

Towards a common EU system for returns

SUMMARY

An effective return policy that removes from the EU third-country nationals who do not have the right to stay on EU territory is key for ensuring the consistency and credibility of the EU's migration policies. Such a return policy requires common rules and procedures in the EU Member States, implemented in accordance with fundamental rights obligations and respecting the principle of *non-refoulement*, as well as a robust cooperation framework with third countries that are willing to accept returnees.

Efforts to increase the number of returns have been a continuous element of EU migration policy for the past 20 years. However, the return of third-country nationals remains a challenge, as only about one in three persons who are ordered to leave the EU are effectively returned to a third country. The limited effectiveness of the return policy is due to several challenges that the EU and Member States face when carrying out return procedures. Those challenges relate to difficulties in implementing return procedures in the Member States (internal dimension) as well as a lack of cooperation on readmission by third countries (external dimension).

Since the 2015 peak in arrivals of asylum-seekers and irregular migrants, the EU and its Member States have significantly stepped up efforts to build a more efficient return policy. Broad changes have been made in the internal and external dimensions of EU return policy, which include strengthening the EU legislative framework on return and putting in place operational and practical tools.

The European Parliament has consistently stressed the need to improve the effectiveness of the EU's return policy, insisting on full compliance with fundamental and procedural rights. It has also stressed the importance of concluding formal EU readmission agreements with third countries, coupled with EU parliamentary scrutiny and judicial oversight.



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Introduction

The EU's policy on the return of third-country nationals who do not have the right to stay in the EU is an integral part of the EU's migration management system, alongside policies on border management and a common asylum system. The EU's return policy has two main dimensions: an internal dimension – concerned with common rules and procedures on return implemented by the Member States – and an external dimension, covering cooperation agreements and arrangements between the EU and third countries on return and readmission.

[Directive 2008/115/EC](#) (Return Directive) lays down common rules and procedures on return, which are implemented by the Member States. These include rules on issuing return decisions, enforcement of these decisions (by means of voluntary return or forcible return), issuing entry-ban decisions, and the use of detention. These measures should be implemented in accordance with fundamental rights obligations, including the best interests of the child, family life, the state of health of the person concerned and respect for the principle of *non-refoulement*.

Effective implementation of the EU's return policy also requires a robust cooperation framework with third countries that are willing to accept returnees. The EU and its Member States have made sustained efforts to develop such cooperation, which has led to the conclusion of 18 legally binding EU readmission agreements (EURAs).¹

Continuous [pressure on the EU's external borders](#) in the last decade has set in motion a process for a comprehensive reform of the EU migration system, including dedicated actions and proposals to improve the return policy through its internal and external dimensions.

Return statistics

According to [Eurostat](#) data, only about one in three persons who are ordered to leave the EU27+ area² are effectively returned to a third country. Between 2013 and 2022, Member States issued 4.3 million return orders, out of which only 1.3 million led to effective returns (including both voluntary and forced returns). After several years of decline, the number of return orders and of effective returns started to increase in 2022 (see Figure 1). According to preliminary data, in the first two quarters of 2023, Member States issued 222 120 return orders and returned 55 225 third-country nationals.

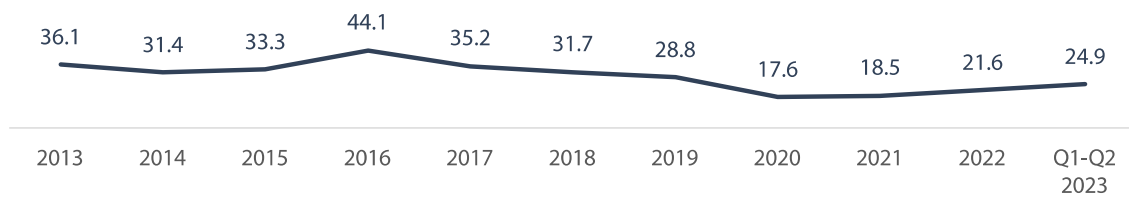
Figure 1 – Annual number of return decisions and effective returns for the EU27+ area (in thousands)



Data source: Eurostat.

Over the 2013-2022 period, the return rate (the proportion of return decisions issued to the number of returns carried out) in the EU27+ area was 30.2 %. The annual return rate has stayed below this overall rate since 2019. In the first two quarters of 2023, the return rate was about 25 % – the highest since 2020 (see Figure 2).

