, COA and Police work together in asylum seekers centres and have regular consultation meetings (LKO) where they discuss matters such as signals of human trafficking or smuggling, nuisance causing behaviour, changes in the policy and mutual cooperation. Such consultations can also be aimed at designing and coordinating a departure strategy or discussing specific files. The IND is often included in such consultations while NIDOS, VWN or the municipality can be invited if relevant. In case one of the organisations indicates the inability to implement the supposed strategy or if implementation fails, scaling up to the Regional Coordination Consultation (RAO) would take place.[62] The RAO is a periodic consultation meeting per region which can be one or two provinces, between the department manager of the DT&V, team chief AVIM, COA regional manager and a senior IND employee. More parties can be invited to the RAO such as IOM or NIDOS if needed, such consultations aim to solve the bottlenecks facing the LKOs.[63] However, complex issues that might have publicity or political impact are referred by the RAO to the Asylum Council that consists of representatives from IND, KMar, DT&V, COA, National Police, Migration Chain, DMB and connected to a chain marine.[64] Furthermore, calamities or incidents such as attempted suicide or threat of self-harm must be reported to the Chain-wide Calamity Team.[65]

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[60] Ministerie van Algemene Zaken, "Directoraat-Generaal Migratie (DGM)," Ministerie Van Justitie En Veiligheid | Rijksoverheid.nl, March 17, 2023, https://www.rijksoverheid.nl/ministeries/ministerie-van-justitie-en-veiligheid/organisatie/organogram/directoraat-generaal-migratie-dgm.
[61] Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, "Carolien Posthumus afdelingshoofd Ketensturing bij JenV," Nieuwsbericht | Algemene Bestuursdienst, October 7, 2021, https://www.algemenebestuursdienst.nl/actueel/nieuws/2021/10/07/carolien-posthumus-afdelingshoofd-ketensturing-bij-jenv.
[62] Ministerie van Justitie en Veiligheid, "Lokaal Ketenoverleg (LKO)," Over DT&V | Dienst Terugkeer En Vertrek, October 27, 2021, https://www.dienstterugkeerenvertrek.nl/over-dtv/leidraad-terugkeer-en-vertrek/overlegvormen/lokaal-ketenoverleg-lko.
[63] Ibid., "Regionaal afstemmingsoverleg (RAO)," Over DT&V | Dienst Terugkeer En Vertrek, September 28, 2021, https://www.dienstterugkeerenvertrek.nl/over-dtv/leidraad-terugkeer-en-vertrek/overlegvormen/regionaal-afstemmingsoverleg-rao.
[64] Ibid., "Deelberaad Asiel (DA)," Over DT&V | Dienst Terugkeer En Vertrek, September 28, 2021, https://www.dienstterugkeerenvertrek.nl/over-dtv/leidraad-terugkeer-en-vertrek/overlegvormen/da.
[65] Ibid., "Calamiteiten en incidenten," Over DT&V | Dienst Terugkeer En Vertrek, September 28, 2021, https://www.dienstterugkeerenvertrek.nl/over-dtv/leidraad-terugkeer-en-vertrek/knelpunten-en-oplossingen/calamiteiten-en-incidenten.

4.1 List of Authorities Involved in the Return Migration Governance as Defined and Authorised by the Law

Authority (English and original name)	**Tier of government (national, regional, local)**	**Type of organisation**	**Area of competence in the fields of return (Briefly explain the role)**	**Link**
Immigration and Naturalisation Service INS Immigratie en Naturalisatie Dienst IND	National	Governmental	Issuing/ postponing/ lifting of return decisions and entry bans Granting residence permit	https://ind.nl/en
Return and Departure Service R&DS Dienst Terugkeer en Vertrek	National	Governmental	Removal, support in obtaining travel documents	https://english.dienstterugkeerenvertrek.nl/
Custodial Institutions Agency Dienst Justitiële Inrichtingen DJI	National	Governmental	Migrant detention	https://www.dji.nl/
Transport and Support Service Dienst Vervoer en Ondersteuning DV&O	National	Governmental	Transport	https://www.dji.nl/over-dji/organisatie-dji/landelijke-diensten/dienst-vervoer-en-ondersteuning/organisatie-dvo
Royal Military Police Koninklijke Marechaussee KMar	National	Governmental	Apprehension, detention, issuance of return orders and escorting	https://www.defensie.nl/organisatie/marechaussee
National Police/ Aliens Police AVIM	National	Governmental	Apprehension and issuance of return orders	https://www.politie.nl/
Seaport Police Zeehaven Politie ZHP	National	Governmental	Apprehension and issuance of return orders	
Centraal Orgaan Opvang Asielzoekers COA	National	Governmental	Housing, counselling and coordinating with DT&V and police	https://www.coa.nl/en
The Guardianship Organisation NIDOS	National	Governmental	Guardianship and contact point for DT&V	https://werkenbijnidos.nl/

Table (1) Authorities Involved in Return Migration Governance

5. The National Legal Framework Regarding Return

5.1. Definitions and Concepts

Return decision: decision in which the Minister informs a foreign national in writing that he/she has no right to stay and has to leave the EU territory within a certain period of time. In the same decision, it is provided that, in case of the rejection of an asylum claim, he/she has to leave the reception centre.[66]

Departure: boarding a ship or aircraft intended for departure from the Netherlands.[67]

Voluntary Departure period: a period between 0 and 28 days after the end of the lawful residence or after the rejection of the residence application or appeal within which the TCN has to leave the Netherlands on his/her own initiative. If the person complies with this obligation, no entry ban will be imposed.[68]

Entry ban: a decision that the person concerned is not allowed to re-enter the EU territory for a certain amount of time. If a voluntary departure term was granted, but the person has not complied with it, an entry ban will be imposed. If no voluntary departure term is granted, the return decision also encompasses an entry ban.[69]

Expulsion: the deportation of the TCN that takes place by handing him/her over to the border authorities, and placing him/her on board of an aircraft or ship of the same carrier that has transported him/her to the Netherlands, directly or with stopover in a country where he/she is granted entry.[70]

Foreigner: anyone who does not have Dutch nationality and who must not be treated as a Dutch national based on a statutory provision. This definition encompasses both Union citizens and third country nationals.[71] The Dutch legislation and authorities use the term 'aliens'.

Independent departure: departure by a person which is registered or proven, without the use of force.

Unauthorised departure: 'assumed departure' (as it was not observed) to unknown destination (met onbekende bestemming MOB).

Third-country nationals: non-EU and non-community citizens/ Persons who have nationality of a third state.

Irregular stay of a third-country national: a TCN is staying irregularly in the Netherlands if this person does not fulfil, or no longer fulfils the conditions of entry as set out in Art. 5 of the Regulation (EU) 2016/399 (Schengen Borders Code) or other conditions for entry, stay or residence, and if there are no obstacles to return or a pending application for residence permit.[72] Although Article 1 of the Return Directive uses the term 'illegally staying',

[66] Ibid.; Article 62 and 62a Aliens Act 2000.
[67] Article 4.1 (2) Aliens Decree 2000.
[68] Article 62 Aliens Act 2000.
[69] Articles 7 (4) and 45 (8) Aliens Act 2000.
[70] Implementation Guidelines A, section A3, subsection 6.
[71] Article 1 Aliens Act 2000.
[72] Ibid. Article 8 Aliens Act 2000.

we prefer the term irregular, which refers to something that does not conform to a set of rules or standards, but may not necessarily be illegal. Furthermore, illegal implies an action or behaviour considered as a criminal offense which is punishable, while irregular refers to a person (staying without authorisation).[73]

Voluntary departure: the foreign national must leave the Netherlands of his own accord within the departure period.[74]

Safe third country of origin:* based on Aliens Regulation 2000 Article 3.37F, a country is considered safe if there are legal provisions in a democratic system where on a lasting basis there is no persecution, torture, inhuman or degrading treatment, punishment, nor threats of indiscriminate violence. Additionally, the degree of protection against persecution or ill-treatment by means of law, regulations, respect for international human rights obligations, non-refoulment and the legal remedies against violations of rights or freedoms.

Vulnerable persons: (not explicitly named vulnerable) unaccompanied minors, foreign nationals for whom it is not possible to travel in view of the state of health, and foreign nationals who are victims of or witnesses reporting human trafficking.[75]

5.2 Return at the Border

While transposing the Return Directive, the Dutch government chose to use the optional clause of Article 2(2)(a) of the directive and to exclude application of the directive at the borders. As a justification, the government reasoned that Article 13 of the Schengen Border Code is already applicable, offering ground for a refusal of entry, for which the reasons are communicated to the TCN. Adding the Return Directive would imply the obligation to also issue a return decision. Furthermore, the Dutch Aliens Act offers refusal of entry as a legal ground for detaining a TCN, which is absent in the Return Directive. Regarding the duration of this border detention, the Netherlands does apply the Return Directive. This detention ground is only applied at the Schiphol airport. That means that TCNs who arrive at the Dutch territory by crossing the land border and express their wish to apply for asylum, are referred to an open reception centre where their asylum claim is registered. Other irregular TCNs who are detected or apprehended at the territory, are issued a return decision according to the Return Directive.

According to Article 6 of the Aliens Act, the Dutch authorities may hold foreign nationals who have been denied entry at the airport in immigration detention in preparation for their removal. If a foreign national is refused entry or apprehended at the border or if a foreign national enters the Netherlands without a valid travel document or without the required financial means or in case of posing a threat to the public order or security they would be placed in a closed area designated by the border control authorities that is secured against absconding. This measure amounts to de-facto border detention, as foreigners stay on the Dutch territory where the so-called fiction of non-entry applies to them. In case the TCN applies for a residence permit or asylum, they have to remain in the place designated by the border control officer as

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[73] https://thecontentauthority.com/blog/illegal-vs-irregular.
[74] Ibid. Article 27b Aliens Act 2000.
* The Aliens Decree enlists the EEA, Albania, Algeria, Andorra, Armenia, Australia, Bosnia and Herzegovina, Brazil, Canada, Georgia, Ghana, India, Jamaica, Japan, Kosovo, Morocco, Monaco, Mongolia, Montenegro, New Zealand, North Macedonia, Ukraine, San Marino, Senegal, Serbia, Togo, Trinidad and Tobago, Tunisia, Vatican City, United States, Switzerland as safe countries of origin.
[75] Article 17 Aliens Act 2000.

part of the procedure as long as there is no decision yet on the lodged application. The maximum duration of the asylum border procedure and detention is four weeks, in line with Article 43(2) Directive 2013/32.[76] In case further investigation is needed, the TCN would be placed in an open reception centre (AZC).[77]

If the asylum request is rejected during the border procedure, the detention of TCNs will be prolonged during the appeal procedure. Rejected asylum seekers have one week to appeal, after which the court has to take a decision within four weeks. In 2020, amendments were made to the Aliens Act which created a legal basis for continuing detention at the border during the (further) appeal procedure of those whose entry was denied or asylum application rejected.[78] If the asylum seeker fails to appeal, or after the court has taken a negative decision in appeal, the detention will be prolonged on the basis of the Return Directive. On that legal basis, the maximum total duration of the border detention can last up to 18 months from the moment of the negative decision in appeal. Mostly, migrants are detained for a period less than 3 months at the border and on the territory, yet, there are migrants who have been detained for longer than 6 months.[79] Families with minor children who apply for asylum, are immediately subject to a screening procedure, after which they are relocated to an open reception centre. The asylum border procedure is not applicable to UAMs neither to people who need special procedural safeguards related to their traumatised experiences in the past, and asylum seekers for whom detention is 'disproportionally cumbersome'.

5.3 Regular Procedure to Issue a Return Decision

A TCN detected or apprehended while irregularly staying in the Netherlands, can be issued a return decision immediately if he or she does not apply for legal residence. When the TCN lodges an application for legal residence and this application is rejected, the negative decision implies a return decision at the same time. Since 7 March 2023, when issuing a return decision, the government enters an alert for the return decision into the Schengen Information System (SIS) which is visible to border authorities and police in the Schengen countries until the foreign national leaves the EU. The return decision is an administrative decision that is issued by the IND, the Aliens Police, ZHP or the Kmar, and includes the departure term that the TCN needs to comply with. If the TCN fails to meet this term, he/she might be subject to forced removal and could receive an entry ban, which applies to the whole EU and EEA territory. As a rule, the entry ban has a duration of two years, but in case of a serious threat to the public order or national security, the duration can be up to twenty years. Prior to the imposition of an entry ban, the TCN needs to be heard to assess the individual circumstances, to ensure that

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[76] "Border Procedure (Border and Transit Zones)," Asylum Information Database | European Council on Refugees and Exiles, April 11, 2023, https://asylumineurope.org/reports/country/netherlands/asylum-procedure/procedures/border-procedure-border-and-transit-zones/.
[77] Ministerie van Justitie en Veiligheid, "Border Detention: Return of Foreign Citizens," Government.nl, August 2, 2022, https://www.government.nl/topics/return-of-foreign-citizens/border-detention.
[78] Staatsblad 2020, 136.
[79] "Duration of Detention," Asylum Information Database | European Council on Refugees and Exiles, April 12, 2023, https://asylumineurope.org/reports/country/netherlands/detention-asylum-seekers/legal-framework-detention/duration-detention/#:~:text=The%20majority%20of%20persons%20are,%2C%20see%20AIDA%202020%20Update.

humanitarian reasons are taken into account in deciding whether or not to impose an entry ban, and if so, with which duration.

In principle, the TCN is granted a voluntary departure term of 28 days, but the Minister can decide to shorten or completely refrain from it. The latter is for instance applicable in case of a risk of absconding or if the TCN poses a threat to public order, policy or national security or has committed a criminal offence. In the latter case the return decision is usually accompanied with an entry ban (see section 4.8 for the exact conditions and criteria). An entry ban cannot be issued without issuing a return order and is only issued to non-EU/EEA nationals. A return decision is also issued when the IND revokes a residence permit or refuses to renew an expiring one.

Thus, a return decision has more legal consequences at the same time: it is a formal decision that the stay is irregular, it implies an order to leave the country within a voluntary departure term (provided for in the decision). If no voluntary departure term is granted, the return decision includes an entry ban. In case of a previous application, the decision includes the rejection of that application. Furthermore the return decision offers the possibility to appeal the decision, and it grants the authorities the competence to enter a place without permission of the owner in order to enforce the decision.[80] In the specific situation of a rejected asylum claim, the return decision also implies the obligation to leave the reception facilities within the same period.[81] In case of an appeal against the rejection, the term for departure and for leaving the reception facilities is extended until 28 days after the judicial decision in appeal. The appeal against the rejection/return decision in the first instance has automatic suspensive effect, but regarding an appeal in the second instance, the court decides on the suspensive effect based on a request for an interim measure. In case of inadmissibility as another (Member) State is responsible based on the Dublin Regulation, the decision serves as a transfer decision as well, but it does not lead to irregular stay.[82] It also offers the asylum seekers a voluntary departure term, and if this is not complied with, the transfer will be enforced. As a consequence of the CJEU judgement in *Gnandi*, all effects of the return decision are suspended as long as the appeal procedure is pending, and the asylum seeker is allowed to await this procedure.[83]

[80] Article 27 Aliens Act 2000.
[81] Article 45 Aliens Act 2000.
[82] Article 44a Aliens Act 2000.
[83] CJEU 19 June 2018, C-181/16, ECLI:EU:C:2018:465 (*Gnandi)* and CJEU 5 July 2018, C-269/18 PPU, ECLI:EU:C:2018:544 (*C*).

5.4 Special Cases and their relation with the Obligation to Issue a Return Decision

Inapplicability of apprehension measures

I. The Aliens Act 2000 Article 50(1) authorises the Dutch police to stop persons in order to check their identity, nationality, and residence status if there is a reasonable suspicion of irregular residence.[84] However, based on Article 12(b) of the General Law on Entry of 2010, police entry to spaces intended for religious services or for meetings of philosophical nature for the purpose of arrest or apprehension is not allowed during the religious service or the reflection meeting except in the case of red-handed detection.[85] Under Article 6.5(2-3) of the Aliens Decree 2000, an entry ban will not be issued or will be lifted in case that the TCN is a victim of human trafficking, smuggling, domestic violence, honour-related violence or a witness eligible for reflection time for reporting human trafficking or smuggling. In case that the TCN is involved in procedures before the ICC or other international courts[*], the departure term would be extended if the foreigner's presence is necessary.

Apprehension during exit check

II. In case the Police or KMar finds a TCN at the border during an exit check and the IND provides that the TCN has been staying in the Netherlands irregularly due to the lack of a valid residence permit or due to that the TCN has not applied for a residence permit in the first place, he/she will receive a return decision. It is possible to lodge an objection to the IND or appeal to the court against the decision.[86]

Return decision from another EU MS

III. If the authorities detect or apprehend a TCN who holds return decision from another EU MS, he or she can be transferred to that country in case of a bilateral agreement without an additional return decision to be taken. In other cases, the Dutch authorities have to issue a return decision based on Dutch law, before they can give effect to such decision, such as a detention measure. Normally, a TCN who is apprehended in the Netherlands due to irregular residence would be issued a return decision and in case of receiving more than one return decision (including in another MS), the TCN would be

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[84] Ruben Timmerman, Arjen Leerkes, Richard Staring, and Nicola Delvino. "'Free In, Free Out': Exploring Dutch Firewall Protections for Irregular Migrant Victims of Crime," *European Journal of Migration and Law* 22, 3 (2020): 427-455, doi: https://doi.org/10.1163/15718166-12340082.
[85] Article 12 Algemene Wet op het Binnentreden.
[*] The Special Tribunal for Lebanon, the International Yugoslavia Tribunal, the Special Court for Sierra Leone, the Kosovo Relocated Specialist Judicial Institution, or the International Residual Mechanism for Criminal Tribunals.
[86] Immigratie en Naturalisatiedienst, "Return Decision".

issued an entry ban.[87] Furthermore, in case the TCN has received a return decision from a MS that enters an alert in the SIS, if he/she is found at the border, the border control officer imposes an entry ban based on Implementation Guidelines of the Aliens Act section A2 subsection 12.4.

Stay during appeal or pending renewal

IV. In case a TCN is awaiting the outcome of an application for the issuance or renewal of a residence permit, or of appeal in first instance, he/she is allowed to reside in the Netherlands. An appeal in second instance does not have automatic suspensive effect, but the court has to decide on the request for an interim measure by the applicant. However, due to the judgement in *Gnandi,* in the case of an asylum procedure, all effects of the return decision are suspended as long as the appeal procedure is pending, and the asylum seeker is allowed to await this procedure.[88] As a safeguard in case of a pending residence permit renewal, the foreign national receives a residence endorsement sticker in his/her passport which provides that the foreign national is allowed to reside in the Netherlands during the procedure. In case of delayed decisions or renewal procedures it is possible to receive a second residence endorsement sticker if the first has expired. The validity of the sticker depends on the individual situation with a maximum of six months.[89]

Return decision to TCNs holding residence permit in another EU MS

V. Under the Article 62a of the Aliens Act, the Minister issues a return decision unless the TCN is in possession of a valid residence permit or another authorisation to stay issued by another MS. In this case the TCN is instructed to enter the territory of the responsible MS immediately, however, in case of non-compliance or if immediate departure is required in the interest of national security or public order, a return decision will be issued.[90] Furthermore, if a TCN has a valid residence permit in one of but has not complied with the conditions and obligations stated in Article 12 of the Aliens Act concerning means of subsistence, employment, threatening public order or national security, he/she shall be expelled by the officer charged of border control who submits an alert request to the IND.[91], in case the TCN who holds a residence permit from another MS is to be issued a return decision that entails a strict entry ban, consultation procedure has to take place between the authority issuing the return decision (IND, KMar, ZHP, the police) and the MS that has issued the residence

[87] Immigratie en Naturalisatiedienst, "Entry Ban".
[88] CJEU 19 June 2018, C-181/16, ECLI:EU:C:2018:465 (*Gnandi).*
[89] Immigratie en Naturalisatiedienst, "Appointment Residence Endorsement Sticker," IND, July 4, 2023, https://ind.nl/en/appointment-residence-endorsement-sticker#:~:text=A%20residence%20endorsement%20sticker%20is,to%20apply%20for%20a%20sticker. Accessed August 6, 2023.
[90] Article 62a Aliens Act; Aliens Circular 2000 VC(A), section A3, subsection 2.
[91] Aliens Circular 2000 VC(A), section A2, subsection 12.2.

permit.[92] Upon consultation the MS having issued the residence permit might withdraw it and the TCN would receive a return decision and an entry ban with a SIS notification.

Readmission Agreements concerning TCNs declared undesirable

VI. Concerning TCNs who are declared undesirable, and irregularly staying TCNs, there are various readmission agreements between the Netherlands and other MSs. The agreement between the Netherlands, Belgium and Luxembourg established in 1960 concerning the External Borders of the Benelux Territory stipulates in Article 9 that each of the three countries take back the so called TCNs who are declared undesirable, who entered the territory of the other contracting state from their territory. Furthermore, Article 10 entails that an undesirable foreigner in any of the three states is undesirable in all the Benelux territory.[93] Additionally, the Netherlands as part of the Benelux has readmission agreement with Germany established in 1966,[94] and readmission agreement with France in 1964 which entails that the Benelux countries shall take back foreigners whom France wants to expel and that France takes back foreigners whom the Benelux countries want to expel without formalities or diplomatic intervention.[95] Similarly with Austria in 1965,[96] Slovenia in 1992,[97] Poland in 1991, Romania in 1995,[98] Armenia in 2009 (readmission agreement however not without formalities).[99] Provisions concerning admitting and taking back foreign nationals under such agreements are enlisted in the VC, section A3 (6.5).

Transfers under the Dublin regulation

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[92] Aliens Circular 2000 VC(C), section A3, subsection 2.
[93] Overeenkomst tussen het Koninkrijk België, het Groothertogdom Luxemburg en het Koninkrijk der Nederlanden, inzake de verlegging van de personencontrole naar de buitengrenzen van het Beneluxgebied, September 14, 2022.
[94] Overeenkomst tussen de Regering van de Bondsrepubliek Duitsland enerzijds en de Regeringen van het Koninkrijk België, het Groothertogdom Luxemburg en het Koninkrijk der Nederlanden anderzijds, inzake het overnemen van personen aan de grens - BWBV0004479," July 1, 1966.
[95] Overeenkomst tussen de Regeringen van het Koninkrijk der Nederlanden, het Koninkrijk België en het Groothertogendom Luxemburg enerzijds, en de Regering van de Franse Republiek anderzijds, inzake het overnemen van personen aan de gemeenschappelijke grens van het grondgebied van de Beneluxlanden en Frankrijk - BWBV0004480, May 16, 1964.
[96] Overeenkomst tussen de Bondsregering van de Republiek Oostenrijk, enerzijds, en de Regeringen van het Koninkrijk België, het Groothertogdom Luxemburg en het Koninkrijk der Nederlanden, anderzijds, betreffende de overname van personen aan de grens - BWBV0004481," April 1, 1965.
[97] Overeenkomst tussen de Regeringen van het Koninkrijk der Nederlanden, het Koninkrijk België en het Groothertogdom Luxemburg, enerzijds, en de Regering van de Republiek Slovenië, anderzijds, betreffende de overname van onregelmatig binnengekomen of verblijvende personen - BWBV0001062, November 16, 1992,
[98] "Internationale Overeenkomsten," *SDU* 8 (January 1994).
[99] Tractatenblad 2009, 124. Officiële bekendmakingen September 16, 2009. Overeenkomst tussen de Benelux-Staten (het Koninkrijk België, het Groothertogdom Luxemburg, het Koninkrijk der Nederlanden) en de Republiek Armenië betreffende de overname van onregelmatig verblijvende personen (met Uitvoeringsprotocol) Brussel, June 3, 2009.

VII. In principle, the Return Directive is not applicable if the Dublin Regulation applies, as this Regulation has its own system for transfers. If an irregularly staying TCN can be transferred to another MS under the Dublin rules, there are two scenarios; the first is that a MS has entered a return decision alert in the SIS; in that case the Netherlands may proceed with a removal procedure, after having issued a return decision based on Dutch law. The second scenario is if a TCN is apprehended in the Netherlands while having a pending asylum procedure in another MS. In that case the take back notification or transfer under the Dublin Regulation will be triggered. According to Article 62(b) of the Aliens Act, the written notification to the TCN on his/her transfer to the responsible MS, counts as the transfer decision. When a transfer decision is issued, the TCN must leave the Netherlands of own volition within four weeks, however, the Minister may shorten the departure term.[100] If the person has not left the Netherlands within the departure term, he/she transferred by force.[101]

Non-removability

VIII. If the TCN cannot be removed from the Netherlands due to humanitarian reasons such as medical treatment, reporting, witnessing or being a victim of human trafficking, war outbreak in the country of return or other reasons due to no-fault, the concerned TCN would be granted a residence permit on humanitarian or no-fault grounds.[102]

5.5 Voluntary Departure and Voluntary Return

Article 60(1) of VW provides that after the end of the lawful residence the TCN should leave the Netherlands voluntarily within four weeks. However, under subsection (4) of the same Article it is possible that the Minister shortens the departure term in the interest of the expulsion of the foreigner, for instance if there is a risk of absconding, or if there is a threat to public policy or national security.[103]

Previously, the Dutch policy which stipulated that immigration authorities automatically refrained from a voluntary departure period if the TCN was suspected or convicted for a criminal offence, was in violation of Article 7(4) Return Directive according to the CJEU ruling on 11 June 2015.[104] This provision in the Directive includes the possibility to refrain from or reduce the period of voluntary departure in case of a threat to public order, public or national security, but this has to be conducted on a case-by-case basis, taking into consideration a person's fundamental rights and circumstances. A threat to public policy has to be interpreted as genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. The Court also made clear that the proportionality principle requires first the assessment if reduction of the term is necessary and sufficient, as reduction prevails over completely refraining from the voluntary departure term. Refraining has more far-reaching

[100] Article 62c Aliens Act 2000.
[101] Article 63 Aliens Act 2000.
[102] Immigratie en Naturalisatiedienst, "Other Residence Permits," IND, January 16, 2023, https://ind.nl/en/residence-permits/other-residence-permits/other-residence-permits. Accessed August 7, 2023.
[103] See Article 62(2) sub c, Aliens Act 2000.
[104] HvJ EU, 11 May 2015, C-554/13, ECLI:EU:C:2015:377 (*Zh. v. O*); HvJ EU, 12 February 2015, C-554/13, ECLI:EU:C:2015:94 (*Zh. v. O*).

consequences, for instance the immediate imposition of an entry ban. Since this judgement, the decision making regarding the voluntary departure term includes an individual assessment.

The Dutch authorities can also shorten or refrain from a voluntary departure term in case of a risk of absconding, if the application for legal residence has been rejected as manifestly unfounded or if the applicant has submitted incorrect or incomplete information.[105] The latter ground is ambiguous, as the Directive only allows 'fraudulent applications', while incorrect or incomplete information can also be submitted without the intention to mislead authorities.

The Minister has the competence by Article 62(3) VW to extend the departure term granted to the foreigner based on the individual circumstances. Based on the Article 6.3 of the VV, the departure period can be extended to a maximum of 90 days or maximum of 6 months in case the foreigner's presence is mandatory in the Netherlands for implementing procedures before ICC or other courts.[*] This Article also provides that the extension decision of the departure period takes into consideration the presence of social and family ties as well as the presence of school-going children.[106] The TCN has to return to the country of origin or to a third country where he/she has the right to reside. Foreign nationals who do not comply with the departure term are issued an entry ban and might be subject to forced return and detention in case of apprehension. In case no voluntary departure term is granted, an entry ban is immediately issued, potentially followed by forced removal.

The DT&V is responsible for the return of the unlawfully residing foreigners whether this return is coerced or assisted. The Aliens Act makes a distinction between independent departure, where the TCN leaves the country without being forced to (most of the time within the voluntary departure term), expulsion, where the TCN is forcefully returned, and unauthorised departure, which means that the person has disappeared and assumed to have left the country (see section 4.1). In case of an independent return, the departure is registered/observed, but in the case of unauthorised departure, the person is registered as 'departed with destination unknown'.

There are various organisations in the Netherlands involved in AVR(R) programs such as the IOM, the Dutch Council for refugees and other NGOs that cooperate with the IOM and DT&V. The VC includes clauses concerning the provision of return assistance to foreign nationals through IOM to return independently from the Netherlands and the eligibility to receive this assistance.[107] There are also provisions regarding the collaboration between the governmental organisations (DT&V, IND, KMar, ZHP) and IOM, where the IND has to consult the DT&V on granting or withholding the permission for the foreign national to leave with the assistance of IOM. Generally, the DT&V provides return assistance based on specific conditions such as that the TCN does not have a pending asylum or residence permit application or in case the TCN has tried to leave the Netherlands and failed due to lacking travel documents, in this case DT&V can provide mediation to obtain the required documents such as a Laissez-Passer.[108] In 2015

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[105] Article 62(2) sub a and b Aliens Act 2000. See also Article 7(4) Return Directive 2008/115/EC.
[*] The Special Tribunal for Lebanon, the International Yugoslavia Tribunal, the Special Court for Sierra Leone, the Kosovo Relocated Specialist Judicial Institution, or the International Residual Mechanism for Criminal Tribunals.
[106] Article 6.3 (4) Aliens Act 2000.
[107] Aliens Circular 2000 VC(A), section A3, subsection 5.
[108] Ministerie van Justitie en Veiligheid, "Hulp van DT&V," Ondersteuning Bij Terugkeer | Dienst Terugkeer En Vertrek, August 4, 2023, https://www.dienstterugkeerenvertrek.nl/ondersteuning-bij-terugkeer/hulp-van-dtv. Accessed August 7, 2023.

and 2016, the government has restricted the financial support for departure and reintegration, inter alia by abolishing the additional support granted to nationals from visa-exempted countries. The argument for the latter decision was that it served to prevent abuse by migrants who travelled visa-free just to benefit from this return-related financial support.

There is qualitative as well as quantitative evidence to support the idea that issuing a return decision without imposing an entry ban yet, can encourage persons to leave the Netherlands.[109] The quantitative data indicate that individuals who received a return decision in 2013 had a two times smaller chance of being found (apprehended) in the Netherlands within a year than individuals who received a return decision in 2012. This could mean that, in 2013, a higher number of illegally residing foreigners left after the return decision was issued, in order to avoid an entry ban. This interpretation assumes that foreigners who received a return decision in 2013 were more aware of the risks of an entry ban than foreigners who received a return decision in 2012, the year that the entry ban was introduced. (The Netherlands was late to implement the Return Directive and the entry ban was introduced quite quickly, and without much publicity, in order to meet the deadline set by the EU; it therefore seems probable that a relatively large number of migrants initially did not know what the entry ban meant).

Such a deterrent effect does not seem to occur once an entry ban has been imposed. There are no indications (quantitative or qualitative) that illegally residing foreigners with an entry ban leave the Netherlands voluntarily to avoid the criminal sanction that comes with the violation of the entry ban. Thus, the tendency to impose entry bans with some restraint makes sense in that respect. These observations also suggest that the deterrent effect of the entry ban itself is stronger than the deterrent effect of criminalising violations of the entry ban (in other words: some irregularly staying TCNs are keen to avoid the entry ban, but once an entry ban has been imposed, they seem unimpressed by the criminal sanctions that may follow).[110]

5.6 Forced Return

Based on the Article 63(1) VW, if the TCN fails to leave the Netherlands on his/her own initiative within the departure period indicated in the return order, he/she might be subject to forced removal. In the Netherlands, there is an obligation to specify the country of removal/destination of return. In 2021, an amendment was made to the VW by which the return decision has to include the country that the foreign national should return to.[111]

Forced Return in collaboration with FRONTEX is most commonly conducted by air through commercial or dedicated charter flights.[112] However, in the Netherlands it is also possible to conduct return through seagoing vessels, in this case KMar sends removal order to the concerned carrier which is known as form M30.[113] The Netherlands collaborates with FRONTEX not only in the implementation of forced returns through joint operations and

[109] WODC-rapport, "Het lot van het inreisverbod: Een onderzoek naar de uitvoeringspraktijk en gepercipieerde effecten van de Terugkeerrichtlijn in Nederland," Memorandum 2014-2.
[110] WODC-rapport, "Het lot van het inreisverbod: Een onderzoek naar de uitvoeringspraktijk en gepercipieerde effecten van de Terugkeerrichtlijn in Nederland, Memorandum 2014-2, para. 4.2.1.
[111] European Migration Network, "Annual Report on Migration and Asylum 2022." July 2023.
[112] Frontex "Return Operations," n.d., https://frontex.europa.eu/return-and-reintegration/return-operations/return-operations/. Accessed August 8, 2023.
[113] Ministerie van Justitie en Veiligheid, "Sample Model M30," Publication | Repatriation and Departure Service, August 11, 2020, https://english.dienstterugkeerenvertrek.nl/duty-to-return/documents/publications/2016/09/12/sample-model-m30-aanwijzing-terugvoerverplichting-maritime-border. Accessed August 8, 2023.

charter flights that are organised by FRONTEX or by another MS, but also in the field of voluntary return. In 2020 the first collaboration took place in a joint operation to return 50 individuals voluntarily from Belgium, France, Germany and the Netherlands to Iraq.[114]

In case the TCN indicates having health issues, a medical examination would be carried out before departure to determine whether the individual is fit to travel. If there is an indication of medical circumstances that may hinder deportation, the DT&V invites a doctor to examine the individual and determine his/her medical fitness. If there are no deterring medical circumstances, the individual would be declared fit to fly.[115] If the TCN cooperates on return and yet cannot be returned due to no fault of their own such as lack of cooperation on the side of the origin country in issuing the necessary travel documents, the IND would issue a no-fault residence permit.[116] Also, in case of war outbreaks or natural disaster in the destination of return, the IND is entitled to issue a temporary residence permit.[117]

According to Article 64 VW, removal is postponed if the TCN is physically unable to travel. However, a Dutch court wanted to inquire from the CJEU if in cases of serious illness, a return decision or removal order can be issued if there is no adequate treatment in the country of return. and what criteria apply in such cases. The CJEU ruled on the 22 November 2022 that Article 5 of the Return Directive, reads in conjunction with Articles 1, 4 and 19(2) of the Charter, thus, prohibits a Member State to issue a return decision or a removal order regarding a TCN who suffers from a serious illness, if there is a serious risk of rapid, significant and permanent increase in his pain.[118] Any requirement on a strict period within which this increase is likely to happen, is prohibited, but the severity threshold of Article 4 of the Charter must be reached. Therefore, only assessing whether a person is able to travel is not sufficient.

The coercive measures in use are not explicitly specified in the forced return operations from 1 January 2013 on. However, those in use are the metal handcuffs, Velcro straps, bite/spit mask, French body belt.[119] There are at least two escorts per returnee and a medical staff on board of the flight. The Justice and Security Inspectorate which is an "independent system", is responsible for monitoring the forced return activities and for monitoring the performed tasks within the migration chain which consists of multiple organisations among others the IND, DT&V, and Kmar.[120] This is stated by the Regulation on the Supervision of the Return of Foreign nationals 2013. [121]

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[114] Frontex, "Frontex Assists in First Joint Voluntary Return with a Charter Flight," n.d., https://frontex.europa.eu/media-centre/news/news-release/frontex-assists-in-first-joint-voluntary-return-with-a-charter-flight-W9ednO.
[115] Dienst Terugkeer en Vertrek, "Dan Zet Je Ze Toch Gewoon Uit Een Kijkje Achter de Schermen Bij de Dienst Terugkeer En Vertrek," Ministerie van Justitie en Veiligheid, January 2018.
[116] Ministerie van Justitie en Veiligheid, "Buiten schuld," Het Terugkeerproces | Dienst Terugkeer En Vertrek, July 29, 2020, https://www.dienstterugkeerenvertrek.nl/het-terugkeerproces/bijzondere-omstandigheden/buiten-schuld. Accessed August 8, 2023.
[117] Ministerie van Justitie en Veiligheid, "How We Work," The Return Process | Repatriation and Departure Service, July 18, 2023, https://english.dienstterugkeerenvertrek.nl/the-return-process/how-we-work. Accessed August 9, 2023.
[118] CJEU 22 November 2022, C-69/21, ECLI:EU:C:2022:913 (X. / Stscr. (NL)).
[119] Fondazione ISMU (2019), Monitoring of forced return in Europe. Strategies, critical issues and best practices, National Guarantor for the rights of persons detained or deprived of liberty.
[120] Ministerie van Justitie en Veiligheid, "Migratie," Toezichtgebieden | Inspectie Justitie En Veiligheid, April 5, 2022, https://www.inspectie-jenv.nl/toezichtgebieden/migratie. Accessed August 9, 2023.
[121] Aliens Return Monitoring Regulation (Regeling toezicht terugkeer vreemdelingen) Law Gazette (Staatscourant) of 23 December 2013, no. 35638.

5.7 Return of Unaccompanied Minors (UAMS)

After in January 2021 the CJEU had ruled in *T.Q.* that the Dutch authorities are not allowed to issue a return decision if the UAM cannot be returned nor to make a distinction between minors younger and minors older than 15 (see Chapter 2), the Secretary of State refrained from issuing a return decision towards UAMs until the end of that year.[122] Since then, a new policy was introduced, granting UAMs with a rejected asylum claim an official postponement of departure as long as a return decision cannot be issued due to further investigations on adequate protection in the country of origin/return. This policy was already used for TCNs who cannot be deported if that would lead to a medical emergency situation.[123] The new policy does not end the distinction between minors younger an older than 15 as only for the first group, the authorities have to investigate whether there is adequate protection in the country of origin. This investigation is only based on information about the applicant's family during his/her asylum procedure. Furthermore, by granting postponement of departure, the Secretary of State refuses to issue a return decision not because of the perspective of granting a lawful residence, as Article 6(4) of the Return Directive refers to, but to wait until the UAM reaches the age of 18.

The new policy implies the continuation of 'tolerating residence' until the age of eighteen, however now without issuing a return decision. The stay does not become irregular, but solely granting postponement of departure, without clear rules on assessing adequate reception in the country of origin, is at odds with the Court's ruling. The Court ruled that an in-depth assessment of the situation of the UAM is necessary to determine what is in the best interests of the child and to comply with the requirements of the Returns Directive. Furthermore, the Dutch policy does not allow for a hearing of the UAM on the possible reception in the country of origin. This is explicitly required by the Court in T.Q. (see para. 59). So, despite the CJEUs emphasis on the need to take the best interest of the child into account, the new policy still violates this principle.

According to scholars, the amendment is a clear attempt to implement the Court's ruling in the most minimalist way. [124] In June 2022, the Judicial Department of the Council of State, the highest administrative judiciary body, concluded that the new policy is not a correct implementation of the T.Q. judgement, as it violates Article 10 Return Directive and Article 24(2) Charter of Fundamental rights.[125] According to the Council of State, the authorities must proceed as early and quickly as possible with investigating the existence of adequate protection in the country of origin, which should already start during the asylum procedure. In response to this judgement, the Secretary of State decided in July 2022 to start with the investigation

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[122] CJEU 14 January 2021, C-441/19, ECLI:EU:C:2021:9 (TQ v. State Secretary of Justice and Security).
This policy was condemned in several national judgements as a wrongful implementation of the T.Q. judgement, see. i.a. Rb. Den Haag, nevenzittingsplaats Den Bosch, 15 February 2021, ECLI:NL:RBDHA:2021:1103.

[123] The legal basis for that policy was Article 64 Aliens Act 2000. Ministerie van Justitie en Veiligheid, "Unaccompanied Minor Aliens (AMV)," Asylum Policy | Government.nl, August 30, 2023, https://www.government.nl/topics/asylum-policy/unaccompanied-minor-foreign-nationals-umfns. Accessed September 1, 2023

[124] Mark Klaassen, "No Perspective for Unaccompanied Minors: The Wrong Implementation of T.Q.," Leiden Law Blog, January 14, 2022, https://www.leidenlawblog.nl/articles/no-perspective-for-unaccompanied-minors-the-wrong-implementation-of-t-q.; Carolus Grütters, "Hoe het belang van het kind wederom niet wordt geaccepteerd: Curieuze aanpassing AMV-beleid vanwege arresten T.Q. en Westerwaldkreis," *A&MR,* no. 2 (2022): 70-76.

[125] ABRvS, 8 juni 2022, ECLI:NL:RVS:2022:1530.

during the asylum procedure, but in case of no clear outcome at the moment of rejection, one year would be granted to the Repatriation and Departure Service to finalise the investigation.[126] If after one year there is no adequate protection identified, despite the full cooperation of the minor, a residence permit will be granted. In case of a lack of cooperation, or disappearance by the minor, the assessment will stop and no residence permit will be granted.
In an analysis of the judgement and response by the government, it is regretted that the interests of the child still has not been put at the centre of the procedure and investigation. As main problematic elements, scholars mention the strict interpretation of 'full cooperation' requiring that the minor gives plausible declarations on his identity and nationality (which can easily be challenged by the authorities), and the lack of clear consequences if during that additional year of investigation the minor turns eighteen.[127] Also, it is only after three years of holding temporary 'no-fault' residence permit that the holder is entitled to a permanent status. Moreover, it is still unclear what the consequences are in respect of this entitlement for the minor who turns eighteen during these three years.

5.8 Entry bans

If the TCN has failed to leave the Netherlands independently within the granted departure term, or if the TCN has been ordered to leave the Netherlands immediately without being granted a departure term, or if the TCN has received more than one return decision, an entry ban would be issued. Article 6.5a of the Aliens Decree (AD) provides the criteria for the duration of the entry ban. In regular cases, the duration of an entry ban is a maximum of two years, however, a shorter duration of less than a year is enforced if the TCN has exceeded the free period after the expiry of the lawful residence by more than three days and less than 90 days. The duration of the entry ban can be extended to no longer than three years in case that the foreign national has been sentenced to prison for a period less than six months. This extension can be up to five years in case of a custodial punishment for six months or longer, of fraud, of a repetitive issuance of a return decision or in case the TCN is found on the territory in violation of an entry ban. The maximum duration is ten years if the TCN poses a threat to public order or safety, such as being convicted for a violent or opium crime, sentenced or imprisonment for a crime longer than six years, or has committed crime against peace, humanity or war crime. In case the Minister takes the view that the TCN poses threat to the national security, the maximum duration of the entry ban is twenty years.[128]

The Minister may lift the entry ban on request of the TCN, if he/she proves to have met the obligation to leave the Netherlands, or after a stay outside the Netherlands for at least half of the duration of the entry ban, without having committed a crime. The Minister may lift the entry ban temporarily in very exceptional and urgent cases, under strict conditions.[129] Under Article 108 Aliens Act violating the entry ban by travelling to or residing in the Netherlands is a criminal offence, and can lead to a prison sentence of six months maximum or a fine of few thousand euros.[130] This is also seen as an indirect criminalisation of irregular stay.

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[126] *Kamerstukken II* 2022/2023, 29344, no. 152.
[127] S, Kok, "ABRvS 8 juni 2022, ECLI:NL:RVS:2022:1530. Duidelijker kader, maar onzekerheid blijft. Toelatings- en terugkeerprocedures voor alleenstaande minderjarige vreemdelingen," *A&MR,* no. 8 (2022).
[128] Article 6.5a subsections 1-6 Aliens Decree 2000.
[129] Article 6.5c Aliens Decree 2000.
[130] See also the Aliens Circular 2000 VC(A), section A2, subsection 12.4.

An entry ban is issued as a separate/independent decision or as a decision that would amend the already issued return decision.[131] Not only the IND can issue an entry ban but also the Aliens Police, ZHP and KMar.[132] The contents, the legal consequences and the possible legal action against the entry ban are communicated in verbal or written form to the foreigner in a language that they understand. Since 2021 it is possible to send the TCN an entry ban per email after they have left the Netherlands, however only the officer of the IND is authorised to issue, amend or lift the entry ban.[133] The entry ban is calculated from the date on which the foreign national has demonstrably left the Netherlands.[134]

5.9 Procedural Safeguards

When an asylum or other type of residence application is rejected the IND issues, on behalf of the Secretary of State of the Ministry of Justice and Security, a comprehensive decision, this decision contains the negative outcome on the application accompanied by the return decision by which the foreign national is obliged to leave the Netherlands normally within a departure term of 28 days. Decisions are sent to the TCN in a written form to the last known address or to his/her legal representative. The foreign national can appeal the IND's decision to the district administrative court, which outcome can be awaited in the Netherlands.

In case the court confirms the rejection, an appeal in second instance can be submitted (by the applicant or the Secretary of State) at the Council of State. As an automatic suspensive effect in second instances appeal is absent, the TCN can request the Council of State to rule that he/she is allowed to await the outcome. If the TCN believes that the upheld decision is in violation of the European Convention on Human rights, he/she can submit a complaint with the European Court of Human Rights, and request for an interim measure on the basis of Article 39 ECHR in order to await this procedure.[135] Also, based on the CJEU's ruling in *Gnandi*, all effects of the return decision are suspended as long as the TCN is allowed to stay in the Netherlands during a pending procedure.[136]

The DT&V which is responsible for implementing the return decisions, conducts removability checks in various moments and consults with the IND on whether the foreign national is still required to leave the Netherlands.[137] During the return procedures, the TCN concerned is obliged to leave the Netherlands independently within the granted departure term, or, if the departure term has expired, the TCN is subject to forced removal and an entry ban. However, when a TCN has exhausted all legal means to stay in the Netherlands and cannot be removed due to no fault of his/her own, such as lack of cooperation from the country of return on the issuance of documents, the DT&V could request the IND to grant the TCN on behalf of the Secretary of State a no-fault residence permit.[138] In case of medical circumstances that prevent the removal of the TCN or a family member, or if the TCN is a victim, witness of or has reported

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[131] Article 66a Aliens Act 2000.
[132] Immigratie en Naturalisatiedienst, "Entry Ban," IND, August 1, 2023, https://ind.nl/en/entry-ban#when-do-you-get-an-entry-ban-. Accessed August 5, 2023.
[133] European Migration Network, "Annual Report on Migration and Asylum 2022." July 2023.
[134] Article 66a Aliens Act 2000.
[135] "Beroepsprocedure na algemene asielaanvraag," De Rechtspraak, n.d., . Accessed August 10, 2023.
[136] CJEU 19 June 2018, C-181/16, ECLI:EU:C:2018:465 (*Gnandi)* and CJEU 5 July 2018, C-269/18 PPU, ECLI:EU:C:2018:544 (*C*).
[137] Repatriation and Departure Service corporate brochure, "The Repatriation and Departure Service the professional implementer of the return policy," Ministry of Justice and Security, 2020, p. 22.
[138] Immigratie en Naturalisatiedienst, "Unaccompanied Minors," IND, March 13, 2023, https://ind.nl/en/about-us/background-articles/unaccompanied-minors.

human trafficking, the return will be postponed, in some cases followed by the granting of a residence permit based on humanitarian grounds.

Pending return individuals are provided accommodation in freedom limiting locations for 12 weeks in case of cooperating on returns. Families are also provided accommodation in closed family locations and it is possible to detain them. In case of families with minor school-going children, return might be postponed till the youngest child reaches the age of 18.[139] Moreover, children may not be separated from their parents and detaining families and UAMs should not last longer than two weeks unless there is resistance against the removal or delay in obtaining the required documents.[140] The detention decision is reported within four weeks to the court which conducts a judicial review to determine the lawfulness of the decision. Also, the decision to extend the detention period is reviewed by the court to assess its necessity and proportionality.

The national policy guidelines for the application of the Aliens Act include safeguards to the TCN in case of being detained at the border, the border officer charged with border control or aliens supervision has to inform the foreign national about their rights to receive assistance from a legal counsel, diplomatic or consular representation in the Netherlands, the right to appeal against the detention and the right to notify third parties (e.g. spouse, family) about the detention as well as the foreigner's right to appeal against the detention.[141]

Furthermore, the detained TCN has the right to contact emergency services, relatives, diplomatic and consular representation as well as the right to be assisted by a lawyer and has the right to be questioned in his/her language through an interpreter.

However, because an interview prior to a (prolonged) detention measure was not conducted in the Netherlands, the Council of State asked the CJEU if that practice was in line with the right to be heard. The Court answered that the right to be heard of Article 15(2) of the Return Directive (also enshrined in Article 41(2) sub a of the Charter), implies the possibility for the returnee to express his views or arguments prior to the decision to impose or prolong a detention measure.[142] The right to be heard before the adoption of a return decision implies that the competent national authorities must enable the person concerned to express his point of view on the detailed arrangements for his return, such as the period allowed for departure and whether return is to be voluntary or coerced.[143] The CJEU ruled that the right to be heard requires an interview prior to a decision to detain or prolong the detention, and that the court can lift the detention in case of a breach of this obligation, however if respect for the right to be heard would have influenced the decision on detention.

The IND performs a check on removability and possible ongoing asylum procedures (or potential refoulement risks) in two different steps in the return procedure; the first is before the TCN is conferred with their diplomatic representation for issuing a laissez-passer and the second is before the departure. If the TCN applies for asylum just before departure, a specialised IND team assesses the presence of new facts or elements. Additionally, there are

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[139] Immigratie en Naturalisatiedienst, "Other Residence Permits," IND, January 16, 2023, https://ind.nl/en/residence-permits/other-residence-permits/other-residence-permits.
[140] Aliens Circular 2000 VC(A), section A5, subsection 2.4 and C.
[141] Aliens Circular 2000 VC(A), section A2, subsection 2.5.
[142] CJEU 10 September 2013, C-383/13 PPU, ECLI:EU:C:2013:533, (*G and R*).
[143] See also the judgment in HvJ EU 11-12-2014, C-249/13, ECLI:EU:C:2014:2431, par. 51 (*Boudjlida*).

postponements and temporary permits in case of medical circumstances.[144] If a TCN holds a residence permit in another MS based on international protection, the IND, KMar, police and ZHP ensure that the return decision will not be enforced as it contradicts the international obligation of prohibiting the refoulement.[145]

5.10 Detention

Legal grounds

In the Dutch context, immigration detention is considered as an administrative measure rather than a punishment that should be used as a last resort. In line with Article 15 Return Directive, it is only allowed when there is a real prospective of expulsion, and when there is a risk of absconding to evade removal.[146] The authorities need to conduct the return procedure with due diligence.[147] Detention decisions are issued by DT&V officers or by assistant public prosecutors from the Ministry of Justice and Security.[148] Immigration detention can also be imposed on asylum seekers if this is necessary for identification, prevention of absconding, or if the applicant poses a risk to public order or national security.[149] Detention can be imposed for a maximum period of six months, which can be extended with twelve months if the return, despite due diligence procedures, requires more time due to a lack of cooperation by the migrant or the lack of necessary documentation from third countries.[150] However, a real perspective of return needs to exist and the documentation has to be expected within a short term.

In order to respect the principle of last resort and necessity, less far-reaching measures must be assessed and available. The Aliens Act provides the legal infrastructure to restrict the freedom of a TCN who is residing unlawfully in the Netherlands and for designating a place and space-that would be secured against unauthorised departure.[151] Freedom-restriction can imply the obligation for the TCN to report daily to the centre and to cooperate fully with the authorities to establish his/her identity and nationality.[152] Other ways to keep persons under supervision is the obligation to pay a deposit, which is refunded upon return, seizure of travel documents or the reporting obligation which means that the foreign national has to report to the aliens police or to the asylum seekers centre on weekly or daily basis or even the ban on

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[144] European Migration Network, "Ad-Hoc Query on The Return Directive (2008/115/EC) and the Obligation to Respect the Non-Refoulement Principle in the Return Procedure," (European Commission, August 13, 2018).
[145] Aliens Circular 2000 VC(A), section A3, subsection 2.
[146] Ministerie van Justitie en Veiligheid, "Aliens Detention," Return of Foreign Citizens | Government.nl, April 13, 2023, https://www.government.nl/topics/return-of-foreign-citizens/aliens-detention. Accessed August 11, 2023.
[147] See for the criteria on immigration detention Article 59 Aliens Act 2000.
[148] Ministerie van Justitie en Veiligheid, "Aliens Detention," Return of Foreign Citizens | Government.nl, April 13, 2023, https://www.government.nl/topics/return-of-foreign-citizens/aliens-detention. Accessed August 11, 2023.
[149] Article 59b Aliens Act 2000.
[150] Article 59 (6) Aliens Act 2000.
[151] Articles 54 and 56 Aliens Act 2000.
[152] Aliens Circular 2000, VC(A), section A2, subsection 10.3 and 10.4. Ministerie van Justitie en Veiligheid, "Pre-Departure Accommodation," The Return Process | Repatriation and Departure Service, August 10, 2020, https://english.dienstterugkeerenvertrek.nl/the-return-process/predepature-accommodation. Accessed August 14, 2023

leaving the borders of the municipality.[153] The Dutch context lacks criteria based on which an option or alternative for detention is implemented, the detention's necessity and proportionality depends on the individual situation and circumstances, the possibility of return and the TCN's level of cooperation which are considered as factors in the balancing of interests.[154] However, in practice, during the assessment if a detention measure is necessary and proportionate, these alternatives are normally not considered sufficient. They are only seriously considered if detention doesn't seem to be adequate due to vulnerability of the TCN. The Council of State adopts the same reasoning (see further 8.1.1).[155] The government takes the view that detention is more effective than limited freedom restrictions.[156] This is at odds with the EU principle of proportionality, reflected in the Return Directive which prioritises the least coercive measure.

The Dutch law has structured the judicial procedure for challenging the detention of a TCN in such a way that it prohibits the courts from carrying out an ex officio review and assessment of all aspects of lawfulness of detention, and from ordering, when it finds out that the detention is unlawful, that the unlawful detention be ended and the TCN be released immediately. Since the Mahdi judgment of 2014 (a Belgian case), this limited scrutiny is under discussion in the Netherlands (see paragraph 8.1.1). The Council of State referred a preliminary question to the CJEU in December 2020, if the court must review the lawfulness of a detention measure ex officio. While the Council of State only referred to Article 5 ECHR, a lower court has supplemented these questions to seek clarification if the Dutch policy complies with Article 47 of the Charter. Furthermore, the district court wanted to know whether the court not only has the power to review the lawfulness of detention ex officio, but also the obligation to do so.

The Court ruled that Article 15 (2) and (3) Return Directive, read in conjunction with Articles 6 and 47 CFR, imply the competence for the judicial authority to raise on its own motion any failure to comply with a condition governing lawfulness. Even if it has not been invoked by the person concerned. This is based on the facts brought to the court's attention (including at the hearings). [157]

Children in detention

For families with minor children and unaccompanied minors, the authorities must assess (and motivate if a detention measure is imposed) if detention would not be a disproportionate burden. In addition, unaccompanied minors can only be detained if there is a weighty interest for the authorities to keep the minor at their disposal.[158] Since 2011, UAMs can only be detained if they are subject to a criminal procedure, if their departure can be realised within two weeks, if they have violated an obligation to report or have disappeared earlier, or if they are refused

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[153] Aliens Circular 2000, VC(A), section A2, subsection 10.3 and 10.4; Ministerie van Algemene Zaken, "Forced Return," August 2, 2022.
[154] Immigration and Naturalisation Service the Netherlands, "Information on Procedural Elements and Rights of Applicants Subject to a Dublin Transfer to the Netherlands," (European Union Agency for Asylum, April 12, 2023) p.12.
[155] Annemarie Busser, Revijara Oosterhuis and Tineke Strik, "Vreemdelingendetentie (II): Gronden getoetst aan wetsvoorstel en aan Europees en internationaal recht," *A&MR*, no. 9 (2019), http://www.stichtinglos.nl/sites/default/files/los/vreemdelingendetentie_ii__brusser__oosterhuis__strik.pdf.
[156] *Kamerstukken II* 2018/2019, 19637 no. 2473.
[157] CJEU 8 November 2022, joined cases C-704/20 and C-39/21, ECLI:EU:C:2022:858 (*C, B and X)*.
[158] *Kamerstukken II* 2010/11, 27062, no. 68.

entry at the external border, as long as their age has not yet been verified.[159] Yet, while normally the maximum duration of detention of families with minor children doesn't exceed fourteen days, the average detention duration for UAMs turns out to be slightly longer.[160] According to the Ministry, this is related to the fact that most detained UAMs were detected irregularly, without having applied for asylum. As the preparation for return can only start after apprehension, the maximum duration in these cases is four weeks. After the maximum duration, UAMs are referred to the association responsible for their guardianship (NIDOS), which takes care for a proper accommodation and support.

Usually, families with children and unaccompanied minors are held in family accommodations or freedom restricting locations instead of detention, and are moved to a closed family centre if deemed necessary.[161] However, it is possible to hold a family with children in a detention centre. Detaining families should not be longer than two weeks before their removal, yet, it can be extended in case of resistance, waiting for obtaining travel documents or lodging a new asylum application. It is also possible to detain one parent in the case of a family with minor children, while the other family members remain in restrictive accommodation centre.[162]

Detention Regime

Immigration detention is held in separate facilities than the punitive prisons; there are three locations in the Netherlands for detaining foreigners which are Zeist, Schiphol and Rotterdam. Pre-removal detention is held in DJI facilities which are built and operated through a public private partnership (PPP) between the government and one or more private companies. Detainees have the right to have a lawyer free of charge, access to communication through telephone either in their rooms or in the common areas to be used at their own expense. Also, detainees can receive visitors according to the rules of the centre. However, the offer of activities is very limited, and due to limited staff, detainees have to stay on their cells for the vast period of time.[163]

The national Ombudsman has directed criticism to the conditions of immigrant detention concluding that it is an inappropriate regime that seriously jeopardises respect for the immigrants' fundamental rights and that in practice it is not used as a last resort. Also, in some cases immigration detention is more strict than penal detention.[164] The Ombudsman expressed particular concern towards the frequent use of the measure of solitary confinement (also as a sanction for two weeks on the refusal to share a cell with another person), the lack of privacy and the lack of daily activities.