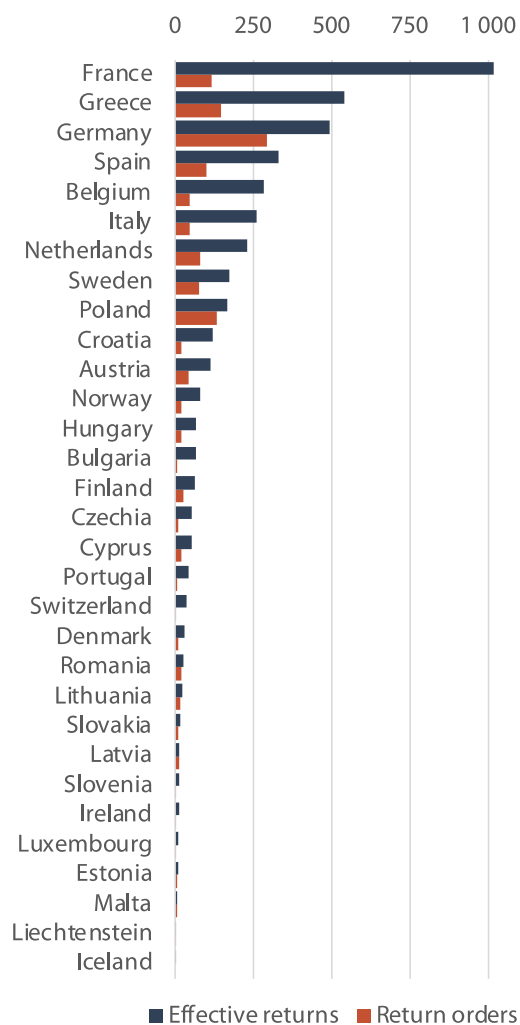
Figure 2 – Annual return rate for the EU27+ area (in %)



Data source: Eurostat.

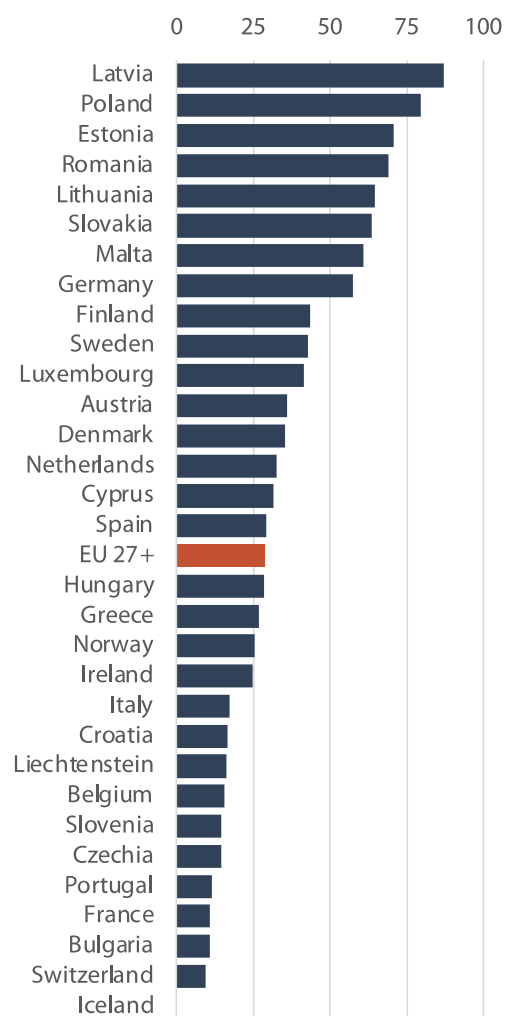
Regardless of these general trends, the return statistics vary significantly between Member States. The number of return orders issued by the top four countries in the 2013-2022 period – France (more than a million), Greece (540 000), Germany (492 000), and Spain (330 000) – amounted to over half of all return orders issued in the EU27+ area (see Figure 3).

Figure 3 – Cumulative number of return decisions and effective returns between 2013 and 2022 (in thousands)



Data source: Eurostat.

Figure 4 – Country-specific return rates for the 2013-2022 period (in %)



Data source: Eurostat.