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[159] *Kamerstukken II* 2010/11, 27062, no. 68.
[160] *Kamerstukken II* 2018/2019, 19637 and 27062, no. 2473. In 2018 the average duration was three weeks.
[161] COA, "Reception Centres for Return," https://www.coa.nl/en/reception-centres-return. Accessed August 14, 2023.
[162] Ministerie van Justitie en Veiligheid, "Pre-Departure Accommodation," August 10, 2020.
[163] Annemarie Busser, Revijara Oosterhuis and Tineke Strik, "Vreemdelingendetentie (I): Detentie-omstandigheden onder huidig regime en onder wetsvoorstel getoetst aan internationale normen," *A&MR*, no. 8 (2019),https://www.stichtinglos.nl/sites/default/files/los/140919%20A%26MR8%20artikel%20Vreemdelingendetentie.pdf.
[164] De Nationale Ombudsman, "Immigration Detention: penal regime or step towards deportation? About respecting human rights in immigration detention," August 7, 2012, https://www.nationaleombudsman.nl/uploads/report_2012105_immigration_detention.pdf.

5.11 Emergency Situations

The Netherlands has transposed Article 18 of the Return Directive concerning the emergency situations which the state might adopt. Speedy reviews take place in case of Dublin cases where the concerned TCN has a pending application, decision or protection in another Member state and applies for asylum in the Netherlands also, if the TCN applies for a last-minute asylum procedure. Families awaiting their removal are held in restrictive accommodation. It is possible to detain families, however, family detention may not be longer than two weeks unless there is resistance or that the family has applied for a new application for residence permit.[165] Furthermore, TCNs who are found without a residence permit or have never applied for a permit and apprehended by the KMar or the police, or might abscond are placed in aliens detention, while those who do not leave the Netherlands within the granted departure term are placed in freedom-limiting locations (VBL) where they are allowed to leave the centres but are obliged to report to the centre on a daily basis and to cooperate fully in the investigation of their identity and nationality.[166]

5.12 Readmission Process

In the period from 2015 till September 2023, the Netherlands was part of six readmission agreements and implementing protocols held between the Benelux countries, Serbia, Georgia, Kazakhstan, Armenia, Ukraine, Bosnia and Herzegovina. These agreements were either concluded or have entered into force from 2015 on (see section 6).

[165] Ministerie van Justitie en Veiligheid, "Pre-Departure Accommodation," August 10, 2020.
[166] Ibid.

6. International Cooperation

	Type of Bilateral Agreements and Negotiations	Title	Signatory State/Target Third Country	Date		Link to document & media coverage
				Signature	Entry into force	
1	**Standard Readmission agreements signed**[167]					
1.1	Protocol to EU Readmission Agreement Benelux-third countries[168]	Protocol between the Governments of the States of the Benelux (the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands) and the Government of the Republic of Serbia on the implementation of the Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation	Serbia	25/01/2013	01/02/2019	https://wetten.overheid.nl/BWBV0006121/2019-02-01#Verdrag_1
1.2	Protocol to EU Readmission Agreement Benelux-third countries[169]	Protocol between the States of the Benelux (the Kingdom of Belgium, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands) and Georgia on the implementation of the Agreement between the European Union and Georgia on the readmission of persons residing without authorisation	Georgia	05/09/2013	01/06/2018	https://wetten.overheid.nl/BWBV0006294/2018-06-01
1.3	Agreement Benelux – third country[170]	Agreement between the States of the Benelux (the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands) and the Republic of Kazakhstan on readmission, and its implementing protocol	Kazakhstan	02/03/2014	01/06/2017	https://wetten.overheid.nl/BWBV0006473/2017-06-01
1.4	Protocol to EU Readmission Agreement Benelux-third countries[171]	Protocol between the Republic of Armenia and the States of the Benelux (the Kingdom of Belgium, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands) implementing the Agreement between the European Union	Armenia	20/06/2018	01/09/2023	https://wetten.overheid.nl/BWBV0006769/2018-06-20

		and the Republic of Armenia on the readmission of persons residing without authorisation				
1.5	Implementing protocol European readmission agreement[172]	Implementing Protocol between the Benelux States (The Kingdom of Belgium, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands) and Ukraine to the Agreement between the European Community and Ukraine on the Readmission of Persons	Ukraine	17/12/2018	01/09/2023	https://wetten.overheid.nl/BWBV0006809/2018-12-17
1.6	Implementing protocol European readmission agreement[173]	Protocol between The States of the Benelux (the Kingdom of Belgium, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands) and Bosnia and Herzegovina implementing the agreement between the European Community and Bosnia and Herzegovina on the readmission of persons residing without authorisation	Bosnia and Herzegovina	05/12/2013	01/08/2021	https://wetten.overheid.nl/BWBV0006319/2021-08-01
2	**Ongoing standard readmission agreement negotiations**					
2.1	Implementing protocol European readmission agreement[174]	Protocol between the States of the Benelux (the Kingdom of Belgium, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands) and Sri Lanka on the implementation of the agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation	Sri Lanka			

[167] European Migration Network, "Bilateral Readmission Agreements," September 2022.
[168] European Migration Network, "Inventory on Bilateral Readmission Agreements signed by or entered into force in EU Member States in 2014-2021,".
[169] Ibid.
[170] Ibid.
[171] Ibid.
[172] Ibid.
[173] Ibid.
[174] Ibid.

2.2	Cooperation on migration with Niger*		Niger	01/02/2023	Further details about the cooperation shall be available at the end of the year	https://www.government.nl/documents/media-articles/2023/02/01/joint-press-communique-working-visit-niger-liesje-schreinemacher-eric-van-der-burg https://www.government.nl/latest/news/2023/02/01/the-netherlands-and-niger-to-strengthen-cooperation-on-migration#:~:text=The%20Netherlands%20and%20Niger%20to%20strengthen%20cooperation%20on%20migration,-News%20item%20%7C%2001&text=The%20Netherlands%20and%20Niger%20plan,management%20and%20combating%20people%20smuggling.
3	**Non-standard readmission arrangements**					
3.1	Police cooperation agreement[175]		Italy	14/03/2000		

* The Dutch Cooperation with Niger is temporarily suspended on 4th August 2023 https://www.government.nl/latest/news/2023/08/04/the-netherlands-suspends-direct-cooperation-with-nigerien-government

[175] Jean-Pierre Cassarino "The Netherlands' Bilateral Agreements Linked to Readmission," December 11, 2017, https://www.jeanpierrecassarino.com/datasets/ra/nl/

3.2	Memorandum of understanding [176]	Tripartite Memorandum of Understanding (the MoU) between the Islamic Transitional State of Afghanistan, the Government of the Netherlands and the United Nations High Commissioner for Refugees (UNHCR).	Afghanistan UNHCR	18/03/2003		https://zoek.officielebekendmakingen.nl/kst-19637-732-b1.pdf
3.3	Memorandum of understanding [177]		Somalia	01/07/2009		https://www.hrw.org/news/2010/07/22/netherlands-do-not-deport-somalis
4	**Migration partnerships, including a clause on the readmission/ removal of irregular foreigners**					
4.1	COMPASS	The global Cooperation on Migration and Partnerships for Sustainable Solutions	Afghanistan, Algeria, Chad, Egypt, Ethiopia, Iraq, Lebanon, Libya, Mali, Morocco, Niger, Nigeria, Sudan, Tunisia	01/01/2021		
5	**Deals/ Statements**					
5.1	Migration deal (action plan)	Non-interference in the Moroccan internal affairs (human rights situation) in exchange for cooperation on returns through providing travel documents for the Moroccans whom the Netherlands wants to expel	Morocco	July 2021 Made public in December 2022		https://nos.nl/collectie/13941/artikel/2477440-marokkodeal-over-overlastgevende-asielzoekers-heeft-nog-weinig-effect https://nos.nl/artikel/2479780-gewortelde-marokkanen-uitgezet-na-43-jaar-in-nederland-geboeid-op-vliegtuig

[176] Ibid.
[177] Ibid.

5.2	Strengthening cooperation on migration	Ministerial meetings to discuss (among other things) the consolidation of migration cooperation	Morocco	11/05/2022 21/02/2023	https://www.linkedin.com/posts/eric-van-der-burg_marokko-is-een-belangrijke-partner-voor-nederland-activity-7033802872513253376-rW_t/ https://www.government.nl/documents/diplomatic-statements/2022/05/11/communique-morocco-the-netherlands#:~:text=The%20two%20countries%20are%20strengthening,the%20spirit%20of%20constructive%20engagement. https://nos.nl/artikel/2464725-staatssecretaris-van-der-burg-overlegt-in-marokko-over-terugkeer-asielzoekers https://www.rtlnieuws.nl/nieuws/nederland/artikel/5367208/marokko-nederland-asiel-staatssecretaris-asielzoekers
5.3	Joint Statement of Ministers	Agreeing on containing the secondary movements through among other things swift return procedures	Belgium, France, Germany, UK	08/12/2022	https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/publicaties/2022/12/08/joint-statement/JOINT+STATEMENT+v+8-12.pdf

Table (2) International Cooperation

7. Funding of Return and Related Programmes

Program	Responsible organisations	Target countries/regions	Funding
COMPASS[178]	IOM and the Ministry of Foreign Affairs of the Netherlands	Afghanistan, Algeria, Chad, Egypt, Ethiopia, Iraq, Lebanon, Libya, Mali, Morocco, Niger, Nigeria, Sudan, Tunisia	55 € million (1 January 2021- 31 December 2023)
Return and Emigration Assistance from the Netherlands (REAN) Assisted Voluntary Return and Reintegration (AVRR)*	IOM	List of targeted/eligible nationalities	2018: 53,69$ million [179] 2019: 53,17$ million[180] 2020: 33, 18$ million[181] 2021: 64,95$ million[182] 2022: 57,91$ million[183]
EU Trust Funds for Africa EU-IOM Joint Initiative	IOM	North Africa, Horn of Africa Sahel/Lake Chad	2016: 9 € million[184] 2017: 23.362 € million[185] 2018: 26.362 € million[186] 2019: 26.362 € million[187] 2020: 29.362 € million[188] 2021: 26.362 € million[189] 2022: 29.362 € million[190]

[178] IOM, "COMPASS Guiding Safe Migration," https://www.iom.int/sites/g/files/tmzbdl486/files/documents/compass-leaflet_en.pdf.
[*] Data about the exact contributed amounts for these programs are not available. The amounts in the funding section are the earmarked contributions from the Dutch government to the IOM.
[179] IOM Migration Resource Allocation Committee, "2018 Annual Report on the Use of the Unearmarked Funding," (IOM, 2019).
[180] IOM Migration Resource Allocation Committee, "2019 Annual Report on the Use of the Unearmarked Funding," (IOM, 2020).
[181] IOM Migration Resource Allocation Committee, "2020 Annual Report on the Use of the Unearmarked Funding," (IOM, 2021).
[182] IOM, "2021 Annual Report on Unearmarked Funding."
[183] IOM, "2022 Annual Report on Unearmarked Funding."
[184] European Commission, "2016 Annual Report The Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa".
[185]European Commission, "2017 Annual Report The Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa".
[186] European Commission "2018 Annual Report The Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa".
[187] European Commission "2019 Annual Report The Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa".
[188] European Commission "2020 Annual Report The Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa".
[189] European Commission "2021 Annual Report The Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa".
[190] European Commission "2022 Annual Report The Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa".

			Total: 170.172 € million
ERRIN	DT&V, Ministry of Justice and Security*		n/a
Migration Management Diploma Program (MMDP)	UNU-MERIT and Maastricht University	Cape Verde, Moldova, Georgia, Armenia, Morocco, Azerbaijan, Tunisia, Jordan, Belarus, Ethiopia, Nigeria, India, Western Balkans, Turkey, the EU's Southern and Eastern neighbourhood, Sub-Saharan Africa, South-Asia	September 2023-February 2025 543,978 € million[191]

Table (3) Funding of Return and Related Programs

* Frontex Joint Reintegration Program and ICMPD Return and Reintegration Facility (RRF) have taken over the return and reintegration operations of the ERRIN per 1 July 2022 https://returnnetwork.eu/2022/06/07/errin-closing-conference/

[191] ICMPD, "Migration Partnership Facility, Capacity Building for Migration Management. Migration Management Diploma Programme (MMDP) and Moving the Migration Policy Agenda Forward (MMPAF) Programme," https://www.migrationpartnershipfacility.eu/mpf-projects/50-migration-management-diploma-programme-mmdp-and-moving-the-migration-policy-agenda-forward-mmpaf-programme/preview, 2023. accessed January 5, 2024.

8. Gaps

This section lists and explains the various gaps in the legal, institutional and international cooperation frameworks in the Dutch return field.

8.1 Gaps in the legal framework

8.1.1 The scope of judicial review (for the prolongation) of detention

Dutch courts are restricted in their scrutiny of detention measures or their prolongation. For a long time, they were supposed to conduct a marginal scrutiny and leave the actual assessment of the facts and the personal interests to the administrative authorities, and were not allowed to replace the administrative decision with their own decision. In the *Mahdi case*, the CJEU clarified in 2014 that the judicial authority ruling on an application for extension of detention must be able to take into account both the facts stated and the evidence adduced by the administrative authority and any observations that may be submitted by the TCN.[192] Also, the authority must be able to consider any other element that is relevant for its decision should it deem this necessary. The judicial authority dealing with an application for extension of the detention must be allowed to decide, on a case-by-case basis, on the merits of whether the detention of the TCN should be extended, and whether it can be replaced with a less coercive measure or whether the TCN concerned should be released. In 2015 the Council of State concluded that the concept of marginal judicial scrutiny is not in line with the Mahdi judgement.[193] Since then, the Mahdi judgement has not only reinforced the competences of the judiciary, but also forced administrative authorities to increase the intensity of the individual assessment prior to the decision to impose or prolong a detention measure. Yet, the judicial competences only became in line with EU law after the CJEU had ruled in 2022 on a preliminary request from the Council of State, that judicial authorities must scrutinise any (un)lawfulness of a detention order ex officio.[194]

8.1.2 Immigration detention not in compliance with the Directive

Apart from the scope of judicial scrutiny, courts still refrain from assessing in all cases if a less far-reaching measure could suffice to ensure return. This assessment is only conducted in situations where the TCN may not be fit for detention, because of certain vulnerabilities of that person. One could argue that the principles of proportionality and necessity always require such assessment. The Council of State seems to adopt the approach that detention is always necessary and therefore justified in case of a risk of absconding, which does not align with the principle of detention as a last resort.[195] The law and practice of immigration detention in the

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[192] CJEU 5 June 2014, C-146/14 PPU, ECLI:EU:C:2014:1320 (*Mahdi*).
[193] ABRvS 23 January 2015, ECLI:NL:RVS:2015:232.
[194] CJEU 8 November 2022, joined cases C-704/20 and C-39/21, ECLI:EU:C:2022:858 (*C, B and X).*
[195] Annemarie Busser, Revijara Oosterhuis and Tineke Strik, "Vreemdelingendetentie (II): Gronden getoetst aan wetsvoorstel en aan Europees en internationaal recht," *A&MR*, no. 9 (2019).
Galina Cornelisse, "Van Magna Carta naar Mahdi," *A&MR*, nos. 6/7 (2015); Wouter van der Spek, "Rechtsbescherming bij inbewaringstelling en detentie van asielzoekers: Gebreken op alle fronten," *A&MR*, no. 4 (2018).

Netherlands is not a proper implementation of the Return Directive in respect to the concept of proportionality and the principle of using detention as a last resort.[196] This also holds true for the regime of immigration detention. Where Member States have to avoid prison-like situations and reflect the nature of immigration detention in the regime and the rights of detainees, the regime of administrative detention in the Netherlands is even more restrictive than the regime of penal detention, according to the National Ombudsman. It therefore concluded that the policy does not satisfy the administrative nature nor the principle of proportionality.[197] The Ombudsman expressed particular concern towards the frequent use of the measure of solitary confinement (also as a sanction for two weeks on the refusal to share a cell with another person), the lack of privacy and the lack of daily activities.

A proposal for a new law, already pending before the parliament since 2015, which was intended to align the detention regime with the principles of the Return Directive, received heavy criticism, as the TCN would be placed in detention in a very strict regime from the start, and would be able to obtain the 'award' of certain programmes and privileges afterwards. [198] The broadened grounds for solitary confinement and other restrictive measures would still imply a frequent use and a risk of arbitrariness. This proposal was adopted by the House of the Representatives in June 2018. However, the consideration of this bill is suspended until the bill announced by the State Secretary has reached the Senate.

8.1.3 No-fault residence permit for unremovable TCNs

By observing the legal framework in the Netherlands regarding returns, various protection gaps can be noticed. The first is concerned with the fact that the migration authorities seldomly do grant residence permits in case of unremovable TCNs. Even if TCNs cannot be removed due to no fault of their own they do not easily receive a so called 'no fault' residence permit although the law stipulates that they should be granted residence permit in such circumstances. The threshold for obtaining a 'no-fault' residence permit is very high, for instance because of the requirement of authentic documents on identity and nationality and a high burden of proof of the impossibility to return. Furthermore, a person must always have cooperated with the authorities to effectively return. Statistics show that only a minority of 13,5% of the no-fault residence permit applications achieved positive outcomes in the period 2008-2012.[199] The last few years, approximately 20 no-fault residence permits have been issued per year, while the number of applications was three times higher.[200]

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[196] Amnesty International, "The Netherlands: the detention of the irregular migrants and asylum-seekers," June 2008, https://www.amnesty.nl/content/uploads/2017/01/eur350022008eng.pdf?x56589.

[197] De Nationale Ombudsman, "Immigration Detention: penal regime or step towards deportation? About respecting human rights in immigration detention," August 7, 2012, https://www.nationaleombudsman.nl/uploads/report_2012105_immigration_detention.pdf.

[198] "Wet terugkeer en vreemdelingenbewaring (34.309)," Eerste Kamer Der Staten-Generaal, n.d., https://www.eerstekamer.nl/wetsvoorstel/34309_wet_terugkeer_en.

[199] See Appendix IV

[200] Ministerie van Justitie en Veiligheid, "Wat houdt bemiddeling in het kader van 'buitenschuld' in?," *Leg Mij Nou Eens Uit. VreemdelingenVisie*, July 6, 2023, https://www.vreemdelingenvisie.nl/vreemdelingenvisie/2023/07/buiten-schuld-vergunning.

8.1.4 Residence permit to unaccompanied minors

Similarly, in the case of UAMs whose asylum or residence permit applications are rejected, there is a gap in the implementation of the Directive because they only receive notice of a postponement of the obligation to return till they reach the age of 18. However, UAMs do not receive residence permits although the Return Directive in its Article 6(4) mentions that the MS concerned may decide to grant an autonomous residence permit or other authorisation offering a right to stay and that the issued return order shall be suspended for the duration of validity of the residence permit or other authorisation offering a right to stay (see section 4.7). The age distinction made by the Netherlands, the postponement of return instead of granting a residence permit and the CJEU ruling in T.Q,[201] mentioned in section 4.7 make clear that the Dutch policy concerning the UAMs does not comply with the Return Directive Article 5(a), 6(1), 4, 8(1) and 10, where Article 5(a) stipulates that when implementing return the Member state shall take the best interest of the child in account and respect the obligation of non-refoulement, and Article 10 stipulates that before issuing a return decision to the UAM, assistance should be granted by the appropriate bodies while taking into consideration the best interest of the child and that before the removal of UAM from the Member State's territory there shall be investigation concerning the reception facilities in the country of return.

8.1.5 The application of the Return Directive in Dublin cases

Another element in the Dutch legal framework which causes protection gaps, is the flexibility for the immigration authorities to choose between the applying the Dublin Regulation and the Return Directive, in case of a TCN who has a pending asylum procedure in another MS. If the authorities decide not to initiate a tack back procedure under the Dublin Regulation, but instead apply the Return Directive, they issue a return decision (and entry ban) and proceed with the forced return procedure. The Dutch Council of State has ruled that in case the Dublin Regulation applies, the State Secretary of Justice and Security is not allowed to take all measures under the Return Directive.[202]

8.2 Gaps in the institutional framework

8.2.1 The lack of an independent monitoring (and advocacy) body

The Netherlands lacks an independent monitoring body. In 2013 the Regulation on the Supervision of the Return of Foreign Nationals provided that the return activities (including detention) in the Netherlands conducted are monitored by the Inspectorate of Justice and Security which is the coordinator and a part of the National Prevention Mechanism (NPM). The NMP, which has its office at the Ministry of Justice and Security, is installed as one of the obligations for signatories to the Optional Protocol to the Convention Against Torture (see Article 4 (2) OPCAT), meant to monitor, raise awareness and advocate for the implementation of the CAT. The National Ombudsman resigned as an observer to the NPM in 2014, arguing

[201] CJEU 14 January 2021, C-441/19, ECLI:EU:C:2021:9 (TQ v. State Secretary of Justice and Security), https://curia.europa.eu/juris/document/document.jsf?text=&docid=236422&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4249070.

[202] ABRvS 29 June 2018, ECLI:NL:RVS:2018:2173, case no. 201800622/1/V3.

that the NPM is not sufficiently independent and poorly functioning.[203] However, this resignation did not lead to any reform in the monitoring of asylum and return activities.[204] In 2016, the subcommittee (SPT) of the OPCAT criticised the lack of independence of the Dutch NPM. It urged the Dutch government to change its policies, so far without result.[205] In 2022, a study (commissioned by the Ministry of Justice and Security) has been published for the preparation to appoint the National Institute for Human Rights as the NPM.[206] This Institute has been mandated with the NPM task as of 2024, for which the recruitment procedure was still pending in February 2024.[207]

8.2.2 The LVV agreement

The Ministry of Justice and Security has made an agreement with the VNG about the LVV scheme which was implemented as a pilot project from 2019 till 2022 entailing that five municipalities would provide basic provisions and that other municipalities would close their shelters. Although the high burden of proof related to the no-fault residence permit confronted by the LVVs, the scheme was successful in finding a sustainable solution to 60% of the TCNs hosted in the facilities either by obtaining a no-fault residence permit or through return. However, the agreement had a temporary nature and was not renewed which has led to a policy vacuum as this impedes the possibility to find a sustainable solution for the irregular and non-removable migrants. Moreover, it increases the vulnerabilities of this category of people due to homelessness and lack of basic provisions. In doing so, the Dutch government still refuses to fully comply with the decisions of the European Committee on Social Rights, that undocumented migrants must be offered shelter and basic needs without further conditions. Instead, the government requires that the person concerned cooperates with his/her return to be eligible for shelter.

8.2.3 Lack of municipal cooperation on evacuations

The evacuation order of TCNs who no longer have the right to stay demanding them to leave the reception centre is based on a national decision from the IND and DT&V, while the evacuation itself is implemented by the local police which follows the municipal authority. However, some municipalities and their local police refuse to implement evacuations, arguing it is not in compliance with their duty to take care of their inhabitants, or that the consequential homelessness may lead to public policy problems. Municipalities are thus confronted with local problems caused by implementing the national policy. This does not only prove the need

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[203] Press statement National Ombudsman, September 2014, https://www.nationaleombudsman.nl/nieuws/nieuwsbericht/2014/nationale-ombudsman-trekt-zich-terug-uit-npm.
[204] "Preventing Torture in Closed Institutions: Dutch NPM Needs to Become More Effective and Fully Independent," Netherlands Helsinki Committee, November 23, 2021, https://www.nhc.nl/preventing-torture-in-closed-institutions-dutch-npm-needs-to-become-more-effective-and-fully-independent/.
[205] Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of the Kingdom of the Netherlands, United Nations, 16 March 2016.
[206] Ministerie van Justitie en Veiligheid, "Meer dan de som der delen? Verkenning NPM," Rapport Berenschot, March 30, 2022. Rijksoverheid.nl, September 28, 2023, https://www.rijksoverheid.nl/documenten/rapporten/2023/09/27/tk-bijlge-rapport-berenschot-verkenning-npm-bij-crm.
[207] https://www.mensenrechten.nl/over-ons/werken-bij-het-college/vacature-collegelid/toelichting.

for decoupling between the national and local level where a solution for the national government is a problem for the local one, but also hinders the implementation of evacuations and return.

8.3 Gaps in the international cooperation framework

Although the Dutch government prioritises extending the cooperation on return and readmission with the countries of origin, there is a significant gap in this cooperation framework. This relates partly to a reluctance of some countries of origin to conclude a readmission agreement, as illustrated by the lengthy, thorny and deferred negotiations with countries like Algeria, Morocco and Turkey.[208] The cooperation between the Netherlands and Morocco is a good example, where Morocco has been refusing to readmit its citizens. In the so-called 'action plan' that the Dutch and Moroccan government signed in July 2021, they promise not to interfere any longer in internal affairs of the other country. The Netherlands also promised to inform the Morocco on its funding of NGOs of Moroccan citizens.[209] After a rather low return rate in 2022, Morocco readmitted around 250 Moroccans in 2023. The commitments in the action plan reveal that the Dutch government is prepared to silence itself on human rights violations in Morocco in exchange for cooperation on returns of irregular migrants. Moreover, in practice this cooperation is not necessarily directed towards returning Moroccan nationals whose application for residence has been rejected, but also those who are born and rooted in Dutch society, and whose removal is therefore highly controversial.[210] In addition, the cooperation on readmission with autocratic governments do not only come at the cost of human rights, but are also unsuccessful due to the political instability that hinders the achievement of policy goals. This is manifest in the case of the readmission negotiations between the Netherlands and Niger.

[208] Jean-Pierre Cassarino, Informalizing EU Readmission Policy (*Routledge eBooks,* 2017), 83–98, https://doi.org/10.4324/9781315645629-7.
[209] Actieplan Nederland Marokko, 8 July 2021, https://open.overheid.nl/documenten/ronl-061c5bb902f31a461b8b646930120c6620906a5b/pdf.
[210] Samira Jadir and Reinalda Start, "Gewortelde Marokkanen uitgezet: na 43 jaar in Nederland geboeid op vliegtuig," *NOS*, June 21, 2023, https://nos.nl/artikel/2479780-gewortelde-marokkanen-uitgezet-na-43-jaar-in-nederland-geboeid-op-vliegtuig.

9. Policy Recommendations

Based on these findings, this report proposes the following policy recommendations to the Dutch migration authorities, which also serve as points of attention for the European Commission while supervising the Netherlands' compliance with Union Law:

I- Better implementation of the Return Directive and the EU case law by adhering to the principles of necessity and proportionality, anchoring the best interest of the child, and respecting the fundamental rights of migrants.

II- Structurally practice less coercive enforcement measures instead of using detention to avoid absconding. Detention must be a measure of last resort and implemented for the shortest term possible and only if no other measures are possible. Also, migrants must have the opportunity to be heard before the decision of detention and its extension.

III- Detention must be held as an administrative measure where the restrictions and duration are reduced to the minimum while taking into consideration the needs and vulnerabilities of the migrants held in detention.

IV- The protection of the child's rights and best interest should be emphasised in the national legislation (Aliens Act, Decree and Implementation Guidelines). Clear guidelines and criteria on the assessment of the availability of adequate reception for unaccompanied minors in the countries of return must be provided and uncertainty must be avoided.

V- There must be independent bodies that monitor the return and detention practices. The recent intention to transfer the National Prevention Mechanism to the National Institute for Human Rights is to be strongly encouraged.

VI- Given the success of the LVV scheme, the government should consider renewing the agreement with the Dutch Municipalities Association (VNG) and turn it into an improved and sustainable structure.

VII- Finally, there will always be immigrants who cannot be returned: no return policy can guarantee a 100% success rate. Instead of leaving those who cannot be returned in a legal and humanitarian limbo, which is currently the case, they should be entitled to a residence permit. The current threshold for in-country applications on this ground is far too high and regularisations are rare in the Dutch context. In sum, the absence of options for legal residence renders the overall migration management policy ineffective.