Similarly, the number of returns carried out by the top four countries – Germany (295 000), Greece (147 000), Poland (134 000), and France (116 000) in the 2013-2022 period amounted to half of all the returns carried out from the EU27+ area.

These discrepancies also affect the return rates of the Member States, although not in a straightforward way. In fact, most of the countries with high overall return rates are not among the countries with significant numbers of either return orders issued or effective returns (see Figure 4). For example, Latvia has an overall return rate of 87 %, though it had issued only about 14 600 return orders in the 2013-2022 period. Poland and Germany are the only countries with a significant number of return orders issued (over 165 000) that also have an overall return rate above 50 %.

The return statistics should be used with caution as they do not fully capture the complexity of the [return procedure](#). For example, the statistics include people who cannot be returned because there is a moratorium on returns to a specific country. The statistics can also be [slow and incomplete](#), lacking data for several Member States. Furthermore, Eurostat return statistics cover enforced and 'voluntary return', referring to a third-country national complying voluntarily with the obligation to return, i.e. 'voluntary departure'; purely 'voluntary' returns (without a return decision) are difficult for Member States to capture. Generally, relying solely on the return rate to assess the effectiveness of return policies may encourage a policy of 'return at all costs'.³ According to the [European Commission](#), the variation between Member States' rate of return 'does not necessarily reflect the effectiveness of return systems, but may also be due to different approaches in collecting and processing data. Aside from internal factors, the migration mix can have a significant influence given the diverse levels of cooperation also on return and readmission between third countries of origin.' The [European Parliament](#) also highlighted that 'the effectiveness of the Return Directive should be measured by referring to the return rate as well as by the sustainability of returns and implementation of fundamental rights safeguards, the respect for procedural guarantees and the effectiveness of voluntary return'.

Key challenges

As shown in the previous section, the return of third-country nationals who do not have the right to stay in the EU remains a challenge. According to the [Commission](#), the limited effectiveness of return policies is due to several challenges that the EU and Member States face when carrying out return procedures. These challenges are internal – relating to difficulties in implementing return procedures in the Member States – as well as external, mainly caused by a lack of [cooperation on readmission](#) by third countries.

Challenges in return procedures within the EU

According to the 2020 EPRS [implementation assessment study](#), Member States have taken different approaches to implementing key aspects of the Return Directive, which affect the effectiveness of returns and the standards of protection. This is partly because the Directive allows for different interpretations of key concepts or relying on national rules when implementing the EU procedure. For example, the Return Directive allows Member States not to apply the Directive to people who are refused entry in accordance with Article 14 of the Schengen Borders Code (SBC), who have been apprehended/intercepted 'in connection with the irregular crossing' of the external borders. This provision raises issues with regard to different interpretations of what is considered 'in connection with the irregular border crossing' and creates parallel procedures⁴ (based on either the Directive or SBC), which may reduce legal certainty.

The Directive obliges Member States to issue a return decision to any person staying irregularly on their territory; however, 'irregular stay' is defined as the presence on the territory of a Member State of a person who does not fulfil, or no longer fulfils, the conditions of entry set in the SBC or the other conditions for entry, stay, or residence in that Member State – which may vary between Member States.

The Directive also provides that voluntary return should be used as a rule, but allows for broad grounds upon which a voluntary departure option can be refused, resulting in different practices among Member States. Another example is that the Directive does not regulate the time period for appealing a return decision, and states have adopted varying (and sometimes multiple) deadlines depending on the reason for return. With regard to removals, the EPRS study found that they vary in terms of the degree of force, form of escorts used, and scope of escorting.

In its 2018 [report on the effectiveness of return in EU Member States](#), the European Migration Network (EMN) also found that national practices implementing the Return Directive vary between Member States. This diversity is also reflected in [CJEU case law](#) on return. The reason for this is differences in administrative practices and interpretations of EU rules. For example, inconsistent definitions and interpretations of the risk of [absconding](#) and of the use of detention allow certain third-country nationals subject to return procedures to abscond, resulting in [secondary movements](#). The lack of cooperation on the part of the third-country nationals, which also includes making contradictory statements relating to nationality, or the destruction of identity papers, hampers return procedures. The EMN report also cites other challenges Member States are facing when applying EU rules on return, such as the difficulty in arranging voluntary departures in the timeframe defined in EU rules and standards; the capacity and resources needed to detain third-country nationals in the context of return procedures; and the length of the return procedure, in particular when the decision is appealed.

According to a 2023 [policy document](#) on return, drafted by the Commission, Member States face important bottlenecks and lack of coordination among actors in the return process, including significant misalignment between asylum and return procedures. For example, the decisions ending legal stay do not always result in a return decision, and non-compliance with a period for voluntary return does not always result in forced return. Other obstacles, mentioned also in the 2021 European Court of Auditors (ECA) [report](#), include lengthy asylum, administrative and judicial procedures, difficulties in preventing absconding, insufficient resources to manage the return procedures, insufficient capacity in pre-removal detention centres and limited administrative capacity to follow up on return decisions.

One of the obstacles to effective returns highlighted by the [2015 action plan on return](#) was the insufficient exchange of information on return decisions and entry bans between Member States and the lack of mutual recognition of Member States' return decisions. In these circumstances, it is possible for third-country nationals under an obligation to leave the EU to avoid return by moving to another Member State. According to the action plan, in such situations Member States should either return the person to the Member State from which the third-country national arrived (where a bilateral readmission agreement exists); issue its own return decision; enforce the decision themselves in application of [Council Directive 2001/40/EC](#) on mutual recognition of return decisions; or grant an authorisation or right to stay (according to Article 6(4) of the Return Directive). The main challenge invoked for mutual recognition is the difficulty in knowing whether another Member State effectively issued a return decision and whether that decision is enforceable.

In its 2019 [policy note](#), the European Council on Refugees and Exiles (ECRE) discusses the complexity of returns by adding that there are irregular migrants who do not fit into existing legal protection categories or whose applications are not fairly treated, or who are highly vulnerable. Those people might have a genuine need for international protection or could have other grounds to stay, such as the best interests of the child or family reunification. All these factors may make return more challenging.

As highlighted in a 2021 [analysis](#) on the new design of the EU's return system, challenges are likely to remain even with the changes proposed by the [pact on asylum and migration](#), such as persistent deficient transposition of the Return Directive as well as the fact that Member States' practices still diverge on who should be returned; how the return should take place; and where to return safely.

Challenges in readmission cooperation with third countries

The obligation for states to readmit their citizens is presumed to exist in international customary law. Article 13 of the 1948 UN [Universal Declaration of Human Rights](#) enshrines the right to return to one's own country, the corollary of which must be the obligation of the state to allow one to do so. Readmission agreements do not establish the state's obligation to readmit its citizens, but merely facilitate this process. By contrast, the readmission of third-country nationals, i.e. nationals other than those of the contracting parties, and stateless persons, does not constitute an obligation under customary international law.⁵

As mentioned by the [Commission](#), efficient return policy relies heavily on [readmission cooperation](#) with third countries. The success of the readmission process largely depends on the quality, speed and effectiveness of the assistance provided by partner countries for identification of irregular migrants, for the issuance of travel documents and for acceptance of returnees. Lengthy and unclear procedures increase the risk of absconding and make returns more difficult. Moreover, certain third countries reject non-voluntary returns or limit them only to specific categories (e.g. criminal offenders), or do not acknowledge readmission requests at all.

The 2021 ECA [report](#) on EU readmission cooperation with third countries lists several key challenges when dealing with third countries during the readmission process. These include:

- various restrictions regarding the types of accepted documents;
- insufficient administrative capacity or lack of willingness to cooperate;
- difficulties in ascertaining the nationality of third-country nationals;
- travel documents issued with short validity, or even only for the specific day of return;
- refusal of European travel document for return;
- visa requirements for escorting officers and obstructive procedures for issuing visas;
- quantitative limits (number of flights per month, or returnees per flight); and
- restrictions on accepted means of transport (limiting use of ferries, boats, charter flights, or airline companies).

Moreover, the Council's 2022 [non-paper](#) on a strategic approach to readmission mentions several factors which can influence the quality of cooperation with partner countries. These factors are: the overall relationship and engagement of a specific country with the EU and its Member States; the presence of incentives and leverage by the EU and its Member States; the internal political environment and relations between stakeholders; the capacity to identify, readmit and reintegrate the returnees and the perception of returns and returnees in public opinion and society.