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11. Annexes

11.1 Return statistics

					The categories included here are based on available Eurostat data						**ALTERNATIVE**		
Year	TCNs found to be illegally present	Asylum applications	TCNs refused entry at the border	Dublin returns	TCNs ordered to leave		TCNs returned following an order to leave (annual data) *	TCNs returned following an order to leave, by type of return			Related alternative national category of official (annual) data on return		
					Total ordered to leave	Return decisions issued for		assisted return	non-assisted voluntary	forced return	Independent departure[211]	Independent without supervision	Total
2015	3150	44970	2295	n/a	19015	19015	8385	n/a	n/a	1850	3320	5070	10240
201	2760	20945	2700	n/a	25310	25310	11890	4640	6470	2220	6760	8100	17080
201	2120	18210	2410	n/a	20750	20750	8195	1530	2810	3390	3400	10170	16960
2018	2790	24025	2555	1850	17935	17935	8830	2150	3480	2650	3610	8620	14880
201	3565	25200	2900	2420	25435	25435	11055	3040	n/a	2760	4460	9660	16880
202	3640	15255	1980	1280	21100	21100	8715	2550	n/a	1650	2630	6880	11160
202	5010	26525	3745	850	17300	17300	2540	2233	n/a	1630	2100	5600	12090
2022	5510	37025	3070	970	15740	15740	975	2478	n/a	1850	2450	4310	8610
Data sources	Eurostat	Eurostat	Eurostat	DT&V[212]	Eurostat	Eurostat	Eurostat	EMN for 2016/ 2017.	EMN Factsheet	DT&V	DT&V	DT&V	

* See appendix I for top five nationalities of return.

[211] Years 2015, 2016 and 2017 are retrieved from EMN reports that build on the DT&V statistics while 2018-2022 are retrieved directly from the DT&V. There are inconsistencies in the EMN reports concerning the naming of this category of returns. In 2016 it is named "voluntary departure" in 2017 "independent return" and in 2018 "assisted voluntary departure".

11.2 Overview of the Legal Framework on Return Policy

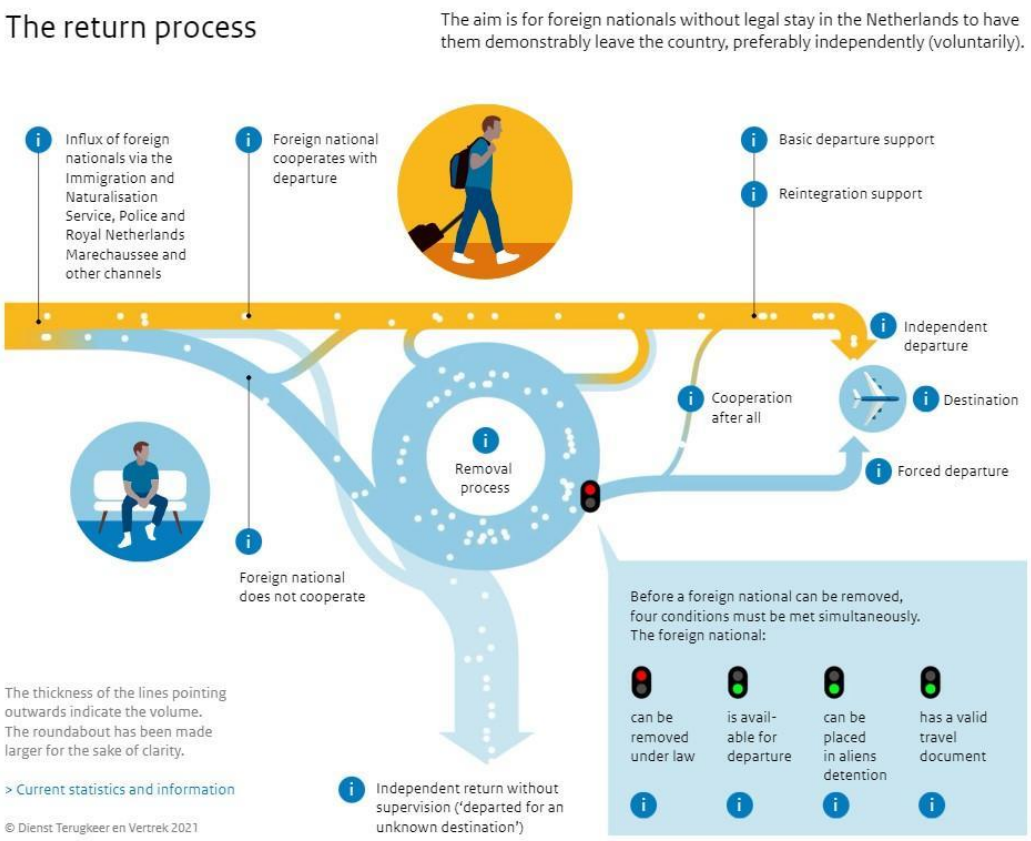
The Title of the Legislation in English	The Title in the Original Language	Policy Area	Year Announced / Implemented	Description of Policy	Key terms for search function	Level of Legislation	Type of Legislation or Administrative Action	Target Group	Web Links to Web links to Source in
Aliens Act	Vreemdelingenwet	Access Stay Enforcement Departure Deportation Entry ban Remedies	2000 - today		Illegal entry Illegal stay Detention Deportation	National	Act	Regular Refugees Illegal Rejectees	https://www.asylumlawdatabase.eu/sites/ https://wetten.overheid.nl/BWBR0011823/2022-10-01/
Aliens Decree	Vreemdelingenbesluit	Access Stay Border Control Surveillance Freedom-restriction Departure Deportation Transfer Entry ban Undesirability Remedies	2000 - today		Asylum residence permit Border control Schengen border code Supervision Custodial measures	National	Decree	Regular Refugees Illegal Rejectees	https://wetten.overheid.nl/BWBR0011825/2023-01-01/#Hoofdstuk4

[212] Ministerie van Justitie en Veiligheid, "Instroom- en vertrekcijfers," Over DT&V, *Dienst Terugkeer en Vertrek*, August 1, 2023, https://www.dienstterugkeerenvertrek.nl/over-dtv/cijfers.

Aliens Circular A	Vreemdelingencirculaire A	Access Supervision Departure Eviction Entry ban Undesirability Freedom-restriction Identification	2000 - 2021			National	Guidelines	Regular Refugees Illegal Rejectees	https://wetten.overheid.nl/BWBR0012287/2021-01-01
Aliens Circular B	Vreemdelingencirculaire B	Regular stay Humanitarian residence Special stay	2000 - 2021			National	Guidelines	Regular Refugees	https://wetten.overheid.nl/BWBR0012289/2021-01-01
Aliens Circular C	Vreemdelingencirculaire C	Asylum Country-specific policy Temporary asylum permit	2000 - 2021			National	Guidelines	Refugees	https://wetten.overheid.nl/BWBR0012288/2021-01-14#Circulaire.divisieC3_Circulaire.divisie3
Aliens Regulation	Voorschrift Vreemdelingen	Access Stay Surveillance Border control Freedom-restriction Departure Eviction	2000 - today		Safe countries of origin	National	Regulation		https://wetten.overheid.nl/BWBR0012002/2023-07-01

Border Accommodation Regime	Reglement Regime Grenslogies	Border Control Supervision Irregular	2001 - today			National	Regulation		https://wetten.overheid.nl/BWBR0005848/2001-04-01
Regulation on the Supervision of the Return of Foreign nationals			2013						
The Repatriation and Detention of Aliens Act			2018			National	Act		
Central Agency for the Reception of Asylum Seekers Act	Wet Centraal Orgaan opvang asielzoekers	Reception Refugees Asylum seeker	2020 - today		Reception Accommodation Supervision	National	Act	Refugees Asylum seekers	https://wetten.overheid.nl/BWBR0006685/2020-01-01
Decree of the State Secretary for Justice and Security amending the Aliens Act Implementation Guidelines 2000	Besluit van de Staatssecretaris van Justitie en Veiligheid houdende wijziging van de Vreemdelingencirculaire 2000	UAMs Return decision Postponement of departure Adequate reception facilities	2022- today		Return of UAMs Postponing return TQ case	National	Decree	UAMs Asylum seekers	https://zoek.officielebekendmakingen.nl/stcrt-2022-53.html

11.3 Flowchart of the national return system



Source: Repatriation and Departure Service (2021). "the return process" available at: https://english.dienstterugkeerenvertrek.nl/the-return-process

Appendix I

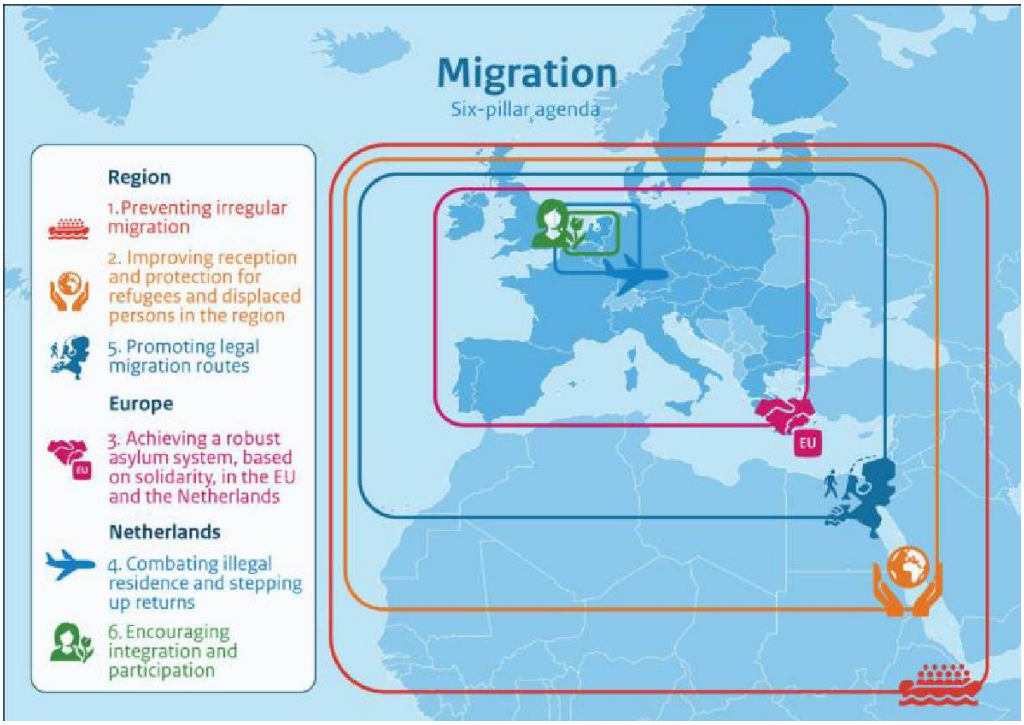
Top nationalities return from DT&V statistics

Year	2015	2016	2017	2018	2019	2020	2021	2022
1	n/a	n/a	n/a	Albania	Morocco	Nigeria	Morocco	Morocco
2	n/a	n/a	n/a	Morocco	Nigeria	Morocco	Algeria	Algeria
3	n/a	n/a	n/a	Iraq	Moldavia	Algeria	Nigeria	Nigeria
4	n/a	n/a	n/a	Afghanistan	Algeria	Syria	Albania	Syria
5	n/a	n/a	n/a	Algeria	Iraq	Iraq	Syria	Ukraine

Source: Ministerie van Justitie en Veiligheid, "Instroom- en vertrekcijfers," Over DT&V | Dienst Terugkeer En Vertrek, November 1, 2023, https://www.dienstterugkeerenvertrek.nl/over-dtv/cijfers.

Appendix II

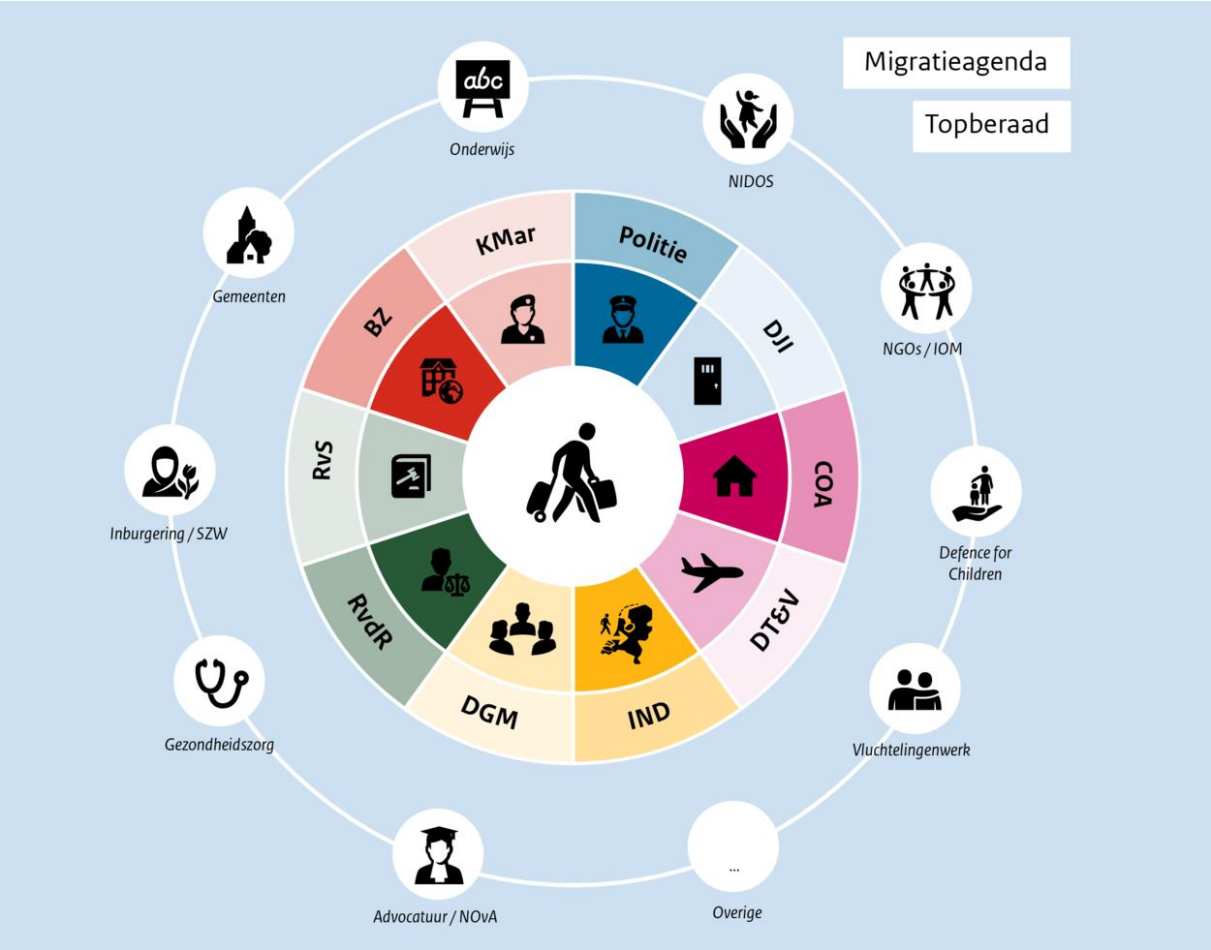
Integrated Migration Approach



Source: Ministerie van Justitie en Veiligheid, "Kabinet presenteert integrale migratieagenda," Nieuwsbericht | Rijksoverheid.nl, July 10, 2018, https://www.rijksoverheid.nl/actueel/nieuws/2018/03/30/migratiebeleid-toekomstbestendig.

Appendix III

Migration Chain partners



Source: Ministerie van Justitie en Veiligheid, "Samenwerking in de keten," Migratieketen, June 28, 2018, https://magazines.rijksoverheid.nl/jenv/migratieketen/2018/01/samenwerking-in-de-keten.

Appendix IV

No-fault permit statistics

	2008	2009	2010	2011	2012	2013 t/m juni
Aanvragen «buiten schuld»	460	550	470	290	240	90

Bron: IND. Afgerond op tientallen.

Het aantal verblijfsvergunningen dat in de afgelopen jaren op grond van «buiten schuld» is verleend (in eerste aanleg en na bezwaar) wordt weergegeven in de volgende tabel:

	2008	2009	2010	2011	2012	2013 t/m juni
Inwilligingen «buiten schuld»	70	70	60	30	40	10

Bron: IND. Afgerond op tientallen.

About the Authors

Prof. dr. Tineke Strik is Member of European Parliament and Professor Citizenship and Migration Law, Radboud University.

Sherry Ebrahim is a PhD researcher at the Faculty of Management, Radboud University.

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COUNTRY SNAPSHOT

Legal and Policy Infrastructures of Returns in France

D2.1

Neva Övünç ÖZTÜRK, Hakan ÜNAY

Swedish Research Institute in Istanbul

1. The Political Context / Framework

France is a popular destination for immigrants, and immigration has been a significant issue in its political discourse for a long time. Following the 'European migration crisis' of 2015, Eduard Philippe (Prime Minister at the time) has made a 'credible removal policy' a condition of 'migratory deterrence'. Thus, it is asserted that expulsions gained a symbolic dimension, which is reassuring the public of the government's ability to deal with the immigration 'problem'.[1] In France, the possibility of expelling foreigners was included in the penal Code back in 1832, but it was only in 1849 that prefects (administrative authorities) were given the power to deport them to their country of origin forcibly. Since then, the reasons for expelling foreigners haven't changed much. The main reasons for expulsion are still related to being a threat to public order, the job market, and the social system. Hence, forced removal is initiated with the necessity to maintain social protection, which is suspected of being benefitted by illegal foreigners without contributing to it. Therefore, the expulsion of foreigners meets both a security imperative and a need to maintain social protection in the general French policies.[2]

As the number of Syrian asylum seekers in Europe rose in 2015, France was governed by President François Hollande of the Socialist Party. The National Assembly had a left-wing majority. While Hollande intended to restore a more "empathetic and

[1] Le Courant, Stefan. "Expulser et menacer d'expulsion, les deux facettes d'un même gouvernement? Les politiques de gestion de la migration irrégulière en France", L'Année sociologique, vol. 68, no. 1, 2018, pp. 211-232

[2] Ibid., p. 212.

serene" image of immigration than his right-wing predecessor, Nicolas Sarkozy, his guiding principle remained no less firm. On the one hand, hundreds of texts such as decrees, orders, and circulars have been published relating to immigration, asylum, reception, and support for foreign nationals, some with more impact than others on the future of migrants in France.[3] In addition, two new laws directly affecting the Code on the Entry and Residence of Foreigners and the Right of Asylum (CESEDA) were issued in the wake of the events of 2015. Obviously, not all of these texts had a direct impact on the people who had to deal with the situation in 2015. In addition, several were aimed solely at managing, improving, and making the services offered to forced migrants more effective. For example, two decrees were issued on October 20 2015, one designating the prefects competent to register asylum applications and the other setting the model form for the declaration of domiciliation for asylum seekers. However, many of these texts aimed to improve control of forced migrants, particularly on entry to France and in temporary accommodation, or attempt to facilitate their return to their countries of origin.

Furthermore, in 2016, the Ministry of the Interior issued a circular that ordered prefects to strictly enforce the Dublin Regulation. This meant that people who were seeking asylum were expelled more quickly to the countries responsible. The circular also instructed the prefects to use various methods of coercion to achieve this goal. As a result, a large number of people were subjected to the "Dublin" process, with over 45,000 individuals affected in 2018 alone. This number accounted for more than one-third of all asylum applications that were registered in France during that year.[4]

Under President Emmanuel Macron's administration, there has been an emphasis on maintaining a balance between "humanity and firmness," occasionally adopting restrictive measures, possibly in response to challenges from the far right.[5] French immigration legislation has become much more complex over the years, reflecting a gradual tightening of immigration law against the backdrop of the rise of the far right, although the immediate and structured mobilisation in relation to Ukrainian asylum seekers in 2022 seems to be the exception to this.[6] For instance, the 2018 immigration law, known as the Collomb Law, increased the maximum detention period for unauthorised migrants to 90 days, shortened the asylum application deadline, and enhanced the potential for deporting rejected asylum seekers. However, the law also facilitated the entry and stay of international students and highly qualified workers, expanded family reunification options, and introduced a four-year residence permit for stateless individuals and beneficiaries of subsidiary protection.[7] It is stated that this approach reflects the precarious search for a balance between those in favour of more humane measures and the pressure exerted by the far-right, with a candidate such as Zemmour even going so far as to propose holding a referendum to achieve "zero

[3] Martel, Ariane, "Instrumentalisation du concept d'identité nationale et politiques migratoires en Europe Une analyse comparée entre l'exil syrien (2015) et l'exil ukrainien (2022) en Allemagne, en France et au Danemark", (Essai de maîtrise) Université Laval, École supérieure d'études internationals, 2023.

[4] Martel, Ariane, Ibid., p. 35.

[5] Boubtane, Ekrame, "France Reckons with Immigration Amid Reality of Rising Far Right, Migration Policy Institute", May 5, 2022, https://www.migrationpolicy.org/article/france-immigration-rising-far-right (Accessed 22.04.2024).

[6] Martel, A., Ibid., pp. 36-37.

[7] Boubtane, E., Ibid.; Martel, A., p. 37.

immigration".[8] In 2019, the government implemented regulations to limit healthcare access for asylum seekers and unauthorised immigrants in an effort to control immigration. On the other hand, the government also expressed a willingness to assist migrants rescued in the Mediterranean and adopted a more open employment-based immigration policy to address labour market needs.[9]

This somewhat 'precarious search for a balance' trend is also reflected in the most recent law of 2024 regarding immigration, as it aims to 'control immigration and improve integration'.[10] On February 1, 2023, the draft law entitled "Controlling Immigration and Improving Integration" was submitted to the French Council of Ministers and finally approved by the Mixed Commission on December 19, 2023, with 'additions and trimming'. France's new immigration law became effective on January 27, 2024, less than a week after at least 75,000 people participated in protests against it across the country.[11] These protests were sparked by the opinion that the new law goes against French values and that it is closely associated with the far-right approach of the Marine Le Pen party, considering that it aims to make it easier for France to deport foreigners who are considered undesirable and also makes it harder for foreigners to access social welfare[12]. The final version of the law was significantly shorter than the one approved in December, as almost half of the 86 articles were struck out by the Constitutional Council following a ruling on January 25. Following the deliberations, the nine-member Council ruled that 35 measures, many of which had been added to the draft law by right-wing parties, could not be included on the grounds that they were either too far removed from the law's initial intent or unconstitutional. Despite the fact that a significant part of the draft law had been struck out by the Constitutional Council, Interior Minister Gérald Darmanin gave an upbeat assessment of it, saying, "Never has a law provided so many means for expelling delinquents and so many requirements for the integration of foreigners".[13] In fact, the new law asserted that it represented a hardening of the immigration rules. Foreigners legally in France could now be deported with criminal convictions. Even those who came to France before they were 13 or those who have lived in France for more than 20 years could be expelled if they are given substantial jail terms and deemed to be a "grave threat to public order"[14]. On the other hand, an article on the regularisation of undocumented workers in industries facing shortages was also kept in the text[15].

As for the scope and the procedure of return[16], the decision on removal or the obligation to leave French territory (QQTF) is taken by the prefect (by the prefect of

[8] Boubtane, E. , Ibid.
[9] Ibid.
[10] Martel, A., pp. 38-39.
[11] ECRE, "France: New Immigration Law Adopted Despite Constitutional Council Rejecting Almost Half of Its Articles", 2 February 2024; https://ecre.org/16309-2/ (Accessed 22.04.2024).
[12] Arbërie Shabani, "Nationwide Protest in France Call on Macron Not to Sign New Immigration Law, Schengen Visa News", 23 January 2024, https://www.schengenvisainfo.com/news/nationwide-protest-in-france-call-on-macron-not-to-sign-new-immigration-law/ (Accessed 22.04.2024).
[13] ECRE, Ibid.
[14] Kirby, Paul, "France set to tighten immigration law after court scraps some measures", BBC News, 26.01.2024, https://www.bbc.com/news/world-europe-68103950 (Accssed 22.04.2024).
[15] Le Monde, French immigration bill signed into law by Macron, 27 January 2024, https://www.lemonde.fr/en/immigration/article/2024/01/27/french-immigration-law-promulgated-by-macron_6470074_144.html.
[16] The information regarding return and expulsion procedures provided here is mostly based on the context published on the French administration's official website, https://www.service-public.fr. Information might not be up to date.

police in Paris). As a rule, it obliges the Third Country National (TCN) to leave France by her/his own means within 30 days. This is the voluntary departure term applied in the French system. The voluntary departure term may be extended if the TCN's situation justifies it (e.g. length of stay in France, schooling of children). During this period, the prefect may require the TCN to appear up to 3 times a week in the prefecture or at the police station or gendarmerie. If the TCN does not leave after this period, s/he can be placed in a detention centre or under house arrest, and an entry ban will be issued. In limited situations, QQTF can also require the TCN to leave the territory without delay, i.e. within 48 hours from the notification of the decision. QQTF is issued if:

- the TCN entered France irregularly (or in the Schengen area) and had no residence permit,
- s/he entered France regularly but stayed there beyond the validity of her/his visa (or if visa exemption applies, stayed more than three months after entering France),
- her/his residence permit has not been renewed or has been withdrawn if the residence permit application is refused,
- s/he has not applied for renewal of their residence permit and have remained in France after its expiry,
- the TCN was an asylum seeker and her/his application for protection has been permanently rejected,
- s/he has been found to be a threat to public order and have been residing in France for less than three months,
- s/he worked without a work permit and have resided in France for less than three months.

If the TCN has been found to be a threat to public order or refused a residence permit for fraud or because her/his application was manifestly unfounded, or if there is a risk of absconding, voluntary departure term is not issued, and the decision obliges the TCN to leave without delay. The QQTF can be challenged by lodging an appeal with the administrative court that has territorial jurisdiction over the prefecture that made the decision. If the TCN is detained, the appeal is filed with the administrative court on which the place of detention or house arrest depends. If the TCN has limited financial resources, s/he can be subjected to legal aid. If a TCN can provide a valid reason that they cannot leave the country, they may be put under house arrest. This can be done as long as there is a reasonable chance that they will be removed from the country. The house arrest can last for up to six months and can be renewed once. There is no specific law attached to this legal regime. The competent authority will issue the house arrest order, depending on the nature of the removal order, whether it is issued by the Prefect or the Minister.[17] (EMN France 2020, 10).

Assisted voluntary return is available and encouraged. The French Office for Immigration and Integration (OFII) organises the return assistance. TCNs who are in an irregular situation in France, who have applied for asylum and do not wish to pursue it, or who have received an OQTF are eligible for voluntary return assistance. Nationals of 28 countries (Armenia, Benin, Burkina Faso, Cameroon, Congo Brazzaville, Congo DRC, Ivory Coast, Gabon, Georgia, Guinea Conakry, Haiti, Mali, Morocco, Mauritius, Senegal, Togo, Tunisia, Kosovo, Afghanistan, Bangladesh, Ethiopia, India, Iraq, Nepal, Nigeria, Pakistan,

[17] EMN France, "Responses to long-term irregularly staying migrants: practices and challenges in France", November 2020, https://home-affairs.ec.europa.eu/system/files/2022-04/emn_france_lt_irregular_migrant_en_final.pdf (Accessed 22.04.2024).

Russia, Somalia) are also eligible for reintegration assistance[18]

2. Statistical Overview[19] Regarding Returns and Readmissions at the National Level

Year	Stock of irregular migrants and/or # TCNs found to be illegally present (data in Eurostat)	# Asylum applications	# TCNs/foreign nationals refused entry at the border	# TCNs/foreign nationals ordered to leave Total #	# TCNs/foreign nationals* returned following an order to leave (annual data)
2015	109.720	80.075	10.860	79.950	12.195
2016	91.985	85.726	8.580	81.000	10.930
2017	115.085	100.755	10.215	84.675	12.720
2018	105.880	123.625	9.515	105.560	15.445
2019	120.455	132.826	9.880	123.845	15.615
2020	103.915	96.424	4.240	108.395	6.930
2021	117.255	103.164	8.210	125.450	6.290
2022	115.120	154.597	9.180	135.645	8.640

This table provides a statistical overview of returns and readmissions at the national level from 2015 to 2022. It includes data on the stock of irregular migrants or third-country nationals (TCNs) found to be illegally present, the number of asylum applications, TCNs/foreign nationals refused entry at the border, TCNs/foreign nationals ordered to leave, and TCNs/foreign nationals returned following

[18] Information regarding voluntary return assistance provided here is based on the context published on OFII's official website: https://www.ofii.fr/procedure/retourner-dans-son-pays/#partie1 (Accessed 22.04.2024).

[19] For the statistics used in the table, see: Eurostat, "Asylum applicants by type, citizenship, age and sex - monthly data",https://ec.europa.eu/eurostat/databrowser/view/migr_asyappctzm__custom_11401687/default/table?lang=en (Accessed 14.05.2024); Eurostat, "Third country nationals found to be illegally present - annual data (rounded)",https://ec.europa.eu/eurostat/databrowser/view/MIGR_EIPRE__custom_5273350/bookmark/table?lang=en&bookmarkId=aa6a64c1-96bf-45e6-af40-2caf02dfcdb1 (Accessed 22.04.2024); Eurostat, "Third country nationals refused entry at the external borders - annual data (rounded)".https://ec.europa.eu/eurostat/databrowser/view/MIGR_EIRFS/default/table?lang=en (Accessed 22.04.2024); Eurostat, "Third country nationals ordered to leave - annual data (rounded)". https://ec.europa.eu/eurostat/databrowser/view/MIGR_EIORD/default/table?lang=en (Accessed 22.04.2024); Eurostat. "Third country nationals returned following an order to leave - annual data (rounded)".https://ec.europa.eu/eurostat/databrowser/view/MIGR_EIRTN/default/table?lang=en&category=migr.migr_man.migr_eil (Accessed 22.04.2024).

an order to leave. The data show fluctuations in the number of irregular migrants and asylum applications over the years. For example, asylum applications peaked in 2019 with 132,826 applications and reached a low in 2020 with 96,424. Similarly, the number of TCNs ordered to leave and those returned following an order also varied, with the highest number of returns (15,615) in 2019 and a significant drop to 6,290 in 2021.

3. General Legal Framework

The Title of the Policy/Legislation in English	The Title in the Original Language	Policy Type/Area	Date/Announced Year	Active Period	Description of Policy or Short Overview
The Code of Entry and Stay of Foreigners and Rights of Refugees	Code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA)	forced return, general/asylum, irregularity, pre-removal detention, assisted return, border management	2004	The last modification was made by Law No. 2024-42 of January 26, 2024	Integrates the main legislative and regulatory provisions relating to foreigners in France, namely: entry into the territory (entry requirements and holding area); residence (residence permit, residence conditions and voluntary return assistance); family reunification; expulsion measures (administrative detention, deportation and expulsion); and right to asylum.
Civil Code	Code Civil	other	1804	Many amendments were made to this Code. The last modification was made by LAW No. 2024-233 on March 18, 2024. This amendment is irrelevant to return and related matters	Integrates texts relating to the status of persons, property and relations between private parties. The Civil Code integrates particular rules that govern nationality matters.

Code of Administrative Justice	Code de justice administrative	other	2000	The last modification was made by Decree No. 2024-167 of March 1, 2024. This modification is not directly related to return and connected matters.	This Code applies to the Council of State, administrative courts of appeal, and administrative courts, and it provides the rules regarding the judgements.
Code of Social Action and Families	Code de l'action sociale et des familles	other	2000	The last modification was made by Decree No. 2024-166 of February 29, 2024. This modification is not related to return or connected matters.	The Code includes rules that govern children, the elderly, and people with disabilities, as well as social institutions, including but not limited to migrants.
2024 Law No. 2024-42 of January 26, 2024 to control immigration, improve integration	LOI n° 2024-42 du 26 janvier 2024 pour contrôler l'immigration, améliorer l'intégration	forced return, irregularity, general/asylum, pre-removal detention	26.01.24	Active	The law provides provisions for the exceptional regularisation of undocumented workers in professions in tension, "talent" residence cards for foreign doctors, measures on integration and asylum, facilitated removal in the event of severe offences, and increases in the duration of house arrest used for migration control.
2018 Law for a controlled immigration, an effective right of asylum and a successful integration	LOI n° 2018-778 du 10 septembre 2018 pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie	forced return, general/asylum, irregularity, pre-removal detention	10.09.2018	Active	The law provides provisions aiming the reduction of deadlines for examining asylum applications, fight against irregular immigration and better integration of foreigners:
2018 Law enabling the effective implementation of the European asylum system	LOI n° 2018-187 du 20 mars 2018 permettant une bonne application du régime d'asile européen	pre-removal detention	20.03.2018	Active	The law aims to facilitate the detention of migrants seeking asylum under the "Dublin" procedure.

2016 Law on the right of foreigners in France	LOI n° 2016-274 du 7 mars 2016 relative au droit des étrangers en France	irregularity, general/asylum	7.03.2016	Active	The law had three objectives: better welcome and integration, making France more attractive to foreign talent, and better fighting against irregular immigration.
The circular of 17/11/2022 on the execution of orders to leave French territory and the strengthening of retention capacities	Instruction du 17 novembre 2022 "exécution des obligations de quitter le territoire français (OQTF) et renforcement de nos capacités de rétention"	forced return, irregularity, pre-removal detention	17.12.2022	Active	The instruction aims to strictly apply the obligations to leave French territory (QQTF) and have some detention-related provisions.

This table outlines the general legal framework concerning policies and legislation related to returns and readmissions in France. It includes several significant laws and codes such as the Code of Entry and Stay of Foreigners and Rights of Refugees (CESEDA), the Civil Code, the Code of Administrative Justice, and the Code of Social Action and Families. For example, CESEDA integrates the main legislative and regulatory provisions regarding foreigners in France, covering aspects like entry requirements, residence permits, family reunification, and expulsion measures, along with the right to asylum.

Additionally, the table features recent and specific laws such as the 2024 Law No. 2024-42, aimed at controlling immigration and improving integration. This law provides provisions for the regularization of undocumented workers in certain professions, issuing "talent" residence cards for foreign doctors, and enhancing measures on integration and asylum. It also facilitates the removal of individuals in the event of severe offenses and increases the duration of house arrest for migration control. Other notable entries include the 2018 laws aimed at effective asylum processing and integration, and the 2022 circular on executing orders to leave French territory, which emphasizes strict enforcement of expulsion orders and includes detention-related provisions.

4. Institutional Framework

Authority (English and original name)	Tier of government (national, regional, local)	Type of organisation	Area of competence in the fields of return (Briefly explain the role)	Link
Ministry of Interior	National	Government	Coordinates, monitors, and participates in the planning of the management of readmission, return, deportation or relocation procedures.	https://www.interieur.gouv.fr
The French Office of Immigration and Integration (OFII)	National/ Regional	Government	OFII's missions include family immigration, the reception and integration of immigrants, assistance for return and reintegration, accompaniment of asylum seekers, the implementation of the "sick foreigners" reform since 2016 and professional immigration	https://www.ofii.fr/nos-missions/
French Office for the Protection of Refugees and Stateless Persons (OFPRA)	National/ Regional	Government	OFPRA's missions include mission to investigate applications for international protection on the basis of the Geneva Conventions of July 28, 1951, and New York of September 28 1954 and Ceseda; mission of legal and administrative protection for statutory refugees, statutory stateless persons and beneficiaries of subsidiary protection; advisory mission as part of the border asylum procedure; and a mission to give an opinion to the Minister of the Interior on whether or not an application for authorisation to enter	https://www.ofpra.gouv.fr

			French territory for asylum is manifestly unfounded.	
Police	National/ Regional	Government	Issues return, and administrative expulsion decisions implement removal operations.	https://www.interieur.gouv.fr
Courts	Regional	Regional/State	Decides about removal.	https://www.service-public.fr/particuliers/vosdroits/F2025?lang=en
National Court of Asylum Law (CNDA)	National	National	The National Court of Asylum, competent to hear decisions relating to asylum applications, is a specialised administrative court ruling on first and last-resort appeals against decisions of the French Office for the Protection of Refugees and Stateless Persons (OFPRA).	http://www.cnda.fr/English

This table provides a comprehensive overview of the legal framework governing returns and readmissions in France. It includes major laws and regulations such as the Code of Entry and Stay of Foreigners and Rights of Refugees (CESEDA), the Civil Code, and the Code of Administrative Justice. Each law is described in terms of its scope and application, covering aspects like immigration control, asylum, family reunification, and expulsion measures. Notable entries include recent legislation like the 2024 Law No. 2024-42, which aims to control immigration, enhance integration, and facilitate the removal of undocumented workers. Additionally, the table highlights the roles of various authorities, including the Ministry of Interior, the French Office of Immigration and Integration (OFII), and the French Office for the Protection of Refugees and Stateless Persons (OFPRA), in managing immigration and asylum processes. These laws and institutions collectively form the backbone of France's approach to handling migration, ensuring both regulatory compliance and humanitarian considerations.

5. International Cooperation[20]

AFRICA

- **France-Gabon Agreement of February 24, 2010,** relating to exchanges of young professionals NOR: MAE/J/10/10868/D
- **France Cameroon Agreement of May 21, 2009,** relating to the concerted management of migratory flows and inclusive development (together six annexes), signed in Yaoundé on May 21, 2009
- **France - Burkina-Faso Agreement** relating to the concerted management of migratory flows and inclusive development (6 annexes) signed in Ouagadougou on January 10, 2009
- **France - Cape Verde Agreement** relating to the concerted management of migratory flows and inclusive development (three annexes together) signed in Paris, November 24, 2008
- **France - Mauritius Agreements: movement and readmission** Relating to stay and circular migration of professionals (two annexes together), signed in Paris, September 23, 2008Agreement relating to cooperation in matters of internal security signed in Paris June 13, 2008
- **France - Mauritius: Decree No. 2008-17 of January 3, 2008,** publishing the Agreement between the Government of the French Republic and the Government of the Republic of Mauritius aimed at facilitating the movement of Mauritian nationals in Reunion, signed in Port-Louis on April 2, 2007, NOR: MAE/J/0773795/D
- **France-Mauritius: Decree No. 2008-16 of January 3, 2008,** publishing the Agreement between the Government of the French Republic and the Government of the Republic of Mauritius relating to the readmission and transit of persons in an irregular situation, signed in Port-Louis on April 2, 2007, NOR: MAE/J/0773783/D
- **France-Benin Agreement** relating to the concerted management of migratory flows and co-development, signed in Cotonou on November 28, 2007, entered into force on March 1, 2010
- **France-Congo Agreement** relating to the concerted management of migratory flows and co-development, signed in Brazzaville on October 25, 2007, and entered into force on August 1, 2009. NOR : MAE/J/09/16108/D
- **France-Gabon Agreement** relating to the concerted management of migratory flows and co-development, signed in Libreville on July 5, 2007, and entered into force on September 1, 2008
- **France-Senegal Agreement** relating to the concerted management of migratory flows, signed in Dakar on September 23, 2006, and Amendment of February 25, 2008, entered into force on August 1, 2009.
- **Franco-Togolese convention** relating to the movement and residence of people, signed on June 13, 1996, in Lomé (published by decree no. 2001-1268 of December 20, 2001, OJ of December 28)
- **Franco-Togolese establishment agreement** signed in Lomé on June 13, 1996, published by decree no. 2001-1325 of December 21, 2001, and entered into force on December 1, 2001. NOR: MAE/J/01/30086/D
- **Circular of April 7, 2010,** relating to the implementation of the provisions relating to admission to stay and work of the Franco-Beninese Agreement relating to the concerted management of migratory flows and co-development of November 28, 2007, NOR: IMI/M /10/00107/C
- **Circular of January 15, 2010** Implementation of the provisions of the Franco-Senegalese Agreement relating to stay and work NOR: IMI/M/09/00083/C
- **Franco-Algerian Agreement of December 27, 1968,** relating to the movement, employment and stay of Algerian nationals and their families (JO of March 22, 1969)

[20] The list of the international cooperation is taken from the following link: https://www.gisti.org/spip.php?rubrique135#contenu

- **Memorandum of understanding between Algeria and France** issuance of consular passes (unpublished)
- **Circular of September 6, 2002** Entry into force of the 2nd amendment to the modified Franco-Tunisian Agreement of March 17, 1988, and 3rd amendment to the modified Franco-Algerian Agreement of December 27, 1968, NOR: INT/D/02/00169/C
- **Circular of July 18, 1994** movement, stay and readmission of Algerians NOR: INT/D/94/00207/C (BO Int. n° 3, 1994) Ministry of the Interior.
- **Circular of March 14, 1986,** relating to the conditions of movement, employment and stay in France for Algerian nationals and their families
- **Information note of February 24, 1997,** relating to the issuance of provisional work authorisations to Algerians, followed by the information note relating to the consequences of the Mert ruling (CE) on the issuance of work authorisations DPM/DM2-3/ 97/140 (BO MTAS-MATVI n° 97/10 of April 16, 1997)
- **France-Tunisia framework agreement of April 28, 2008,** relating to the concerted management of migration and inclusive development between the Government of the French Republic and the Government of the Tunisian Republic, signed in Tunis on April 28, 2008, entered into force with its protocols on July 12009 Text of the NOR agreement and protocols: MAE/J/09/16069/D
- **Franco-Tunisian Agreement of March 17, 1988 amended** on matters of residence and work. (JO of February 11, 89)
- **Amendment to the Franco-Tunisian Agreement of March 17, 1988** made in Tunis on September 8, 2000, published by decree No. 2003-976 of October 8, 2003, and entered into force on November 1, 2003. It modifies the amendment of December 19 1991, to the Franco-Tunisian Agreement on residence and work. NOR: MAE/J/03/30092/D
- **Circular of April 6 2011** Residence authorisations issued to third-country nationals by Schengen Member States NOR: IOC/K/11/00748/C
- **Circular of July 31, 2009,** relating to the Franco-Tunisian framework agreement relating to the concerted management of migration and inclusive development as well as the Franco-Tunisian protocol relating to the concerted management of migration and the Franco-Tunisian protocol on development solidarity, of April 28, 2008. Implementation of the provisions relating to admission to stay and work NOR: IMI/M/09/00076/C
- **Circular of September 6, 2002** Entry into force of the 2nd amendment to the modified Franco-Tunisian Agreement of March 17, 1988, and 3rd amendment to the modified Franco-Algerian Agreement of December 27, 1968, NOR: INT/D/02/00169/C
- **Circular of April 19, 1996,** relating to the movement, stay and readmission of Tunisians NOR: INT/D/96/00062/C Ministry of the Interior.
- **Circular of March 9, 1994,** relating to the movement, stay and readmission of Tunisians NOR: INT/94/00090/C (unpublished) Ministry of the Interior.

AMERICA

- **France-Brazil: Decree No. 2014-1052 of September 15, 2014,** publishing the Agreement in the form of an exchange of letters between the Government of the French Republic and the Government of the Federative Republic of Brazil concerning the establishment of a cross-border movement regime for the benefit of residents of the border area between the State of Amapa and the Guyana region (together an annexe), signed in Brasilia on March 26, 2014 and in Paris on April 28, 2014 NOR: MAEJ/1420305 /D
- **France-Brazil: Decree No. 2008-71 of January 22, 2008,** publishing the partnership and cooperation agreement between the Government of the French Republic and the Government of the Federative Republic of Brazil in matters of public security, signed in Brasilia March 12, 1997, NOR: MAE/J/0765447/D
- **France-Brazil: Decree No. 2007-1518 of October 22, 2007,** publishing the Agreement between the Government of the French Republic and the Government of the Federative Republic of Brazil relating to the construction of a road bridge over the Oyapock River connecting French Guiana and the State of Amapá, signed in Paris on July 15, 2005, NOR: MAE/J/0767958/D

- **France-Dominique: Decree No. 2007-413 of March 23, 2007,** publishing the Agreement between the Government of the French Republic and the Government of the Commonwealth of Dominica aimed at facilitating the movement of Dominican nationals in the French departments of America, done in Basse-Terre (Guadeloupe) on March 9, 2006, NOR: MAE/J/0730032/D
- **France-Dominique: Decree No. 2007-412 of March 23, 2007** publishing the Agreement between the Government of the French Republic and the Government of the Commonwealth of Dominica relating to the readmission and transit of persons in an irregular situation, made in Basse -Terre (Guadeloupe) March 9, 2006 NOR: MAE/J/0730031/D
- **France - Saint Lucia: Decree No. 2006-431 of April 12, 2006,** publishing the Agreement between the Government of the French Republic and the Government of Saint Lucia relating to the readmission of persons in an irregular situation, signed in Castries on April 23, 2005 (1) NOR: MAE/J/0630041/D
- **France - Saint Lucia: Decree No. 2006-432 of April 12, 2006,** publishing the Agreement between the Government of the French Republic and the Government of Saint Lucia aimed at facilitating the movement of Saint Lucian nationals in the French departments of America, signed in Castries on April 23, 2005, NOR: MAE/J/0630042/D
- **France-Brazil: Decree No. 2001-760 of August 28, 2001,** publishing the Agreement between the Government of the French Republic and the Government of the Federative Republic of Brazil relating to the readmission of persons in an irregular situation, signed in Paris on May 28, 1996, NOR: MAE/J/0130052
- **France-Guatemala: Decree No. 2000-316 of April 5, 2000** publishing the Agreement between the Government of the French Republic and the Government of the Republic of Guatemala relating to the readmission of persons in an irregular situation, signed in Guatemala on November 11 1998, NOR: MAE/J/0030025/D (JO of April 8, 2000)
- **France-Panama: Decree No. 2000-313 of March 31, 2000,** publishing the Agreement between the Government of the French Republic and the Government of the Republic of Panama relating to the readmission of persons in an irregular situation, signed in Panama on April 30 1999 NOR: MAE/J/0030028/D (OJ of April 8, 2000)
- **France-Venezuela: Decree No. 99-1235 of December 29, 1999,** publishing the Agreement between the Government of the French Republic and the Government of the Republic of Venezuela relating to the readmission of persons in an irregular situation, signed in Caracas on January 25 1999 NOR: MAE/J/99/30074/D (JO of January 5, 2000)
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About the Authors

Dr Neva Övünç ÖZTÜRK is a senior researcher of the GAPs Project at the Swedish Research Institute in Istanbul (SRII), Sweden/ Türkiye and a Law Faculty Member of Ankara University, Türkiye.

Hakan ÜNAY is a researcher for the GAPs Project at the Swedish Research Institute in Istanbul (SRII), Sweden/Türkiye. He is also a PhD student at Kırıkkale University at International Relations Programme.

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GAPS

Decentring the Study of Migrant Returns and Return Policies

Legal and Policy Infrastructures of Returns in Italy

Country Snapshot

Authors:

N. Ela GÖKALP ARAS (SRII)
Kamila KOWALSKA (UW)
Umutcan YÜKSEL (SRII)

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Table of Contents

List of Abbreviations

AMIF	Asylum, Migration and Integration Fund
AR	Assisted Return
AVR	Assisted voluntary return
AVRR	Assisted Voluntary Return and Reintegration
CIE	Centres for Identification and Expulsion
CPTA	Centres for Temporary Stay and Assistance
DEPMI	La Dimensione Esterna della Politica di Migrazione Italiana
ECHR	European Court of Human Rights
EMN	European Migration Network
EU	The European Union
EURAs	EU's Readmission Agreements
FRONTEX	The European Border and Coast Guard Agency
IOM	International Organization for Migration
MoI	Ministry of the Interior
NAR	Non- Assisted Return
NGO	Non-governmental organisation
OECD	Organisation for Economic Cooperation and Development
OTL	Order to Leave
PSASR	Protection System for Asylum Seekers and Refugees
TCN	The Third-Country National
UNHCR	The United Nations High Commissioner for Refugees

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Summary

Work Package 2 (WP2) of the GAPs Project, "Legal and Policy Frameworks of Returns in the EU", focuses on the legal, institutional and policy frameworks regarding the return and readmission policies at the European Union (EU) level and in the five selected EU member consortium countries (Sweden, Poland, Germany, Greece, and Netherlands) as well as the related gaps. In addition, three country snapshots of the non-consortium EU Member States (Italy, France, and Hungary) are provided.

This snapshot of Italy provides an in-depth examination of the legal, institutional, and policy frameworks governing migrant returns and readmissions in Italy. The snapshot contextualises Italy's position as a primary entry point for migrants in the Mediterranean, driven by migratory pressures from North Africa and the Middle East. Over recent decades, Italy's approach to migration management has evolved in response to changing patterns, domestic politics, and international pressures. Italy's migration policy has undergone significant transformations since the 1990s. Key legislative milestones include:

- **1990s- Foundation of Modern Migration Policy:** The foundation of modern migration policy began with the Turco-Napolitano Law (1998), focusing on controlling irregular immigration and establishing detention centres for migrants.
- **2000s- Strengthening Legal Frameworks and the European Union Alignment:** The Bossi-Fini Law (2002) introduced stricter immigration controls, linking residence permits to employment. This period also saw the alignment of Italy's policies with the EU standards, including the implementation of the European Return Directive (2008/115/EC).
- **2010s- Responding to the Migration Crisis:** Italy faced unprecedented migratory pressures due to conflicts in the Middle East and North Africa, leading to legislative measures like the Minniti-Orlando Decree (2017) to expedite asylum procedures and enhance deportations. Bilateral agreements with North African countries, particularly Libya, were crucial during this period.
- **2020s and Present- Multiple Challenges and Return Focus:** Recent developments include the Salvini Decrees (2018-2019), which tightened migration control and abolished humanitarian protection status, extending detention periods to facilitate deportations.

Italy's return and readmission policy involves multiple institutional actors, including the Ministry of the Interior, the Central Directorate of Immigration and the Border Police. These entities coordinate various aspects of the return process, from planning and monitoring to executing deportations and managing detention centres.

International cooperation plays a pivotal role in Italy's return policy. Italy has established numerous bilateral agreements with countries of origin and transit to facilitate readmissions. The collaboration with those countries, although controversial due to human rights concerns, has been instrumental in controlling irregular migration flows. Italy's return policy has faced significant human rights scrutiny, particularly concerning its agreements with Libya. The European Court of Human Rights ruling in "Hirsi Jamaa and Others v. Italy" (2012) underscored the state's obligations to protect individuals from refoulement and highlighted the challenges Italy faces in balancing migration control with human rights commitments.

In conclusion, Italy's return and readmission policy reflects a complex interplay of legislative developments, institutional coordination, and international cooperation shaped by the country's strategic geographic position and the broader European context. The snapshot underscores the ongoing challenges and evolving nature of migration management in Italy.

Keywords: Return policy, readmission policy, Italy, migrant returns, migration management

The GAPs Project

GAPs is a Horizon Europe project that aims to conduct a comprehensive multidisciplinary study on the drivers of return policies and the barriers and enablers of international cooperation on return migration. The project aims to examine the disconnects and discrepancies between expectations of return policies and their actual outcomes by decentring the dominant, one-sided understanding of "return policy-making". To this end, GAPs:

- Examines the shortcomings of the EU's return governance;
- Analyses enablers and barriers to international cooperation and;
- Explores the perspectives of migrants themselves to understand their knowledge, aspirations and experiences with return policies.

GAPs combines its decentring approach with three innovative concepts:

- A focus on return migration infrastructures, which allows the project to analyse governance fissures;
- An analysis of return migration diplomacy to understand how relations between EU MSs and third countries hinder cooperation on return and;
- A trajectory approach that uses a socio-spatial and temporal lens to understand migrant agency.

GAPs is a three-year interdisciplinary project (2023–2026) coordinated by Uppsala University and the Bonn International Centre for Conflict Studies with 17 partners in 12 countries on four continents. The 12 countries in which fieldwork has been conducted are Sweden, Nigeria, Germany, Morocco, the Netherlands, Afghanistan, Poland, Georgia, Türkiye, Tunisia, Greece and Iraq.

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1. Introduction

Italy's strategic position in the Mediterranean has made it a central entry point for migrants and asylum seekers aiming to reach Europe. Over the past decades, Italy has faced significant migratory movements, particularly from North Africa and the Middle East. These changing migratory patterns, domestic political dynamics, and international pressures have prompted the development of comprehensive migration policies, including various mechanisms, procedures and practices for returning migrants to their countries of origin or transit.

This snapshot highlights the critical turning points and current practices in Italy's return and readmission policy. The snapshot approaches Italy's selected policy in this framework by tracing the most recent relevant statistical figures, evaluating the migration return policy through key legislative and policy changes (policy framework), and mapping the legal and institutional framework and international cooperation.

2. Statistical Overview

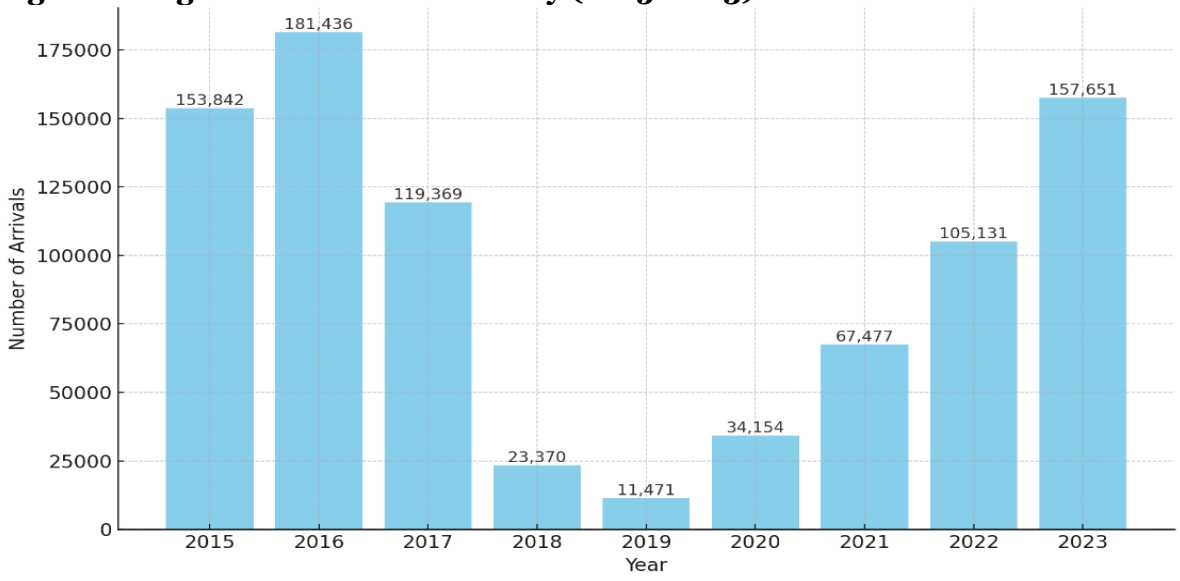
This part delves into the quantitative dimensions of Italy's return and readmission policy, a critical component of the country's immigration management strategy. The statistical analysis presented herein provides a comprehensive overview of the trends and outcomes associated with these policies, highlighting the shifts in approach and their impacts on migration patterns.

2.1. Sea Arrivals

In 2023, 157,651 refugees and migrants reached Italy via sea in 3,592 separate landings, marking the fourth consecutive year of increasing arrivals and a 50 per cent rise compared to the previous year.

Notably, 2023 ranked as the third-highest year for sea arrivals since 1998, following 2014 (170,100) and 2016 (181,436) peaks. To respond to the situation, the Government of Italy declared a state of emergency in April 2023 and expanded its reception capacity.

Figure 1: Migrant Sea Arrivals in Italy (2015-2023)



Source: UNHCR Operational Data Portal, Mediterranean Situation, Italy Sea Arrivals

The majority of the sea crossings (62%) departed from Tunisia (97,667 persons; 2,796 disembarkations), followed by 33% from Libya (51,986 persons; 652 disembarkations), 5% from Türkiye (7,153 persons; 92 disembarkations).

In 2023, 62 different nationalities were registered by Italian authorities at disembarkation sites, with the top five countries of origin being Guinea (12%), Tunisia (11%), Cote d'Ivoire (10%), Bangladesh (8%) and Egypt (7%). In 2023, most West African nationals reached Italy from Tunisia (Tunisians accounting for only 18% of the departures from that country), while Asians and North and East African nationals typically crossed the Central Mediterranean from Libya. On the Libya-sea route, the top five countries of origin were Bangladesh, Egypt, the Syrian Arab Republic, Pakistan, and Eritrea, with Asian nationals and Syrians mostly travelling to Libya via air through Benghazi and moving onwards to Tripolitania for embarkation. On the Türkiye-Italy route, the main nationalities were Afghan, Iranian, Iraqi and Pakistani.