According to the 2020 EPRS implementation assessment study, faced with resistance from third countries to commit to readmission agreements the EU has increasingly resorted to informal cooperation in the external policy dimension. This is reflected in operationalising returns and the rising prominence of Frontex (the European Border and Coast Guard Agency) in the field of return and in the external dimension. The downside of this approach is that informal agreements on return – such as many [Frontex Working Arrangements](#) – contain minimal references to fundamental rights. These informal agreements also raise issues of accountability. For example, they leave 'limited avenues for ex ante budgetary accountability by the Parliament for [EU Trust Funds](#) directed towards EU external migration policy'.

Policy developments

Efforts to increase the number of returns have been a continuous element of EU migration policy for the past 20 years. In the beginning, EU action on return policy focused mainly on fostering cooperation among Member States. Measures included [mutual recognition of return decisions](#) and [compensation for the financial imbalances](#) resulting from that recognition; establishing a [uniform European travel document for return](#); rules on the [organisation of joint flights for removals](#) and on mutual assistance between Member States [in cases of transit for removal by air](#); and creation of an

[immigration liaison officers network](#). In 2008, the Parliament and Council adopted a directive on [common standards and procedures](#) in Member States for returning illegally staying third-country nationals.

After the 2015 [peak in arrivals](#) of asylum-seekers and irregular migrants and the adoption of the [European agenda on migration](#), the EU and its Member States significantly stepped up efforts to build a more efficient return policy. The justifications cited included [low numbers of returns](#) and the argument that the significant enforcement deficit they revealed represented an incentive for irregular entry into the EU. The European Commission's Directorate-General for Migration and Home Affairs adopted a [strategic plan 2016-2020](#), according to which the outcomes of return-oriented efforts should be measured in the form of an annual return rate. The goal was to significantly increase the rate by 2020, from a baseline of 40 % in 2014.⁶ To achieve this, broad changes were made to the internal and external dimensions of EU return policy in the following years. In parallel to strengthening the EU legislative framework on return, operational and practical tools have been put in place.

Internal dimension

In September 2015, the Commission released an [action plan on return](#) to assist Member States with enforcing removals. It was intended to raise the return rate in the EU in the short and medium term, prioritising voluntary return over forced return. Two years later, given the surge in immigration that occurred in the latter part of 2015 and 2016 and the lack of progress on increasing the return rate, the Commission published a [revised](#) action plan on return, supplemented with a [return handbook](#) providing practical guidance for national authorities competent for carrying out return-related tasks.

However, none of the proposals put forward by the Commission in the area of return in the last decade seem to have had a clear impact on the [EU's return rate](#), which kept decreasing after 2016 (see section above). Aiming to improve those figures, in 2018 the Commission presented a proposal for a [targeted revision](#) of the EU Return Directive, which seeks to harmonise different national procedures and reduce the risk of absconding. The proposed changes concern provisions relating mainly to voluntary departure (Article 9), entry bans (Article 13), remedies (Article 16) and detention of returnees (Article 18). The Commission also proposes to introduce new provisions defining the risk of absconding (Article 6), imposing on Member States an obligation to cooperate on returnees (Article 7) and an obligation to create a return management system (Article 14), and creating a border return procedure (Article 22).⁷ Some of these proposed changes have been substantially modified through specific provisions included in the proposal on the [Asylum Procedure Regulation](#), as amended by the Commission's [pact on asylum and migration](#), put forward in September 2020.

The pact also seeks to set up a common EU system for return by creating an EU Return Coordinator position and by establishing a High-Level Network for Return. It also introduces a new [screening procedure](#) and a mandatory [return border procedure](#) to prevent unauthorised entry into the EU and accelerate returns. One of the main novelties introduced by the pact is the creation of a 'seamless link' between asylum and return policies, which promises to contribute to a 'quicker return of third-country nationals without a right to remain in the Union'. The pact also introduces new possibilities for Member States to provide assistance to each other in carrying out returns. It envisages the implementation of the solidarity principle in the form of [return sponsorship](#) schemes, under which a Member State commits to supporting returns from another Member State. Combined with the new legal framework put forward in the pact, the Commission sees assisted voluntary return as the crucial element in the common EU system for returns. To this end, it proposed a [strategy](#) to develop a more uniform and coordinated approach among Member States in carrying out tasks related to voluntary return and reintegration.

Significant new competences on returns have also been granted to the [European Border and Coast Guard](#) (EBCG). Launched in 2016 with the objective of expanding the mandate and operational capacity of Frontex, the EBCG has been given additional powers for organising, coordinating and

executing return-related activities of Member States. The [European Centre for Returns](#) was created within Frontex as an integrated system of return management, while the EBCG has been progressively taking over activities from the existing Member State networks: the [European Integrated Return Management Initiative](#), the [European Return Liaison Officer](#) and the [European Return and Reintegration Network](#).

External dimension

Reform of the internal dimension alone will not be sufficient to increase the efficiency of returns, given that the cooperation of the countries of origin is essential. The EU and its Member States have been trying to build up such cooperation by negotiating and concluding readmission agreements and arrangements; so far, the EU has concluded 18 legally binding EU readmission agreements and all of them apply to both nationals and third-country nationals. Not only are there [issues with the implementation](#) of existing readmission agreements, but, as pointed out by the 2021 ECA report, during the 2015-2020 period the EU also achieved limited progress in concluding negotiations of new EU readmission agreements.

Third countries may be reluctant to engage in negotiations about concluding a readmission agreement and it can take several years to reach one. One of the difficulties involved concerns the requirement for non-EU countries to readmit not only their own nationals, but also people who have transited through their territory. A case in point is [Morocco](#), where, despite the negotiating directives being agreed in 2000, negotiations are still ongoing, with little prospect of reaching a conclusion soon.

The Commission has therefore focused on developing practical cooperation arrangements (standard operating procedures, joint migration declarations, common agendas on migration and mobility, and joint ways forward) with third countries. To date, it has negotiated [six legally non-binding arrangements](#) for returns and readmissions. Alongside these formal and informal agreements at the EU level, the Member States continue to use [bilateral agreements](#) with third countries to achieve their return objectives.

Despite the EU's ongoing efforts to enhance readmission cooperation with third countries, the above-mentioned ECA report concludes the results have been limited. In order to leverage third countries' cooperation on returns, in 2016 the Commission presented a [partnership framework on migration](#), which created the basis for 'migration partnerships' with third states. Several migration partnerships were concluded that same year with Ethiopia, Mali, Niger, Nigeria and Senegal. Those reflect the insight that other formats and additional incentives are needed in order to persuade third countries' governments to cooperate on returns in practice:

Positive and negative incentives should be integrated in the EU's development policy, rewarding those countries that fulfil their international obligation to readmit their own nationals, and those that cooperate in managing the flows of irregular migrants from third countries [...]. Equally, there must be consequences for those who do not cooperate on readmission and return. The same should be true of trade policy, notably where the EU gives preferential treatment to its partners [...]. All EU policies including education, research, climate change, energy, environment, agriculture, should in principle be part of a package, bringing maximum leverage to the discussion.
([Commission communication on partnership framework](#))

The significance of the topic of return in the internal and external dimensions of EU migration policy is also manifested in the EU's budget planning. The [Asylum, Migration and Integration Fund](#) for 2021-2027, the [Border Management and Visa Instrument](#), NDICI (with the 10 % spending target for migration-related actions), and the [Instrument for Pre-accession Assistance](#) (IPA III) will be used for the implementation of the EU's migration priorities and facilitate, among other objectives, cooperation on readmission, voluntary returns and sustainable reintegration.

In recent years, the strategy of using incentives and sanctions in other policy domains to force cooperation on returns has been included in a number of EU instruments beyond migration

partnerships. In 2020, the European Parliament and Council adopted a new [Schengen Visa Code](#), which uses an annual review mechanism to reward cooperation on returns and impose sanctions for inadequate compliance. The political agreement at the end of 2020 on the new [EU Neighbourhood, Development and International Cooperation Instrument](#) (NDICI) made it possible to employ conditional and flexible funding mechanisms to incentivise recipient countries' cooperation on EU migration objectives, such as return. In 2021, the EU and the Organisation of African, Caribbean and Pacific States (ACP) concluded the negotiations for a new treaty that will replace the current legal framework known as the Cotonou Agreement. The new [Partnership Agreement](#), which has [not yet entered into force](#) and will be in place for 20 years, re-emphasises the obligation to readmit citizens already included in the predecessor agreement and also entails a commitment to ensure timely identification of returnees and issue suitable travel documents.