Table 1: Italy Sea Arrivals based on Nationality (2020-2023)

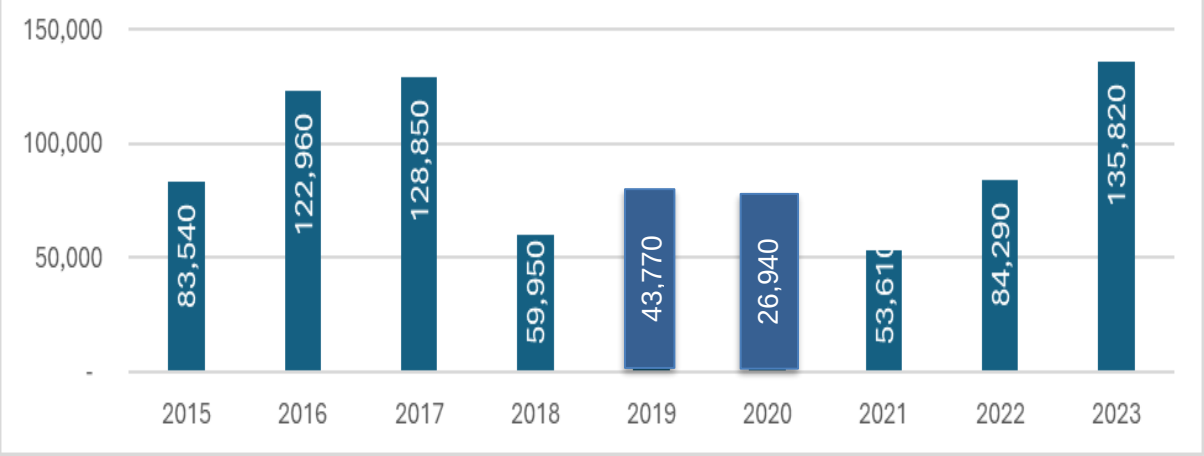
Year	Top 3 country of embarkation	Number of migrants arrived in Italy	Top 3 nationalities
2020	Tunisia	14.568	Tunisia, Côte d'Ivoire, Guinea
2020	Libya	13.012	Bangladesh, Sudan, Morocco
2020	Turkey	4.190	Pakistan, Afghanistan, Iraq
2021	Tunisia	31.556	Tunisia, Côte d'Ivoire, Guinea
2021	Libya	20.218	Bangladesh, Egypt, Eritrea
2021	Turkey	12.916	Iran, Iraq, Afghanistan
2022	Tunisia	32.371	Tunisia, Côte d'Ivoire, Guinea
2022	Libya	53.310	Egypt, Bangladesh, Syria
2022	Turkey	16.205	Afghanistan, Iran, Egypt
2023	Tunisia	97.667	Guinea, Tunisia, Côte d'Ivoire
2023	Libya	51.986	Bangladesh, Egypt, Syria
2023	Turkey	7.153	Afghanistan, Iran, Iraq

Source: Italy Sea Arrivals Dashboard, Dec 2023, Dec 2022, Dec 2021, Dec 2020

2.2. Asylum Applications

The trend in asylum applications from 2015 to 2023 exhibits notable fluctuations, with a peak in 2017 (128,850 applications) followed by a sharp decrease until 2020. However, there has been a rebound from 2021 onwards, culminating in 135,820 applications in 2023. This increase reflects the growing numbers of arrivals and the complex geopolitical situations, especially in Libya, Tunisia and Türkiye. The data indicates a heightened demand for international protection in Italy, underscoring the ongoing challenges in migration management and the necessity for robust asylum systems.

Figure 2: Asylum Applications (2015-2023) for Italy



Source: Eurostat, Asylum applicants annual aggregated data, 8 March 2024

2.3. General Data on Irregular Migration

The number of third-country nationals (TCNs) refused entry at Italy's external borders showed some variation, with a noticeable peak in 2017 (11,260). After 2017, the figures fluctuated slightly but remained below the peak, with 2022 witnessing 5,795 refusals, a modest increase from the previous year (2021: 5,760).

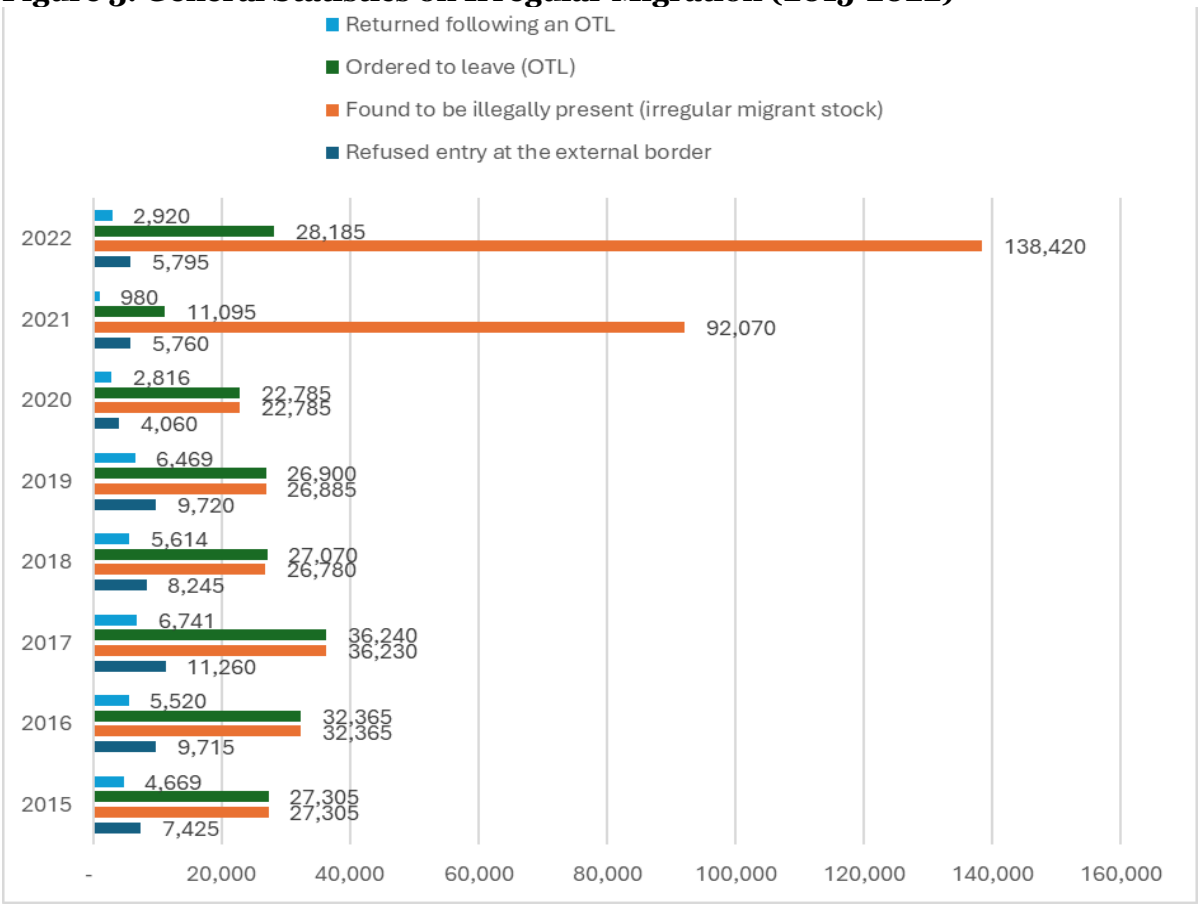
The stock of TCNs found to be illegally present in Italy saw a significant increase over the period, particularly notable between 2020 (22,785) and 2021 (92,070), more than quadrupling. This upward trend continued into 2022, reaching 138,420, marking the highest level in the observed period.

The number of "Order to Leave (OTL)" is issued followed a generally increasing trend, with a dip in 2020 (22,785) before a sharp decrease in OTL issuance in 2021 (11,095). However, there was a dramatic increase in OTLs in 2022 (28,185), indicating a more aggressive stance on ordering irregular migrants to leave.

Conversely, the number of TCNs returned following an OTL remained significantly lower than the number of OTLs issued, indicating a gap in the enforcement or execution of these orders. For example, in 2022, 2,920 individuals were returned following an OTL, which is a small fraction of the total OTLs issued that year (28,185).

The number of forced returns generally showed a slight upward trend, with occasional fluctuations. The highest number of forced returns within the period was in 2019 (6,035), with a slight decrease observed in the following years. In 2023, there were 3,270 forced returns, which is higher than the figures for 2020 and 2021 but still below the peak.

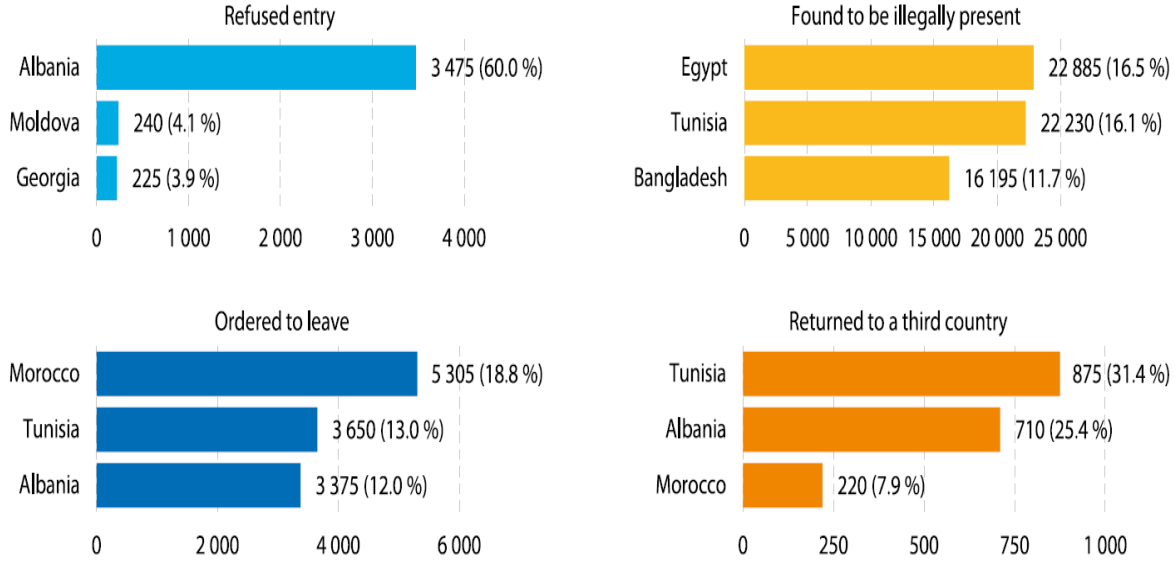
Figure 3: General Statistics on Irregular Migration (2015-2022)



Source: Eurostat, Enforcement of Immigration Legislation Data (8 March 2024)

The following figure displays several key statistics related to migration enforcement in Italy. It provides data on four categories: refused entry, ordered to leave, found to be illegally present, and returned to a third country. Figure 4 illustrates the migration enforcement actions taken by Italy, highlighting the countries with the most significant numbers in each category. Albania, Tunisia, and Morocco are frequently mentioned across multiple categories, indicating that individuals from these countries are prominently affected by these enforcement measures.

Figure 4: Top 3 countries of citizenship of third-country nationals subject to immigration law enforcement, 2022 Absolute numbers (and the shares in the respective totals)



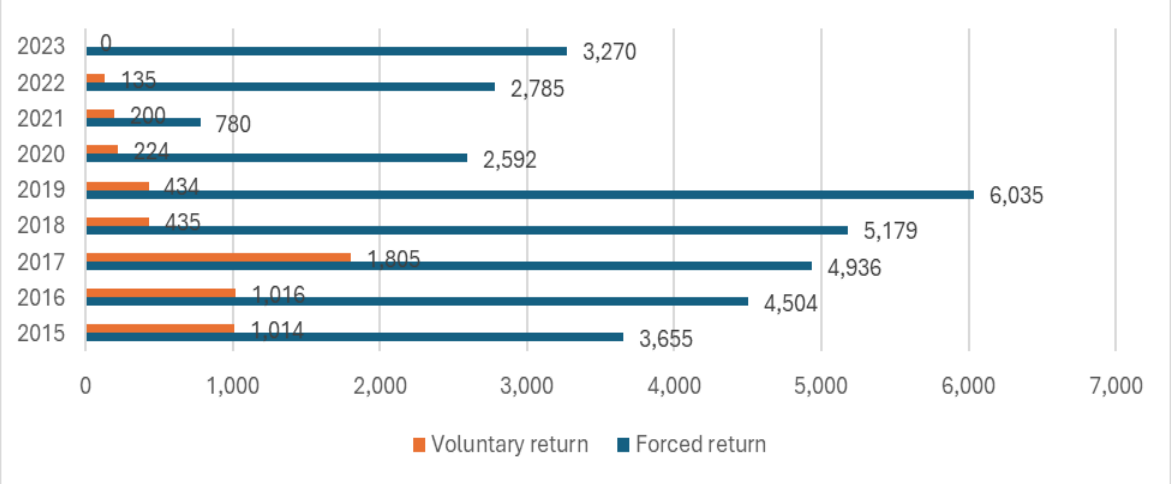
Source: Eurostat. (2022). Italy EMN Country Factsheet. Available at: https://www.emnitalyncp.it/wp-content/uploads/2023/09/EMN_Factsheets2022_IT_0.pdf (p. 16) (Accessed 4 April 2024).

2.4. Forced vs. Voluntary Returns

Voluntary returns have varied significantly over the years, reaching a peak in 2017 (1,805) before dropping to notably low levels in subsequent years, culminating in no voluntary returns recorded in 2023.

This drastic reduction in voluntary returns over the years suggests a shift in the dynamics of return migration, with fewer migrants opting for or being able to take this route.

Figure 5: Number of TCNs Who Left the Territory by Type of Return

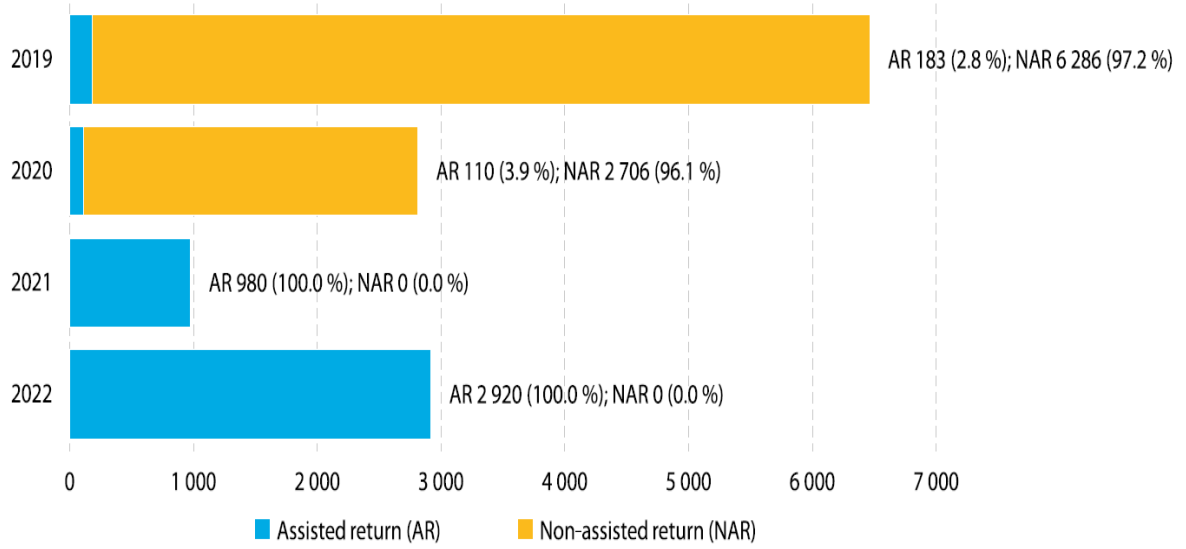


Source: Eurostat, Enforcement of Immigration Legislation Data (8 March 2024)

Figure 5 illustrates the number of third-country nationals who left Italy between 2019 and 2022, categorised by the assistance they received during their return. Assisted Return (AR)

and Non-Assisted Return (NAR) are the two types of returns presented. The figure demonstrates a transition in Italy's return policy from predominantly non-assisted returns in 2019 and 2020 to exclusively assisted returns in 2021 and 2022. This shift reflects an increased emphasis on providing support to migrants during the return process, potentially indicating changes in policy priorities, enhanced collaboration with international organisations like the International Organization for Migration (IOM), and greater allocation of resources to assist returning migrants.

Figure 6: Third-country nationals who left the territory, by type of assistance received, 2019–2022 Absolute number (and the share within the total)



Source: Eurostat. (2022). Italy EMN Country Factsheet. Available at: https://www.emnitalyncp.it/wp-content/uploads/2023/09/EMN_Factsheets2022_IT_0.pdf (p. 16) (Accessed 4 April 2024).

3. Policy and Legal Framework

3.1. Policy Developments (1990s-2023)

Over the past three decades, Italy has undergone significant transformations in its approach to managing migration, particularly concerning the return and readmission of irregular migrants. This timeline offers a comprehensive overview of the key legislative measures, bilateral agreements, and policy shifts that have shaped Italy's return and readmission framework from 1990 to the present. The timeline highlights Italy's evolving strategies in response to changing migration patterns, international obligations, and domestic political dynamics by chronicling these developments.

3.1.1. The 1990s: Foundation of Modern Migration Policy

The early 1990s marked the beginning of substantial legislative efforts to manage immigration in Italy. The Martelli Law (Law No. 39, 1990)[1] was one of the first comprehensive migration laws, introducing measures to regulate immigration and establishing the basis for asylum procedures. The Law also set the stage for return policies by addressing the need for legal and

[1] LEGGE 28 Febbraio 1990, N. 39, Available at: https://www.gazzettaufficiale.it/eli/id/1990/02/28/090G0075/sg (Accessed 1 April 2024).

administrative mechanisms to deport irregular migrants. In 1998, the Turco-Napolitano law (Law No. 40/1998)[2] became the main guideline for public policy on migration in Italy regarding programming migratory flows, tackling illegal immigration, and promoting a broad series of rights for integrating regular migrants.

In 1997, the Dublin System, also known as the Dublin Regulation, started for Italy by implementing the Dublin Convention[3] (signed in 1990, came into force in 1997) in 1997, then updated with the Dublin Regulation[4]. It was designed to determine which European Union (EU) Member State (MS) is responsible for examining an application for asylum seekers has significant implications for Italy, particularly in the context of returns. Once an asylum seeker is transferred to Italy under the Dublin Regulation, Italy is responsible for processing the application and, if necessary, arranging for the individual's return to their country of origin. This includes cases where the asylum claim is rejected or the individual does not qualify for international protection.

In this period, Italy's external migration policy focused on the most critical source, transit or border countries. In this framework, the first readmission agreements[5] are signed with main source countries. 1997 Readmission Agreement: Italy and Albania signed a Readmission Agreement in 1997, with Italy returning approximately 44% of Albanians ordered to leave.[6] Regarding readmission and return, the first agreement (Exchange of notes between Italy and Tunisia concerning the entry and readmission of persons in an irregular situation)[7] with Tunisia was established in 1998, regulating entries and implementing return and readmission procedures for irregular migrants. This political document established a framework to regulate entries and implement return and readmission procedures for irregular migrants. Italy offered preferential treatment for Tunisian nationals regarding annual entry quotas.[8] Italy provided technical and financial assistance to support Tunisia's efforts against irregular migration and funded the creation of detention centres in Tunisia. In exchange, annual quotas for regular entry of Tunisian workers into Italy were established. Italy and Morocco also signed

[2]LEGGE 6 Marzo 1998, N. 40, Available at: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1998;40 (Accessed 1 April 2024).

[3] Signed in 1990 and came into force in 1997. No longer valid, replaced by the Council Regulation (EC) No 343/2003 of 18 February 2003, then by the Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013.

[4] The Dublin Regulation has undergone several revisions. The original Dublin Convention was replaced by the Dublin II Regulation in 2003 and later by the Dublin III Regulation in 2013, which is currently in force. Dublin III/ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604 (Accessed 4 March 2024).

[5] To excess the official text of those agreements are not available however, the full list of the agreements are provided as a part of Annex III and IV. The New Pact on Migration and Asylum introduces reforms to the Dublin System aimed at improving efficiency and fairness. It includes a solidarity mechanism to redistribute asylum seekers more equitably across EU Member States and streamline return procedures.

[6] Iole Fontana, Matilde Rosina and Sahizer Samuk Carignani, 2022, "La Dimensione Esterna della Politica di Migrazione Italiana (DEPMI)", *The Siracusa International Institute for Criminal Justice and Human Rights*, Available at: https://www.esteri.it/wp-content/uploads/2022/11/The-Siracusa-Institute_DEPMI.pdf (Accessed 1 February 2024), p. 25.

[7] Scambio Di Note Concernente L'ingresso e la Riammissione Delle Persone in Posizione Irregolare

[8] Fontana et al., 2022, p. 50.

a Readmission Agreement[9] in 1998, which included provisions for the readmission of irregular migrants.[10]

In terms of return policies, the participation of Italy in the Schengen System in 1997 is also important due to the abolishment of the internal borders and the specific return provisions of Article 23, paragraphs 3&4 of the Schengen Agreement.[11]

3.1.2. The 2000s: Strengthening Legal Frameworks and the European Union Alignment

Intensification of agreements, particularly with North African countries, focusing on combating irregular migration was important for this period, along with implementing EU directives and intensifying bilateral agreements with North African countries, notably Libya, focusing on migration control.[12] The turn of the millennium saw Italy aligning its migration policies with the EU standards while tightening migration controls. The Bossi-Fini Law (Law No. 189/ 2002)[13] tightened immigration controls and introduced stringent measures to deport irregular migrants, linking residence permits to employment contracts. This Law can be seen as a partial revision of the Turco-Napolitano Law (1998) in terms of controlling irregular immigration with measures to limit the possibilities of entrance into Italy, criminalisation of irregular migrants and introduction of the Centres[14] for Identification and Expulsion (CIE).[15] Italy also created the European Return Directive (2008/115/EC)[16] to harmonise return procedures across the EU MSs during this period. This directive emphasised voluntary return as a priority while ensuring humane treatment for all returnees.

This period mainly refers to striker controls and bilateral agreements with the source countries. The external dimension of the return policy continued in this decade with several critical bilateral agreements, cooperation documents, and a memorandum of understanding. In 2000, the Italy-Algeria Readmission Agreement was signed and entered into force in 2008; Italy and Pakistan adopted an Agreement for the Readmission of migrants in irregular positions in 2000, which became operative despite the lack of a formal signature by Pakistan; the Migration Agreement was signed between Italy and Nigeria and entered into force in 2011;

[9] Agreement on expulsion of citizens and transit for removal (*Accordo sull'espulsione dei cittadini e sul transito per allontanamento*).
[10] Ibid., p. 123.
[11] EMN, 2022, Return Migration in Italy Report, Available at: https://home-affairs.ec.europa.eu/system/files/2020-09/7a._it_emn_ncp_return_country_study_finalen_version_en.pdf, p. 25 (Accessed 3 March 2024).
[12] Ibid., p. 5-6.
[13] LEGGE 30 Luglio 2002, N. 189, Available at: https://www.gazzettaufficiale.it/eli/id/2002/08/26/002G0219/sg (Accessed 4 March 2024).
[14] Centres for Temporary Stay and Assistance (CPTAs), established by Law No. 40/1998, for detaining irregular migrants pending expulsion, were renamed Centres for Identification and Expulsion (CIEs) by Law No. 189/2002 and later, Law No. 46/2017 renamed them as Detention Centres for Repatriation (CPRs), extending detention from 30 to 90 days, and finally to 180 days under Decree Law No. 113/2018.
[15] OECD, 2019, "Working Together for Local Integration of Migrants and Refugees in Rome, OECD Regional Development Studies", *OECD Publishing*, Paris, https://doi.org/10.1787/ca4d491e-en. (Accessed 30 March 2024).
[16] 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, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0115 (Accessed 3 February 2024).

in 2002 the Readmission Agreement was signed with Moldova and the Readmission and Return Agreement between Italy-Egypt[17] was signed in 2007 and still in place.[18]

Although Italy and Libya had no formal readmission agreement during this period, various agreements and joint initiatives have been crucial and controversial, reflecting complex dynamics in regional security, migration management, and human rights. The first notable agreement is the 2008 Treaty of Friendship, Partnership, and Cooperation between Italy and Libya[19], which included provisions for joint efforts to combat irregular migration, with Italy pledging substantial financial support for border security and migration control in Libya. Again, as not being a readmission agreement, the Police Cooperation Agreement between Italy and Turkey was signed in 2001, including the return issue.[20] Finally, at the end of this period, a New Memorandum[21] signed between Italy and Tunisia in 2009 aimed to relaunch cooperation on readmission and expedite identification procedures, resulting in a steady increase in returned migrants.

3.1.3. The 2010s: Responding to the Migration Crisis

The 2010s brought unprecedented migratory pressures due to conflicts in the Middle East and North Africa. Italy's geographical position made it a primary entry point for many migrants and asylum seekers. During this period, the development of the legal framework and operational agreements continued. Italy strengthens external border control and readmission agreements within the EU framework, facing challenges in human rights and international cooperation. In parallel to these developments, Italy implemented several legislative measures, such as the Minniti-Orlando Decree (Law No. 46 of 2017)[22]. This Law aimed to expedite asylum procedures and enhance the efficiency of deportations. The most important institutional dimension regarding forced removals is the establishment of new detention centres (Centri di Permanenza per il Rimpatrio) that are specifically designed to facilitate the return of irregular migrants.

The Arab Spring significantly affects migration flows, leading to adjustments in Italy's policy approach. During this period, the bilateral agreement with the source countries continued, and Italy signed several bilateral agreements with countries of origin and transit, particularly in North Africa. These agreements aimed to improve cooperation on readmission and provided financial aid to enhance border control and manage migration flows. For example, in 2011, the Italy-Tunisia Agreement was signed, which includes provisions for the deportation of Tunisian nationals found to be in Italy in irregular situations. In addition, Italy signed a cooperation agreement with Niger to enhance border security and manage migration flows. The agreement includes Italian support for training Nigerien security forces and providing resources for border management. In 2016, the Italy-Sudan Agreement was signed, which also aims to improve the identification processes for Sudanese nationals in Italy.

[17] The full text of the Agreement is Available at: https://atrio.esteri.it/Search/Allegati/48977 (Accessed 28 March 2024).
[18] Fontana et al., 2022, p. 47, 66, 70, 111-112, 135, 143.
[19] Il Trattato di amicizia, partenariato e cooperazione tra Italia e Libia , Available at: http://briguglio.asgi.it/immigrazione-e-asilo/2011/aprile/trattato-italia-libia-2008.pdf (Accessed 4 March 2024).
[20] Ibid., p. 161.
[21] Full text is available at: https://www.regioni.it/news/2011/04/06/immigrazione-siglato-laccordo-tra-italia-e-tunisia-48788/ (Accessed 28 April 2024).
[22] LEGGE 17 Febbraio 2017, N. 13, Available at: https://www.retesai.it/wp-content/uploads/2017/01/immigrazione-il-testo-coordinato-del-decreto-minniti.pdf (Accessed 4 March 2024).

Among them, the collaboration with Libya was particularly notable, and the Treaty of 2008 was further solidified with a Memorandum of Understanding (MoU)[23] signed in 2017. This agreement focused on enhancing cooperation to stem the irregular migrants departing from Libya. Key components included Italy's support for the Libyan Coast Guard in intercepting and returning migrants and financial aid for Libyan detention centres and migration control efforts. The Italy-Libya collaboration has faced substantial scrutiny and criticism regarding human rights abuses in Libyan detention centres. Regarding its role and the violations in these centres, Italy was accused of outsourcing migration control to Libya.

During this period, one important development was the 2015 European Refugee Crisis. Due to its strategic geographical location in the Mediterranean, Italy became one of the primary entry points. In terms of the return aspect, Italy increased efforts to identify and return individuals who did not meet the criteria for asylum. This involved strengthening the capacity of immigration authorities to process returns efficiently. With support from the EU, the Italian government invested in improving identification and documentation processes to facilitate returns. In this framework, Italy negotiated several bilateral agreements with countries of origin and transit to facilitate the readmission of their nationals. It worked closely with EU agencies such as Frontex (European Border and Coast Guard Agency) to enhance return operations.

Another impact of the 2015 crisis can be seen in the focus on voluntary return programmes, and Italy promoted voluntary return programs. These programs, often implemented in collaboration with the IOM, provided financial incentives and reintegration support to encourage migrants to return voluntarily to their home countries. The period also witnessed debates on the effectiveness and human rights implications of return and readmission practices, with Italy navigating challenges related to international law and migrant rights.

Regarding the human rights implications, in 2012, the European Court of Human Rights (ECHR) ruling in "Hirsi Jamaa and Others v. Italy (Application no. 27765/09)"[24] appears as a landmark case in the realm of international human rights law, specifically concerning the rights of migrants and asylum seekers. It is a case decided by the ECHR that involved a group of 24 Somali and Eritrean nationals who were intercepted at sea by Italian authorities and subsequently returned to Libya without being allowed to apply for asylum or challenge their deportation. In terms of impact and significance, this ruling of the ECHR set a significant precedent in international human rights law, emphasising the obligations of states under the ECHR to protect individuals from refoulement (return to a country where they may face harm).

Finally, this period ended with a new national legal development, the Salvini Decrees, formally known as "Decreto-Legge n.113/2018"[25] and "Decreto-Legge n. 53/2019"[26]. They refer to a set of legislative measures introduced by Matteo Salvini, Italy's Minister of the Interior, in 2018. These decrees significantly altered Italy's immigration and asylum policies, emphasising security and stricter migration control. In terms of return, they abolished the "humanitarian protection" status, which was a form of protection granted to migrants who did not qualify for refugee status but could not be returned to their home countries for humanitarian reasons. This status was replaced with more limited forms of protection. Also, the maximum period for

[23] The full text in English is available at: https://www.asgi.it/wp-content/uploads/2017/02/ITALY-LIBYA-MEMORANDUM-02.02.2017.pdf (Accessed 27 February 2024).
[24] ECtHR - Hirsi Jamaa and Others v Italy [GC], Application No. 27765/09, Available at: https://www.asylumlawdatabase.eu/en/content/ecthr-hirsi-jamaa-and-others-v-italy-gc-application-no-2776509 (Accessed 4 April 2024).
[25] DECRETO-LEGGE 4 Ottobre 2018, N. 113, Available at: https://www.gazzettaufficiale.it/eli/id/2018/10/04/18G00140/sg (Accessed 28 April 2024).
[26] DECRETO-LEGGE 14 Giugno 2019, N. 53, Available at: https://www.gazzettaufficiale.it/eli/id/2019/06/14/19G00063/sg (Accessed 28 April 2024).

migrants to be detained in repatriation centres was increased from 90 to 180 days, aiming to facilitate deportations. The decrees introduced restrictions on asylum seekers' access to reception centres (Protection System for Asylum Seekers and Refugees/ SPRAR). The decrees have been seen as part of a broader trend towards the securitisation of migration in Italy and the EU.

3.1.4. The 2020s and Present: Multiple Challenges and Return Focus

The early 2020s saw significant shifts due to the COVID-19 pandemic, which impacted migration flows and return operations. Italy's return migration policy had to adapt to new health and safety measures. During this period, the major policy trend focused on voluntary returns and international cooperation. Regarding the national legal framework, the Lamorgese Decree[27] (Decree-Law No. 130 of 2020) revised aspects of the Minniti-Orlando Decree (2017) to improve the protection of migrants' rights while maintaining effective return mechanisms. It aimed to strike a balance between security concerns and humanitarian considerations.

In terms of international cooperation and the external dimension of Italy's migration policy, in 2020, a new informal collaboration deal to restore and accelerate return practices was adopted between Italy and Tunisia.[28] Finally, on 4 August 2021, the Italian Parliament authorised the financing of Italy's support to the Libyan Coast Guard again.[29] These developments can be seen as parallel to the EU-Turkey Statement (2016)[30], which are political, governmental and sometimes even unwritten deals that allow the authorities to escape the political control of their parliaments and constitutional control of such arrangements.[31]

Italy also aligned with the New Pact on Migration and Asylum proposed by the European Commission in 2020[32]. The Pact emphasised a comprehensive approach to migration management, including stronger cooperation on return and reintegration efforts at the EU level. In 2023, the political agreement was achieved for the Pact, and the European Parliament voted on it in April 2024, while as of April 2024, it was adopted by the Council of the EU. The return dimension of the New Pact on Migration and Asylum focuses on enhancing the efficiency and effectiveness of returning migrants who do not have the legal right to stay in the EU in their countries of origin. Key elements can be summarised as simplifying and expediting return procedures to ensure timely and effective returns, strengthening coordination among EU MSs, enhancing cooperation with third countries to facilitate readmissions, promoting voluntary return programs, and providing reintegration support to ensure sustainable returns. Italy, due to its geographical position as a primary entry point for migrants, plays a crucial role in the implementation of the Pact, particularly concerning the return dimension.

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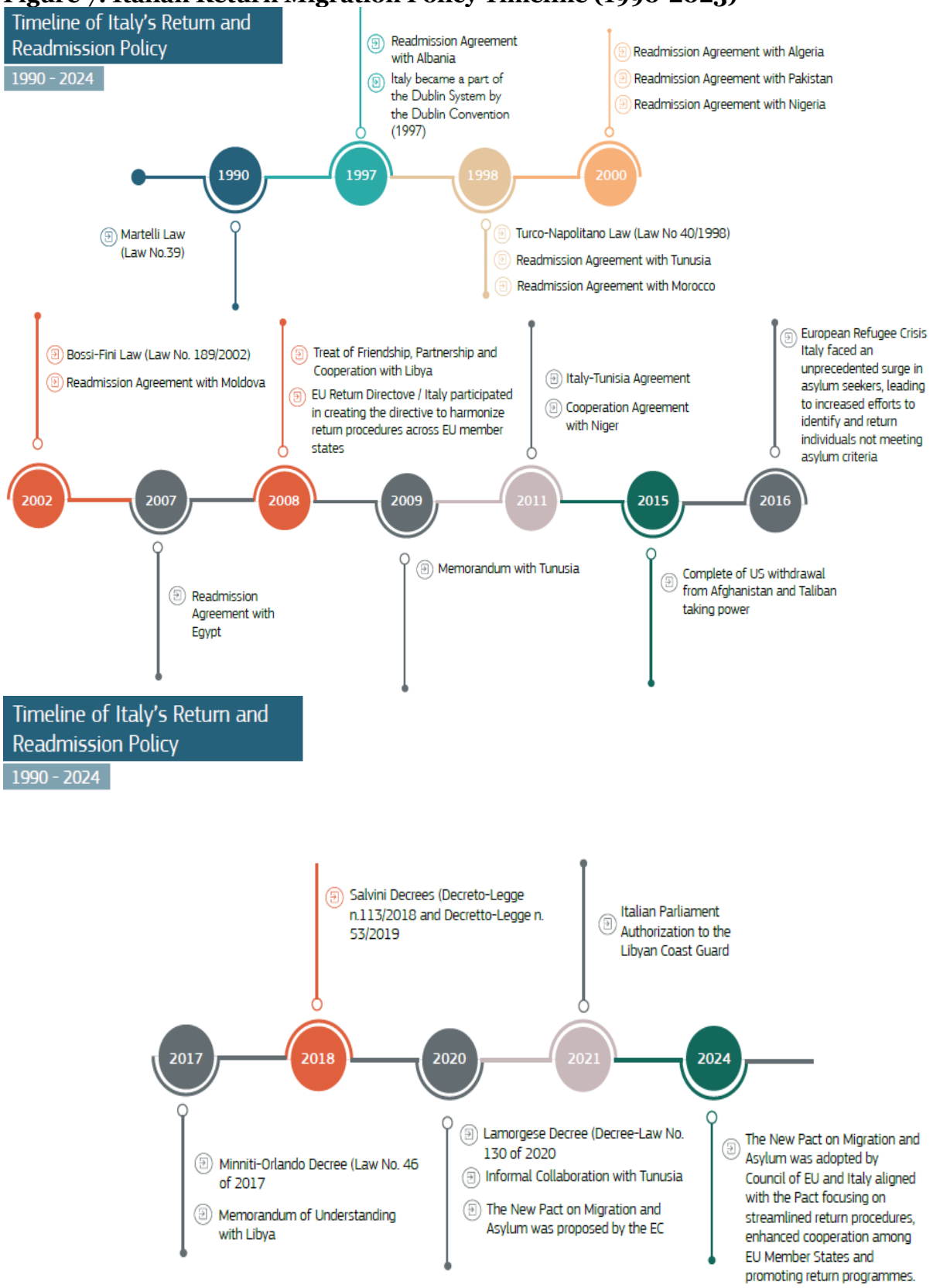
[27] DECRETO-LEGGE 21 Ottobre 2020, N. 130, Available at: https://www.gazzettaufficiale.it/eli/id/2020/10/21/20G00154/sg (Accessed 26 April 2024).
[28] Fontana et al., 2022, p. 155
[29] OpinioJuris, "The Memorandum of Understanding between Italy and Libya: Does It Create Human Rights Obligations on the Part of Italy?", 5 August 2021, Available at: https://opiniojuris.org/2021/08/05/the-memorandum-of-understanding-between-italy-and-libya-does-it-create-human-rights-obligations-on-the-part-of-italy/ (Accessed 4 May 2024).
[30] The EU-Turkey Statement, Available at: https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/ (Accessed 2 May 2024).
[31] EuroMed Rights, 2021, "The Policy of Forced Returns Between Italy and Tunisia", p. 7, Available at: https://euromedrights.org/wp-content/uploads/2021/04/EN_Chapter-4-Italy-Tunisia-1.pdf (Accessed 4 May 2024).
[32] 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, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0609 (Accessed 4 April 2024).

As seen from the 1990-2023 journey of Italy's return and readmission policy, particularly over the past three decades, Italy's return migration policy has evolved significantly, influenced by national priorities, EU directives, and global migration trends. From the foundational laws of the 1990s to the contemporary adjustments necessitated by the COVID-19 pandemic, Italy has continually refined its legal and administrative frameworks to manage return migration effectively. The ongoing challenge for Italy remains to balance the enforcement of return policies with the protection of migrants' rights, ensuring humane and fair treatment in all procedures.

Figure 7: Italian Return Migration Policy Timeline (1990-2023)



Source: Design by the authors

3.2. Legal Framework for Forced Removals and Voluntary Returns

Although there is no agreed definition or legal term, pushbacks are generally considered a form of illegal return policy tool due to their violation of international and EU Law, particularly the principle of non-refoulement. Pushbacks can be seen as "a form of forced/coerced return, and they involve actions for migrants who have already crossed the border, but also towards people who are present near or at the border, attempting to cross it".[33] Briefly, pushbacks aim to prevent the person from entering the country and requesting international protection as one type of coercive return disguised in practices or "a return before arrival".[34] Similarly, the GAPs Project classifies "pushbacks" as one of the types of return governing mechanisms, which appears as strict border controls at the first arrivals as formal policy instruments and physical pushbacks practised at the borders and impede admission and asylum claims.[35] However, since pushbacks are mainly disguised in practices, it is impossible to find the official legal framework regarding the type of coercive returns; therefore, only forced removals (expulsion) and assisted voluntary returns will be briefly mentioned here for this snapshot.

3.2.1. Forced Removal (Expulsion) Process as A Part of the Forced Return Type of Return Policies in Italy

Italian Law distinguishes between three different types of expulsion of foreign citizens:

1) Administrative expulsion, ordered by the Ministry of the Interior (Article 13 of Legislative Decree 286/98);
2) Administrative expulsion, ordered by the Prefect (Article 13 Subsection 2 of Legislative Decree 286/98);
3) Expulsion as a security measure (Article 15 of Legislative Decree 286/98).

As for the **administrative expulsion ordered by the Ministry of the Interior**, it is applied when a foreigner (both Italian resident or not) constitutes a danger to public order or the security of the state.

In case of the **administrative expulsion applied by the Prefect,** the circumstances that lead to the application of the above measure against the foreigner are the following:

- Irregular entry to the Italian territory;
- Not applying for a residence permit within eight days of entering regularly in Italy;
- Not applying for the renewal of the residence permit within 60 days after its expiration;
- In case the valid residence permit is cancelled or revoked,
- When a foreigner, holder of a valid residence permit, is suspected of living with money that derives from the commission of associative crimes and he/she is unable to prove the legitimate sources of the income;
- When a foreigner, holder of a residence permit, is suspected of belonging to mafia-type associations,
- In case the expulsion decree has already been issued to the foreigner and he/she has not left Italy within 15 days of its notification,

[33] EuromedRights, Ibid.
[34] Ibid.
[35] Sahin-Mencütek, Z. Triandafyllidou, A., Barthoma, S, Nimmer, M., Rottmann, S., Öztürk, N. and R. Istaiteyeh, 2023, "Framework paper on the concepts and typologies on returns, combined with four conceptual notes in Global Migration: Consequences and Responses", Vol. 1: 78, Uppsala: Acta Universitatis Upsaliensis. DOI: 10.5281/zenodo.10021239

- Finally, once expelled, the foreigner returns to Italy before the period specified in the expulsion order (excluding those who have obtained the "special authorisation to re-entry" from the Ministry of the Interior).

The third type of **expulsion** - considered **a security measure -** is applied by the Judicial Authority after a criminal conviction when the foreigner is considered socially dangerous by the Judge.

When an expulsion order is applied, the foreigner is accompanied by the police directly to the border or to a temporary detention centre.

The accompaniment to the detention centres occurs when a foreigner does not possess an identification document, in case it is impossible to accompany him/her to the border due to health problems, or when the accompaniment isn't possible due to organisational reasons of the Judicial Police.

Having the expulsion decree precludes the foreigner from re-entering Italy for 3-5 years (with some motivated exceptions upon a "special authorisation" from the Italian Minister of the Interior).

The Law specifies some categories of foreigners to whom the expulsion decree does not apply:
- When the person in question can be persecuted in his own country for reasons of sex, race, language, religion, citizenship, political opinions, personal and social conditions;
- When there is a danger that the foreigner can be sent to another country where he/she can suffer from the same kind of persecution.

In other cases, the expulsion may be ordered exclusively by the Ministry of the Interior - this restriction regards in particular:
- Minors under 18 years of age, excluding their right to follow the parent or caregiver expelled from the Italian territory;
- Holders of the residence card;
- Foreigners who permanently live with relatives up to the fourth degree or the spouse of Italian Nationality;
- Pregnant women or in the six months following the birth of the child.

3.2.2. Assisted Voluntary Returns and Reintegration Programmes

Assisted voluntary return (AVR) programmes are a key component of Italy's migration management strategy. These programmes aim to facilitate the return of migrants who voluntarily return to their home countries.

The legal basis for assisted returns in Italy is primarily outlined in the Consolidated Immigration Act (Legislative Decree No. 286/1998), which has been amended multiple times to align with EU regulations and directives. The AVR programmes are designed to provide a humane and dignified return process, including pre-departure counselling, logistical support, and reintegration assistance in the country of origin. There are three key legislative instruments for the AVR programmes.[36]
- Legislative Decree No. 286/1998 (Consolidated Immigration Act)
- Decree-Law No. 113/2018 introduced stricter measures for immigration control, including aspects related to returns.
- Decree-Law No. 130/2020**, which aimed to revise aspects of the 2018 law to

[36] AIDA, 2022, "AIDA Country report: Italy". Available at: https://asylumineurope.org/wp-content/uploads/2023/05/AIDA-IT_2022-Update.pdf (Accessed 22.04.2024).

balance security concerns with humanitarian considerations

The Ministry of the Interior oversees the implementation of AVR programs, often in partnership with the IOM. The programs are funded by both national resources and the European Union's Asylum, Migration and Integration Fund (AMIF).

Recent developments in Italy's AVR policy have focused on improving the efficiency and effectiveness of the return process. However, challenges remain, including ensuring adequate support for reintegration and addressing the legal and procedural complexities that migrants face.

Annex 1 reflects Italy's most important legal documents regarding the return and readmission policy.

4. Institutional Framework: Actors in Italy's Return and Readmission Policy

The institutional framework and the actors involved in Italy's return and readmission policy form a complex network of legal provisions, governmental bodies, and international organisations. Central to the implementation of the return and readmission policy in Italy, various actors operate at multiple levels of governance, from national authorities to international organisations and non-governmental entities. Each actor plays a distinct yet interrelated role in ensuring that the processes of return and readmission are carried out effectively, humanely, and in accordance with legal frameworks.

At the national level, the Ministry of the Interior (MoI) stands as the principal authority overseeing the return and readmission policy. This Ministry is responsible for issuing expulsion orders and coordinating with other governmental bodies to ensure compliance with Italy's immigration laws. As regional representatives of the Ministry, prefectures execute these orders and manage the administrative procedures related to returns. Additionally, judicial authorities are involved in cases where expulsions are mandated as security measures following criminal convictions, thereby linking the return policy to the broader judicial system. The Ministry oversees the Department for Civil Liberties and Immigration, coordinating with other agencies and ensuring compliance with legal standards.[37]

Border Police (Polizia di Frontiera) is responsible for monitoring Italy's borders and ensuring the enforcement of immigration laws. It plays a critical role in identifying and processing individuals who are subject to return or readmission.[38] On the other hand, as the Provincial Policy Office, *Questura* handles the registration and processing of asylum applications within Italy, which also involves executing deportation orders and facilitating the voluntary return of migrants.[39]

International cooperation is a critical component of Italy's return and readmission policy. The IOM collaborates closely with the Italian government to facilitate voluntary return and reintegration programs, providing logistical support and assistance to migrants. This partnership exemplifies the transnational dimension of migration management, highlighting the importance of coordinated efforts across borders.

[37] AIDA, Ibid.
[38] Ibid.
[39] Ibid.

Non-governmental organisations (NGOs) also play a vital role in the return and readmission process. These organisations offer legal assistance, advocacy, and support services to migrants, ensuring that their rights are protected throughout the return procedure. NGOs often act as watchdogs, monitoring the implementation of return policies and advocating for the humane treatment of migrants.

Furthermore, the EU, such as Frontex, provide operational support and funding for return operations. These agencies ensure that Italy's return and readmission practices align with EU standards and regulations, facilitating a harmonised approach to migration management across member states.

Annexe 2 reflects the related actors briefly explaining their roles with their official institutional websites.

5. International Cooperation Regarding Return and Readmission

Over the past decades, Italy has engaged in numerous bilateral and multilateral agreements, collaborating with various countries and international organisations to facilitate the return of irregular migrants. These agreements often include provisions for the identification, documentation, and repatriation of irregular migrants and commitments from the countries involved to readmit their nationals.

Italy's return and readmission policy is also supported by its active participation in the EU initiatives and frameworks, which provide a coordinated approach to migration management across member states. As part of the EU, Italy benefits from the EU's Readmission Agreements (EURAs), which the European Commission negotiates with third countries. The EU Asylum, Migration and Integration Fund (AMIF) supports Italy's efforts in managing migration, including funding for Assisted Voluntary Return and Reintegration (AVRR) programmes. Also, the IOM facilitates the voluntary return of migrants and provides reintegration assistance to ensure sustainable returns.

Italy's use of bilateral agreements with major immigrant-sending countries has been instrumental in promoting

Annex 3 and **Annex 4** provide the bilateral agreements linked to readmission and the readmission agreements.

6. Annexes

Annex 1: Legal Framework on Returns

Title of the Policy/Legislation in English	The Title in the Original Language and link to the document	Policy Area	Date/Announced Year	Active Period	Key terms	Type of Legislation	Target Group or Immigrant Category
Legislative Decree no. 286/1998 on "Consolidated Act on provisions concerning the Immigration regulations and foreign national conditions norms"	Decreto legislativo 25 luglio 1998, n. 286 "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero" **Link:** https://www.gazzettaufficiale.it/eli/id/1998/08/18/098G0348/sg	general/immmigration, asylum	Published on 18/08/1998	Active from 2/9/1998 Last Amendment on 30/12/2023	illegal entry; illegal stay; return; return decision; removal order; expulsion, forced repatriation; entry ban	Decree-Law	immigrant, irregular migrant, asylum seeker, refugee, rejected asylum seeker
Presidential Decree no. 394/1999 on "Regulation on norms implementing the consolidated act on provisions concerning the immigration regulations and foreign national conditions norms"	Decreto del Presidente della Repubblica del 31 agosto 1999, n. 394 su "Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero" **Link:** https://www.gazzettaufficiale.it/eli/id/1999/11/03/099G0265/sg	general/immmigration, border management	Published on 03/11/1999	Active from 18/11/1999 Last Amendment on 30/12/2023	illegal entry; illegal stay; return; return decision; expulsion, forced repatriation, pre-removal detention; entry ban	Decree	immigrant, irregular migrant, asylum seeker, rejected asylum seeker
Law no. 189 of 30 July 2002 on "Modification to the legislation on immigration and asylum"	Legge 30 luglio 2002, n. 189 sulla "Modifica alla normativa in materia di immigrazione e di asilo" **Link:** https://www.gazzettaufficiale.it/eli/gu/2002/08/26/199/so/173/sg/pdf	general/immmigration, border management	Published on 26/08/2002	Active from 10/09/2002 Last Amendment on 23/02/2005	illegal entry; illegal stay; return; return decision; expulsion, forced repatriation, pre-removal detention; entry ban	Law	immigrant, irregular migrant, asylum seeker, rejected asylum seeker

Legislative Decree no. 251/2007 on "Implementation of Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted"	Decreto legislativo 19 novembre 2007, n. 251 su "Attuazione della direttiva 2004/83/CE recante norme minime sull'attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonche' norme minime sul contenuto della protezione riconosciuta" **Link:** https://www.gazzettaufficiale.it/eli/id/2008/01/04/007G0259/sg	general/asylum	Published on 04/01/2008	Active from 19/1/2008 Last Amendment on 05/05/2023	return policy, voluntary repatriation	Qualification Decree	asylum seeker, refugees, rejected asylum seeker
Legislative Decree no. 25 of 28 January 2008 on "Implementation of Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status."	Decreto legislativo del 28 gennaio 2008, n. 25 su "Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato" **Link:** https://www.gazzettaufficiale.it/eli/id/2008/02/16/008G0044/sg	general/asylum, border management, repatriation	Published on 16/02/2008	Active from 02/03/2008 Last Amendment on 04/12/2023	return procedures; return decision; removal order; expulsion, forced repatriation; entry ban	Legislative Decree	general/asylum seeker, irregular migrant
Decree-Law no. 89 of June 23, 2011 on "Urgent provisions for the completion of the implementation of Directive 2004/38/EC on the free movement of EU citizens and the transposition of Directive 2008/115/EC on the repatriation of irregular third-country nationals"	Decreto-legge del 23 giugno 2011, n. 89 su "Disposizioni urgenti per il completamento dell'attuazione della direttiva 2004/38/CE sulla libera circolazione dei cittadini comunitari e per il recepimento della direttiva 2008/115/CE sul rimpatrio dei cittadini di Paesi terzi irregolari" **Link:** https://www.gazzettaufficiale.it/gazzetta/serie_generale/caricaDettaglio?dataPubblicazioneGazzetta=2011-06-23&numeroGazzetta=144	general/immigration, repatriation, border management	Published on 23/06/2011	Active from 24/06/2011 Amended and converted in Law no. 129 on 02/08/2011	expulsion; application of return procedures; forced repatriation; voluntary repatriation; entry ban	Decree-Law, then Law	irregular migrant rejected asylum seeker

Decree of October 27, 2011 on "Guidelines for the implementation of voluntary and assisted repatriation programs, referred to in Article 14-ter, of Legislative Decree No. 286 of July 25, 1998, introduced by Article 3, paragraph 1, letter e), of Decree-Law No. 89 of June 23, 2011, converted, with amendments, by Law No. 129 of August 2, 2011	Decreto del 27 ottobre 2011 su "Linee guida per l'attuazione dei programmi di rimpatrio volontario e assistito, di cui all'articolo 14-ter, del decreto legislativo 25 luglio 1998, n. 286, introdotto dall'articolo 3, comma 1, lett. e), del decreto-legge 23 giugno 2011, n.89, convertito, con modificazioni, dalla legge 2 agosto 2011, n. 129 **Link:** https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2011-12-31&atto.codiceRedazionale=11A16541	return procedures, voluntary and assisted return	Published 31/12/2011	Active from 01/01/2012 Amended and converted in Law no. 129 on 02/08/2011	voluntary and assisted repatriation, repatriation procedure, expulsion, vulnerable migrants, human traffic victims,	Decree, then Law	irregular migrant, rejected asylum seeker, vulnerable migrant, migrant - human traffic victim
Presidential Decree no. 21/2015 on "Regulation on the procedures for the recognition and revocation of international protection"	Decreto del Presidente della Repubblica del 12 gennaio 2015 su "Regolamento relativo alle procedure per il riconoscimento e la revoca della protezione internazionale a norma dell'articolo 38, comma 1, del decreto legislativo 28 gennaio 2008, n. 25" **Link:** https://www.gazzettaufficiale.it/eli/id/2015/03/05/15G00029/sg	general/asylum, forced return, pre-removal detention	Published on 05/03/2015	Active from 20/03/2015 Last Amendment on 04/10/2018	return; return decision; detention of asylum seekers; pre-removal detention	Presidential Decree	irregular migrant, asylum seeker, rejected asylum seeker
Law no. 47 of 7 April 2017 on "Provisions on protection measures for unaccompanied foreign minors"	Legge n. 47 del 7 aprile 2017 su "Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati" **Link:** https://www.gazzettaufficiale.it/eli/id/2017/04/21/17G00062/sg	general/immigration, asylum	Published on 21/04/1917	Active from 06/05/2017 Last Amendment on 16/01/2018	non-refoulement; voluntary and assisted repatriation; repatriation procedure; expulsion; minors human traffic victims	Law	unaccompanied migrant minor, migrant minor asylum seeker

Decree-Law no. 113 of 4 October 2018 on "Urgent provisions on international protection and immigration, public security, as well as measures for the functionality of the Ministry of the Interior and the organisation and functioning of the National Agency for the administration and destination of assets seized and confiscated from organised crime"	Decreto-legge del 4 ottobre 2018, n. 113 su "Disposizioni urgenti in materia di protezione internazionale e immigrazione, sicurezza pubblica, nonchè misure per la funzionalità del Ministero dell'interno e l'organizzazione e il funzionamento dell'Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata" **Link:** https://www.gazzettaufficiale.it/eli/id/2018/10/04/18G00140/sg	general/immigration, asylum, border management, public order and safety	Published on 04/10/2018	Active from 05/10/2018 Amended and converted in Law no. 132 on 01/12/2018 Last Amendment on 21/06/2023	pre-removal detention; asylum seekers detention; expulsion; return ban; entry ban; Schengen; Dublin procedure; repatriation; safe countries of origin	Decree-Law, then Law	irregular migrant, asylum seeker, rejected asylum seeker
Decree-Law no. 53 of 14 June 2019 on "Urgent provisions on public order and safety"	Decreto-Legge del 14 giugno 2019, n. 53 su "Disposizioni urgenti in materia di ordine e sicurezza pubblica" **Link:** https://www.gazzettaufficiale.it/eli/id/2019/06/14/19G00063/sg	public order and safety	Published on 14/06/2019	Active from 15/06/2019 Amended and converted in Law no. 77 on 08/08/2019 Last Amendment on 30/12/2020	illegal immigration	Decree-Law, then Law	irregular migrant
Ministry of Foreign Affairs and International Cooperation decree of October 4, 2019 on "Identification of safe countries of origin, pursuant to Article 2-bis of Legislative Decree No. 25 of January 28, 2008"	Decreto del Ministero degli Affari Esteri e della Cooperazione Internazionale del 4 ottobre 2019 su "Individuazione dei Paesi di origine sicuri, ai sensi dell'articolo 2-bis del decreto legislativo 28 gennaio 2008, n. 25" **Link:** https://www.gazzettaufficiale.it/eli/id/2019/10/07/19A06239/sg	asylum, immigration, border management, safe countries of origin	Published on 07/10/2019	Active from 23/10/2019	safe countries of origin	Decree	irregular migrant, asylum seeker, rejected asylum seeker

National Commission for the Right to Asylum Circular no. 8864 of 28 October 2019- Safe countries of origin list Article 2 bis LD 25/2008: accelerate procedure Articles 28, 28 bis, 28 ter	Circolare della Commissione Nazionale per il diritto di asilo, Prot. 886 del 28 Ottobre 2019, Lista dei paesi di origine sicuri ex art. 2 bis d.lgs 25/2008; applicazione delle procedure accelerate ex art. 28, 28 bis 28 ter	asylum, immigration, border management, safe countries of origin	Issued on 28/10/2019	Active	safe countries of origin, expulsion	Circular	irregular migrant, asylum seeker, rejected asylum seeker
Decree-Law no. 130 of 21 October 2020 on "Urgent provisions on immigration, international and complementary protection, amendments to Articles 131-bis, 391-bis, 391-ter and 588 of the Criminal Code, as well as measures on the prohibition of access to public establishments, on combating the distorted use of the web and on the discipline of the National Guarantor of the rights of persons deprived of their liberty"	Decreto-legge del 21 ottobre 2020, n. 130 su "Disposizioni urgenti in materia di immigrazione, protezione internazionale e complementare, modifiche agli articoli 131-bis, 391-bis, 391-ter e 588 del codice penale, nonchè misure in materia di divieto di accesso agli esercizi pubblici ed ai locali di pubblico trattenimento, di contrasto all'utilizzo distorto del web e di disciplina del Garante nazionale dei diritti delle persone private della libertà personale" **Link:** https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto-legge:2020;130	general/immigration, asylum, border management, public order and safety	Published on 21/10/2020	Active from 22/10/2020 Amended and converted in Law no. 173 on 18/12/2020 Last Amendment on 02/03/2023	illegal immigration, illegal entry; asylum seekers detention; illegal stay; return; return decision; removal order; expulsion, pre-removal detention, forced repatriation; entry ban	Decree-Law, then Law	irregular migrant, asylum seeker, rejected asylum seeker, vulnerable migrant
Decree Law no. 20/2023 on "Urgent provisions on the legal entry of foreign workers and fight against irregular migration"	Decreto Legge 20/2023 su "Disposizioni urgenti in materia di flussi di ingresso legale dei lavoratori stranieri e di prevenzione e contrasto all'immigrazione irregolare" **Link:** https://www.gazzettaufficiale.it/eli/id/2023/03/10/23G00030/sg	general/immigration, illegal immigration, forced return, border management	Published on 10/03/2023	Active from 11/03/2023 Amended and converted in Law no. 50 on 05/05/2023	application of return procedures; forced repatriation; pre-removal detention	Law	irregular migrant, rejected asylum seeker

Decree-Law no. 124 of September 19, 2023 on "Urgent provisions on cohesion policies, for the relaunch of the economy in the areas of southern Italy, and on immigration"	Decreto-legge del 19 settembre 2023 n. 124 sulle "Disposizioni urgenti in materia di politiche di coesione, per il rilancio dell'economia nelle aree del Mezzogiorno del Paese, nonche' in materia di immigrazione" **Link:** https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2023;124	pre-removal detention	Published on 19/09/2023	Active from 20/09202 3 Amended and converted in Law no. 162 on 13/11/202 3	expulsion, application of return procedures; forced repatriation; pre-removal detention;	Decree-Law, then Law	irregular migrant, rejected asylum seeker

Source: From different sources, this table prepared by the authors

Annex 2: Actors Related Returns and Readmissions

Authority (English and original name)	**Type of government**	**Type of organisation**	**Area of competence in the fields of return**	**Link**
Ministry of the Interior **(Ministero dell'Interno)**	National	Government	Coordinates, monitors, and participates in the planning of the management of readmission, return, deportation or relocation procedures	https://www.interno.gov.it/it
Central Directorate of Immigration and the Border Police of the Ministry of the Interior **(Direzione centrale dell'immigrazione e della polizia delle frontiere del Ministero dell'Interno)**	National	Government	Organises operations of readmission via charter flights, coordinates the escort, the participation of police medical and nursing staff, as well as obtains the consent of the state of destination and of any transit countries so as to complete the operation	https://www.interno.gov.it/it/ministero/dipartimenti/dipartimento-pubblica-sicurezza/direzione-centrale-dellimmigrazione-e-polizia-frontiere
Justice of the Peace **(Giudice di Pace)**	National	Government	Provides authorisation in cases of expulsion order with compulsory accompaniment; measures restricting personal liberty to ensure the execution of voluntary departure; measures ordering detention at a repatriation centre and the order of immediate removal from Italy	https://gdp.giustizia.it/
Frontex	European	Supranational	Organises, coordinates and conducts return operations	https://www.frontex.europa.eu/
IOM Italy **(Organizzazione Internazionale per le Migrazioni in Italia)**	International	International organisation	Organises and implements AVRR	https://italy.iom.int/it
Civil society actors **(Attori della società civile)**	International/ National/ Local	NGOs, International Organisations, etc.	Provide health care and medical treatment services in the detention facilities; Mediate to inform the TCN about the return decision; Provide confirmation of the voluntary departure.	