European Parliament position

As early as 2005, the European Parliament [denounced](#) the collective expulsions of asylum-seekers to Libya by stating that the 'Italian authorities have failed to meet their international obligations by not ensuring that the lives of the people expelled by them are not threatened in their countries of origin'.

In a series of resolutions, Parliament has agreed on the need to improve the [effective implementation](#) of the Return Directive and the effectiveness of return procedures in the Member States. However, it has insisted that the return of migrants should only be carried out in [full compliance with the fundamental and procedural rights](#) of migrants, and where the country to which they are being returned is safe for them. Parliament has also underlined that voluntary return should be prioritised over forced return. Furthermore, it underlined that [children](#) should be returned only when it is in their best interests, in a safe, assisted and voluntary manner, and offering long-term support for reintegration.

In 2017, Parliament [expressed](#) its deep regret that 'in the EU migration policy framework and refugee movements response, the EU and its Member States have opted for the conclusion of agreements with third countries, which avoid the parliamentary scrutiny attached to the Community method'. Parliament also deplored the increasing use of EU development and humanitarian aid funding as a tool to put pressure on third countries to cooperate on readmission and return. According to Parliament, 'EU assistance and cooperation must be tailored to achieving development and growth in third countries ... and to reducing and eventually eradicating poverty in line with Article 208 of the TFEU, and not to incentivising third countries to cooperate on readmission of irregular migrants'.

In its 2020 [resolution](#) on the implementation of the Return Directive, Parliament called on the Member States to 'urge and enable the Commission to conclude formal EU readmission agreements coupled with EU parliamentary scrutiny⁸ and judicial oversight'.

In 2021, Parliament again [deplored the informal arrangements](#) that the EU and some Member States have concluded over the years, which contain minimal references to fundamental rights. It also called for the EU to ensure that readmission agreements and agreements for cooperation on border management are only made with third countries that explicitly commit to respecting human rights, including the principle of *non-refoulement* and the rights enshrined in the [UN Refugee Convention](#).

MAIN REFERENCES

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- Diaz Crego M., [Recasting the Return Directive](#), EPRS, European Parliament, 2021.
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- Roig A. and Huddleston T., [EC Readmission Agreements: A Re-evaluation of the Political Impasse](#), *European Journal of Migration and Law* 9: 363-387, 2007.

ENDNOTES

- ¹ EURAs are based on reciprocal obligations and are concluded between the EU and non-EU countries to facilitate the return of people residing irregularly in a country to their country of origin or to a country of transit. These agreements can only come into play once a return decision has been issued. They are technical instruments that set out clear obligations and procedures for the authorities of non-EU and EU countries as to when and how people residing irregularly in a country should be taken back.
- ² The EU27+ area includes all EU countries, Iceland, Liechtenstein, Norway and Switzerland. Ireland and Denmark do not participate in the EU Return Directive.
- ³ See [EPRS Implementation Assessment study](#) on the Return Directive (page 9).
- ⁴ See also <https://eulawanalysis.blogspot.com/2021/01/the-implementation-of-eu-return.html>.
- ⁵ See A. Roig and T. Huddleston, [EC Readmission Agreements: A Re-evaluation of the Political Impasse](#), *European Journal of Migration and Law* 9: 363-387, 2007.
- ⁶ See N. Biehler, A. Koch and A. Meier, [Risks and Side-Effects of German and European Return Policy](#), Stiftung Wissenschaft und Politik Research Paper, 2021.
- ⁷ For detailed information on the recast proposal, see M. Diaz Crego, [Recasting the Return Directive](#), EPRS, European Parliament, 2021.
- ⁸ The Parliament has a clear say in EU readmission agreements. The [Treaty on the Functioning of the European Union](#) (TFEU) provides an explicit legal basis for EU readmission agreements (Article 79(3)) and specifically states that the Parliament must give its consent prior to the conclusion of certain agreements (Article 218(6)(v)). Moreover, the Parliament 'shall be immediately and fully informed at all stages of the procedure' (Article 218(10)).

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