Source: From different sources, this table prepared by the authors

Annex 3: Bilateral Readmission Agreements of Italy

The title of readmission agreement in English	The title of the readmission agreement in the Original Language	Date of signature	Signatory States
Agreement between Italy and Macedonia for the readmission of persons whose entry and/or stay is contrary to the legislation in force between the two countries	Accordo tra Italia e Macedonia per la riammissione delle persone il cui ingresso e/o soggiorno sia contrario alla normativa vigente tra i due Paesi	26.02.1997	Italy - Republic of Macedonia
Agreement between Italy and Georgia on the readmission of persons	Accordo tra Italia e Georgia sulla riammissione delle persone	15.05.1997	Italy - Georgia
Agreement between Italy and Albania on the readmission of persons at the border, with Executive Protocol	Accordo tra Italia e Albania sulla riammissione delle persone alla frontiera, con Protocollo esecutivo	18.11.1997	Italy-Albania
Exchange of Notes between Italy and Tunisia on the readmission of persons residing without authorisation	Scambio di Note tra Italia e Tunisia sulla riammissione delle persone in posizione irregolare	6.08.1998	Italy-Tunisia
Agreement between Italy and Marocco on the readmission	Accordo tra Italia e Marocco sulla riammissione	27.07.1998	Italy-Morocco
Agreement on readmission and police cooperation between Italy and Tunisia	Accordo relativo alla riammissione e alla cooperazione di polizia tra Italia e Tunisia	13.12.2003	Italy-Tunisia
Cooperation Agreement on Bilateral Labour Migration Flows and Efficient Management of Migration Flows and Prevention of Illegal Migration	Accordo di cooperazione in materia di flussi migratori bilaterali per motivi di lavoro e gestione in modo efficiente dei flussi migratori e prevenzione della migrazione illegale	28.11.2005	Italy - Egypt
Technical arrangements for joint maritime patrols by an Italian-Libyan operational nucleus under Libyan command, carried out by six Italian Guardia di Finanza vessels.	Accordi tecnici di pattugliamento marittimo congiunto da parte di un nucleo operativo italo-libico, a comando libico, effettuato da sei navi della Guardia di finanza italiane	December 2007	Italy - Libya
Cooperation Agreement between Italy and Libya finalising and completing Italian-Libyan cooperation	Accordo di cooperazione tra Italia e Libia che perfeziona e porta a compimento la cooperazione italo-libica	30.08.2008	Italy-Libya
Memorandum of understanding between Italy and Ghana on readmission	Memorandum d'intesa tra Italia e Ghana sulla riammissione	08.02.2010	Italy-Ghana
Memorandum of understanding between Italy and Niger on readmission	Memorandum d'intesa tra Italia e Niger sulla riammissione	09.02.2010	Italy-Niger
Memorandum of understanding between Italy and Senegal on readmission	Memorandum d'intesa tra Italia e Senegal sulla riammissione	28.07.2010	Italy-Senegal
Memorandum of understanding between Italy and Nigeria on readmission	Memorandum d'intesa tra Italia e Nigeria sulla riammissione	12.06.2011	Italy-Nigeria
Memorandum of understanding between the Public Security Department of the Italian Interior Ministry and the national police of the Sudanese Interior Ministry	Protocollo d'intesa tra il dipartimento di pubblica sicurezza del ministero dell'interno italiano e la polizia nazionale del ministero dell'Interno sudanese per la lotta alla criminalità, la gestione delle frontiere e dei flussi migratori e per il rimpatrio.	03.08.2016	Italy-Sudan

for the fight against criminality, management of frontiers, and migration flows and repatriation **Link:** https://www.asgi.it/wp-content/uploads/2017/10/English-Translation-Memorandum-of-Understanding-Sudan-Italy-SL-Clinic-UniTO.pdf			
Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and reinforcing the security of borders between the State of Libya and the Italian Republic. **Link:** https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf	Memorandum d'intesa sulla cooperazione nei settori dello sviluppo, della lotta all'immigrazione clandestina, al traffico di esseri umani e al contrabbando di carburante e sul rafforzamento della sicurezza delle frontiere tra lo Stato della Libia e la Repubblica Italiana	02.02. 2017	Italy- Libya
The agreement between Italy and Tunisia to 'strengthen border control'	L'intesa tra Italia e Tunisia per "rafforzare il controllo delle frontiere"	2020	Italy-Tunisia

Source: From different sources, this table prepared by the author

Annex 4: Italy's Bilateral Agreements Linked to Readmission

Countries	Type of Agreement, Date
Region	**EU& Iceland, Norway, Switzerland and the UK**
Austria	V 01/04/1998
Bulgaria	V 25/12/1998
Croatia	V 01/06/1998
Cyprus	V 22/05/2003; CP V 04/01/2006
Czechia	CP V 15/12/1999
Estonia	V 03/03/1999
France	V 01/12/1999
Greece	CP V 10/01/2000; V 18/04/2001
Hungary	CP V 17/04/1998, V 10/04/1999
Latvia	V 07/11/1997
Lithuania	V 24/02/1999
Malta	V 29/11/2002
The Netherlands	CP V 14/03/2000
Poland	V 01/05/2001
Romania	V 01/02/1998
Slovakia	V 01/01/1999; CP V 06/11/2002
Slovenia	V 01/09/1997
Spain	V 01/02/2001
Switzerland	V 01/05/2000
Region	**Eastern Europe and the Balkans**
Albania	IP V 03/12/2008
Bosnia-Herzegovina	V 12/05/2004; IP V 13/09/2018
Georgia	S 15/05/1997; IP N
Kosovo	V 10/02/2015
Moldova	V 01/05/2004; IP S 12/05/2015
Montenegro	ME S, 09/12/1999; IP V 10/02/2015
North Macedonia	V 23/10/1997; IP V 13/04/2019
Russia	ME S, 20/01/2006; IP V 08/07/2011
Serbia	S 01/04/2005; IP S 13/11/2009
Ukraine	IP N
Region	**North African Countries**
Algeria	S 24/02/2000; V 18/10/2006; CP S 22/11/1999 V 28/01/2008; Declaration S 18/07/2022; CP S 01/02/2024
Libya	AA S 13/12/2000; AA S 03/07/2003; ME S, 18/01/2006; CP S 29/12/2007; ME S, 17/06/2011; EL S, 03/04/2012; ME S, 02/02/2017
Morocco	S 27/07/1998
Tunisia	EL S 06/08/1998; CP S 13/12/2003, AA S 28/01/2009; ME S 05/04/2011
Region	**Other Mediterranean Countries**
Egypt	CP V 18/06/2000; V 25/04/2008
Turkey	CP V 09/02/2001, N
Cote d'Ivoire	EL S 08/02/2018; S 01/10/2018 (JWF); ME S 31/01/2020
Djibouti	ME S 27/06/2012
Ethiopia	S 05/02/2018 (Admission procedures)

Countries	Type of Agreement, Date
Ghana	ME S 08/02/2010
Guinea	S 27/07/2017 (Good Practices Procedure on identification and return)
Niger	ME S 09/02/2010
Nigeria	V 12/06/2011 (migration agreement); ME S 01/03/2017; S SOPs 27/03/2019
Senegal	ME S 28/07/2010; ME S 16/05/2018
Sudan	ME S 03/08/2016
The Gambia	CP S 29/07/2010; ME S 06/06/2015; ME S 26/10/2017; S 01/05/2018 (Good Practices Procedure on identification and return)
Region	**Latin America and the Caribbean**
Colombia	N
Ecuador	N
Mexico	CP V 10/07/2002
Peru	ME S 12/10/2004
Region	**Asia and Oceania**
Afghanistan	S 03/10/2016 (Best practice procedure on identification and return)
Bangladesh	S 30/09/2017 (SOPs)
India	CP V 21/01/2000; N
Iran	N
Uzbekistan	CP V 17/08/2001
Pakistan	S 03/2000
Philippines	V 28/02/2004
Sri Lanka	EL, V 24/09/2001; IP N

Source: Cassarino, Jean-Pierre (2024). "Italy's Bilateral Agreements Linked to Readmission", Available at: https://www.jeanpierrecassarino.com/datasets/ra/it/ (Accessed 1 March 2024) (This address requires registration to the platfor and permission from J. P. Cassarino).

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Dr N. Ela Gökalp Aras is a senior researcher and the principal investigator (PI) of the GAPs Project at the Swedish Research Institute in Istanbul (SRII), Sweden/Türkiye. She is the co-leader of the WP2 (Legal and Policy Frameworks of Returns in the EU) of the GAPs Project.
Dr Kamila Kowalska, is an assistant professor at the Institute of Political Science at University of Gdańsk and associated researcher at the Centre of Migration Research at the University of Warsaw (UW), Poland.
Umutcan Yüksel is a researcher at the Swedish Research Institute in Istanbul (SRII), Sweden/Türkiye

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COUNTRY SNAPSHOT

Legal and Policy Infrastructures of Returns in Hungary

D2.1

Anna Trylińska, Mateusz Krępa, Marta Pachocka, Tomasz Sieniow

Centre of Migration Research, University of Warsaw

1. Statistical Overview Regarding Returns and Readmissions at the National Level

Two authorities collect data regarding Returns and Readmissions in Hungary – the National Directorate-General for Aliens Policing (NDGAP; in Hungarian: *Országos Idegenrendészeti Főigazgatóság*, OIF) and the Ministry of the Interior. There is open but limited access to certain data.

Year	**Stock of irregular migrants (# TCNs found to be illegally present) (data in Eurostat)**	**# Asylum applications**	**# TCNs/foreign nationals* refused entry at the border**	**# pushbacks (if available)** (unofficial data by NGOs also acceptable; please indicate the data source)	**# TCNs/foreign nationals* ordered to leave – Total**
2015	424055	177135	11505		2603
2016	41560	29432	9905		3274
2017	25730	3397	14010		1057
2018	18915	671	15050		824
2019	36440	500	14240		976
2020	89370	117	36500		1169
2021	134140	40	34650		1532
2022	222515	46	15780	158565	1478
Data sources:	Eurostat	NDGAP/OIF	Eurostat	AIDA	NDGAP/OIF

2. General Legal Framework[1]

Hungary has one of the most restrictive immigration laws in the European Union. Act II of 2007 on the entry and stay of third-country nationals was amended several times. The new immigration law was supposed to enter into force on 1 January 2024 with a two-month grace period. The application of the new regulations entered into force on 2 March 2024, but the implementation rules (executive decrees and detailed provisions) have not yet been announced[2]. The NDGAP was closed during January and February 2024. During this interim period, no new application could be submitted. The NDGAP resumed decision-making operations in March 2024. To ease the transition, all residence cards expiring before March will be automatically renewed until the end of April 2024. Act XC of 2023 introduced major changes in the immigration law in Hungary. The government introduced new purposes for stay in Hungary while eliminating some previous purposes for stay. The new rules are stricter than before 2024, for example, regarding new types of work permits, immediate return of migrants, so-called 'golden visa', and limited categories of migrants who can proceed with family reunification.

The main rules and principles of the Hungarian return procedure can be found in:

- Act XC of 2023 on general rules for admission and right of residence of third-country nationals (hereinafter: Act on foreigners),
- Act VI of 2018 to amend certain laws on measures to combat illegal immigration,
- Act XX of 2017 amending certain acts to tighten the procedures conducted on the border,
- Government Decree no. 114/2007 (V. 24.) on the implementation of Act II of 2007 on the entry and stay of third-country nationals (related to the Act II of 2007) (valid till 29 February 2024),
- Act II of 2007 on the entry and stay of third-country nationals (valid till 29 February 2024).

As a rule, two authorities may issue a decision on return (art. 97 of Act XC on foreigners): the court or the police. The court imposes an obligation to leave the country on a foreigner who has committed a crime – as a punishment or after serving a prison sentence. The Act provides for a limited group of foreigners who are expelled in this way. Act XC on foreigners stipulates reasons for the issuance of the return decision to a foreigner, that is who performed work without the required work permit, or the permit required by this Act, whose entry and stay violates or endangers national security, public safety or public order, or whose entry and stay harms or endangers public health. A foreigner whose residence permit application was rejected has 30 days to leave the country. Hungary does not provide free of charge legal assistance to foreigners but aids with legal advice (with an interpreter if necessary[3]). Foreigners can use legal assistance at their own expense and have a right to appoint a legal representative in immigration police procedures related to deportation. However, a foreigner may, upon request, use the free legal assistance specified in the law to challenge the decision to order

[1] Nemzeti Jogszabálytár, 2023. évi XC. törvény, https://njt.hu/jogszabaly/2023-90-00-00.
[2] European Commission, European Website on Integration, *Hungary: New immigration law affects residence permits*, accessed March 18, 2024, https://migrant-integration.ec.europa.eu/news/hungary-new-immigration-law-affects-residence-permits_en.
[3] Art. 219 of Act XC on foreigners.

deportation by the immigration police in an administrative court[4]. It is important to note there is no appeal against the decision ordering expulsion[5]. Foreigners can submit a complaint to the administrative court within 8 days. The court decides on the claim within 15 days from the date of receipt of the complaint at the court. The court puts down the verdict in writing within 3 working days and communicates it electronically to the immigration enforcement authority. The Hungarian law does not provide a path for further legal remedies against the administrative court's judgment. The Act on foreigners does not specify obstacles to return. However, Act no. LXXX of 2007, Act on Asylum[6] specifies obstacles to return, i.a., it may not be ordered or carried out to the territory of a country which is not considered a safe country of origin or a safe third country for the person concerned, and there is no safe third country which would receive him/her. In case there is no safe country of return, the foreigner can be granted a humanitarian stay.

Overview of the Legal Framework on Return Policy (Legislation Mapping)

The Title of the Policy/Legislation in English	The Title in the Original Language	Policy Type/Area	Date/Announced Year	Active Period *(note down if it is expired or repealed)*	Description of Policy or Short Overview	Key terms for search function (readmission, removal criteria, alternatives to detention etc.)	Level of Legislation	Type of Legislation or Administrative Action	Target Group or Immigrant Category	If the policy is origin country or nationality specific, note down the country name (e.g. Iraq) or nationality name (e.g. Palestinians)	Department or Agencies or National Law Enforcement mentioned in the Policy/Legislation (Optional)	Web Links to Source in English	Web links to Source in Original Language
Fundamental Law of Hungary, 25 April 2011	Magyarország Alaptörvénye, 2011. április 25.	fundamental law	2011	from 2011 to now		fundamental rights	National	Fundamental Act	Humans	no	no	https://www.parlament.hu/documents/125505/138409/Fundamental+law/73811993-c377-428d-9808-ee03d6fb8178	
Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (Third-Country Nationals Act or TCN Act)	2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról	regular and irregular immigration	2007	from 2007 to 29/02/2024 (many amendments)	legalization of stay of non-EU, types of residence permit, deny of it	deportation	National	Act	Economic migrants	no	no	https://thb.kormany.hu/download/9/ec/a0000/10_Act%20II%200f%202007%20and%20Government%20Decree%20114_2007.pdf	
Act XC of 2023 on General Rules for Admission and Right of Residence of Third-Country Nationals		regular and irregular immigration	2024	March 1st, 2024-now	legalization of stay		national						
Government Decree 114/2007 on the Implementation of ThirdCountry Nationals Act (TCN)		regular and irregular immigration	2007	from 2007 to 29/02/2024)	legalization of stay		National	Decree	Economic migrants	no	no	https://thb.kormany.hu/download/9/ec/a0000/10_Act%20II%200f%202007%20and%20Government%20Decree%20114_2007.pdf	https://ec.europa.eu/migrant-integration/library-document/government-decree-1142007-v-24-implementation-act-ii-2007-

[4] Art. 220 of Act XC on foreigners.
[5] Art. 101 of Act XC on foreigners.
[6] Art. 45 of Act no. LXXX of 2007, Act on Asylum.

													entry-and-stay-third-0_en https://www.refworld.org/docid/5da701504.html
Act LXXX of 2007 on Asylum (Asylum Act)	2007. évi LXXX. törvény a menedékjogról	asylum	2007	from 2007 to now (many amendments)			National	Act	Asylum seekers, refugees	no	no	2007. évi LXXX. törvény - Nemzeti Jogszabálytár (njt.hu)	https://www.ecoi.net/en/file/local/1353572/1930_1400659917_5371cb504.pdf
Act LXXXIX of 2007 on the State Border	2007. évi LXXXIX törvény az államhatárról	Illegal / immigration /Asylum	2007	from 2007			National	Act	Irregular immigrants/Asylum seekers	no	no	https://njt.hu/jogszabaly/2007-89-00-00	
Bill No. T/333 amending certain laws relating to measures to combat illegal immigration		Illegal immigration					National	Decree	Irregular immigrants	no	no		https://helsinki.hu/wp-content/uploads/T333-ENG.pdf
269/2015. (IX. 15) Government Decree announcing a crisis situation caused by mass immigration and establishing the rules related to the declaration, maintenance and termination of the crisis situation		Migration management	2015				National	Act	Asylum seekers, irregular migrants	no	no		https://www.ecoi.net/en/file/local/1304414/1930_1442909015_55f90f614.pdf
Government Decree 276/2011 (XII. 20.)		Migration management	2011				National	Decree		no	no		
Government Decree 409/2012 (XII. 28.) Korm		Migration management	2013				National	Decree		no	no		
Government Decree 411/2017 (XII. 15.) Korm		migration management	2018				National	Decree		no	no		
36/2024. (II. 29.) Government decree amending emergency government decrees in connection with the law on the general rules for the entry and residence of third-country nationals	36/2024. (II. 29.) Korm. rendelet A harmadik országbeli állampolgárok beutazására és tartózkodására vonatkozó általános szabályokról szóló törvénnyel összefüggésben veszélyhelyzeti kormányrendeletek módosításáról	migrants	2024				National	Decree		no	no		

Source: Own elaboration.

3. Institutional Framework

The authority responsible for policymaking in the field of immigration is the Ministry of the Interior. Within its structure, the body responsible for matters of immigration and asylum is the National Directorate-General for Aliens Policing (NDGAP)[7]. The Head of the NDGAP is the only authority dealing with administrative duties related to visas, residence permits, asylum, and citizenship. The NDGAP is also responsible for running detention centres. The NDGAP, in managing migration, works in close partnership with the Police, military and civil security services. The Police have responsibility for border control, removal, return procedures and monitoring detention. The courts impose an obligation to leave the country on a foreigner who has committed a crime – as a punishment or after serving a sentence in prison. The courts also examine the complaints against the return decisions

List of Authorities Involved in the Migration Return Governance

Authority	Tier of government (national, regional, local)	Type of organisation	Area of competence in the fields of return (Briefly explain the role)	Link
Ministry of the Interior	National	Government	Coordinates, monitors and participates in the planning of the management of readmission, return, deportation or relocation procedures.	https://2010-2014.kormany.hu/en/ministry-of-interior
National Directorate-General for Aliens Policing	National	Government	Processes temporary and permanent residence permits, runs detention centers.	http://www.bmbah.hu/index.php?lang=en
Regional Directorate	Regional	Government	Process temporary residence permits in the region.	-
Directorate of Refugee Affairs	National	Government	Process asylum cases.	http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=521&Itemid=728&lang=en
Police	National/Regional	Government	Issues return and administrative expulsion decisions, implements removal operations.	https://www.astynomia.gr/?lang=en
Courts	Regional	Regional government	Decides about removal.	https://www.ypes.gr/apokentromeni-dioikisi-aytodioikisi/
IOM Hungary	International	International Organization	Organizes and implements AVRR.	https://hungary.iom.int/

Source: Own elaboration.

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[7] Sections 1, 2 and 4 of the Government Decree no. 126/2019 (V.30.) on the appointment of the aliens policing body and its powers.

4. International Cooperation

List of Readmission Agreements and Return-Related Legal or Policy Documents/Tools

	Type of Bilateral Agreements and Negotiations	Title	Signatory State/Target Third Country	Date	
				Signature	Entry into force
1	Standard Readmission agreements signed				
1.1.		Agreement between the Swiss Federal Council and the Government of the Republic of Hungary about the takeover and handing over people at the state border	Hungary/Switzerland	4.02.1994	08.06.1995
1.4		Act V of 1996	Hungary/Austria	08.10.1992	20.04.1995
1.5		Act VII. of 1996	Hungary/Czech	1995	05.08.1996
1.6		Act XX of 2005	Hungary/Greece	-	01.05.2005
1.8		Act XXVIII of 2002	Hungary/Latvia		04.05.2002
1.9		Act VII of 2004	Hungary/Slovakia	-	13.11.2004
1.10		Act LXXXI of 1999	Hungary/Slovenia		30.06.1999
1.11		Agreement between the Government of the Republic of Poland and the Government of the Republic of Hungary on the transfer and reception at the state border of persons staying without permission	Poland/Hungary	25.11.1994	05.08.1995
1.13		Act LXXVII of 1999	Hungary/Bulgaria		1999
1.14		Act XXXV of 2003	Hungary/Croatia	-	15.11.2001
1.15		Act LX of 2002	Hungary/Romania		30.11.2002
1.18			Hungary//Bosnia and Herzegovina	18.09.2007	1.01.2008
			Hungary/Montenegro	18.09.2007	1.01.2008
1.19			Hungary/Russia	25.05.2006	1.06.2007
1.20			Hungary/Georgia	22.10.2010	2.03.2011
1.21			Hungary/Pakistan	26.10.2009	1.10.2010
1.22			Hungary/Albania	14.04.2005	1.05.2006
		Act LXXXVII of 2012	Hungary/Kosovo	15.05.2012	09.08.2012
1.23			Hungary/Armenia	19.04.2013	1.01.2014/
1.24			Hungary/Azerbaijan	28.02.2014	1.09.2014
1.25		Agreement between the European Union and the Republic of Belarus on the readmission of persons residing without authorisation	Hungary/Belarus	8.01.2020	1.07.2020
1.26			Hungary/North Macedonia	18.09.2007	1.01.2008
1.27			Hungary/Moldova	10.10.2007	1.01.2008
1.28			Hungary/Serbia	18.09.2007	1.01.2008
1.29			Hungary/Turkey	16.12.2013	1.10.2014
1.30			Hungary/Cape Verde	18.04.2013	1.12.2014
1.31			Hungary/Hongkong	27.11.2001	1.03.2004
1.32			Hungary/Makao	13.10.2003	1.06.2004
1.33			Hungary/Ukraine	18.06.2007	1.08.2008
1.34		Act XXXIII of 2006	Hungary/France	-	30.09.1998

Source: Own elaboration.

5. Memorandum of Understanding between Austria, Serbia and Hungary[8]

Austria, Serbia and Hungary signed on 16 November 2022, the memorandum of understanding on enhancing trilateral cooperation in effectively combating illegal immigration. The memorandum is a short 4-page document. Countries agreed on cooperation in the following areas:

- protection of the Serbia-North Macedonia border (focusing on migrant smuggling, human trafficking, and other forms of organised crime and terrorism),
- Austria and Hungary would contribute to the protection of the above-mentioned border by deploying personnel, sharing knowledge, innovative technic border controls and education and training,
- Austria and Hungary would support Serbia in the process of returning migrants to their country of origin with respect to national and international legislation (i.a., cooperation in the organisation of return flights),
- Austria and Hungary appreciate that Serbia will finish the visa exemption regime with Burundi, Tunisia and India (already finished by the end of 2022),
- Austria and Hungary would consider further support in the field of border protection and prevent migrant smuggling through the border of Serbia with high migration pressure (i.a., additional human resource support),
- Austria and Hungary would invite the EU to provide additional support to Serbia (i.a., financial) to protect the border.

On 7 July 2023, Austria, Hungary, and Serbia signed a Memorandum of Understanding on strengthening trilateral cooperation in areas of effective fighting illegal migration, which is a continuation of the above Memorandum[9].

[8] Magyarország Kormánya, *Memorandum of understanding between Hungary, the Republic of Austria and the Republic of Serbia*, accessed March 18, 2024, https://cdn.kormany.hu/uploads/sheets/4/40/401/401caa8f29ba9d15b989ae2be2b7ed9.pdf.
[9] Влада Србије, *Strengthening cooperation with Austria, Hungary in fight against illegal migration*, accessed March 18, 2024, https://www.srbija.gov.rs/vest/en/209541/strengthening-cooperation-with-austria-hungary-in-fight-against-illegal-migration.php.

About the Authors

Anna Trylińska is a Researcher at the Centre of Migration Research, University of Warsaw, a PhD candidate at The Institute of Law Science, Polish Academy of Science, and an immigration lawyer.

Mateusz Krępa is a Researcher at the Centre of Migration Research, University of Warsaw and a PhD candidate at the University of Warsaw.

Marta Pachocka (PhD) is an Assistant Professor at the Centre of Migration Research, University of Warsaw and SGH Warsaw School of Economics, and a Principal Investigator in GAPs in Poland.

Tomasz Sieniow (PhD) is an Assistant Professor at the Centre of Migration Research, University of Warsaw and The John Paul II Catholic University of Lublin, and a President of the Board of The Rule of Law Institute Foundation in Lublin.

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National Centre for Social Research (EKKE) (Greece)
Association Migration Internationale (Morocco)
Toronto Metropolitan University (Canada)
University of Nigeria (Nigeria)
Bilim Organization for Research and Social Studies (Afghanistan)
Uniwersytet Warszawski (Poland)
Migration Matters EV (Germany)
University of Sousse (Tunisia)
SPIA UG (Germany)
University of Glasgow (UK)

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