



more |

Motivations, experiences and consequences of returns and readmissions policy: revealing and developing effective alternatives

more

Motivations, experiences and consequences of returns and readmissions policy: revealing and developing effective alternatives



A POINT OF NO RETURN: A Comparative Analysis of Legal and Policy Responses to Irregularised Non-Removable Third-Country Nationals in Selected EU Member States

Executive Summary

Funded by



**Funded by
the European Union**

Co-funded by



**UK Research
and Innovation**

Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Research Executive Agency. Neither the European Union nor the granting authority can be held responsible for them.

Project Number: 101094107

PROJECT COORDINATOR



PARTNERS



The MORE Consortium

Coordinator

UNIVERSITAT DE BARCELONA, **SPAIN**

Partners

UNIVERSITA CA' FOSCARI VENEZIA, **ITALY**

UNIVERSITÉ LIBRE DE BRUXELLES, **BELGIUM**

PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS ASBL,
BELGIUM

MIROVNI INSTITUT, **SLOVENIA**

KMOP – KENTRO MERIMNAS OIKOGENEIAS KAI PAIDIOU, **GREECE**

RED BARNET, **DENMARK**

LINKOPINGS UNIVERSITET, **SWEDEN**

GEORG-AUGUST-UNIVERSITÄT GÖTTINGEN STIFTUNG OFFENTLICHEN RECHTS, **GERMANY**

CENTRE FOR EUROPEAN POLICY STUDIES, **BELGIUM**

Associated Partner

THE UNIVERSITY OF OXFORD'S CENTRE ON MIGRATION, POLICY AND SOCIETY, **UNITED KINGDOM**

Authors

Edited by Sergio Carrera (Senior Research Fellow and Head of Unit, CEPS) and Júlia Pócze (Research Assistant, CEPS).

Coordinated by Olga Jubany (Professor, Universitat de Barcelona)

Authors of the reports on which this document is based: This Article is based on desk research and an assessment of relevant primary and secondary sources. It also draws from sources resulting from country-specific research carried out by the following MORE Project partners: Isabelle Carles, Sarah de Jong (Belgium); Svenja Schurade, Sabine Hess (Germany); Theodora Morou, Margarita Markoviti (Greece); Francesca Cimino, Fabio Perocco (Italy); Katerina Kočkovska Šetinc, Sergeja Hrvatič, Veronika Bajt (Slovenia); Sevda Tunaboylu, Alèxia Rué, Olga Jubany (Spain); and Aida Ibričević, Branka Likic-Brboric (Sweden).

How to cite this publication: Carrera, S. and Pócze, J. (2024), *A Point of No Return: A Comparative Analysis of Legal and Policy Responses to Irregularised Non-Removable Third-Country Nationals in Selected EU Member States (Executive summary)*, MORE Project, 2024, <http://doi.org/10.5281/zenodo.14747937>

Publication date

January 2025

Disclaimer: *This document provides a concise summary of the key findings from the Synthesis Report on Legal and policy responses to irregularised non-removable TCNs and promising practices from seven EU Member States and the UK that was conducted in the framework of MORE project. For detailed analysis, evidence, and comprehensive insights, please refer to the full report. The information in this summary should not be considered complete or fully representative of the entire study.*

Introduction

The treatment of third-country nationals ('TCNs') in irregularised situations, but particularly of those individuals who are 'non-removable' or 'non-deportable', has become a pressing concern in EU policy. Persons in such situations remain on Member State territory, as their expulsion is precluded due to a combination of humanitarian, legal, technical and other relevant factors, leaving them in an administrative 'limbo'. While EU policy has increasingly emphasised the adoption of 'effective' migration policies that centre on accelerating returns and enforcing more deportation orders, this approach often fails to duly consider both the fundamental rights of TCNs and the precarious circumstances that shape their situation.

Migration policies based on the imperative that effective migration management demands increasing the return rate can only work to the expense of fundamental rights, enshrined as a core EU principle not only in the Charter of Fundamental Rights, but also in Article 2 TEU.

This research article takes a rights-based perspective to analyse the legal and policy frameworks, as well as the practical realities of non-returnability across seven EU Member States – Belgium, Germany, Greece, Italy, Slovenia, Spain, and Sweden. It seeks to peel back the layers of a web of fragmented administrative rules and policies, which often end up framing fundamental rights as obstacles to 'effective' enforcement rather than indispensable obligations of the state that must be upheld.

There are a myriad of reasons that complicate, if not completely cut off, access to crucial socio-economic rights such as healthcare, housing and employment, which highlight the immediate need for a revised, more humane approach to non-returnability within EU migration policy. To that end, this article advocates for an approach that considers human dignity above expedited procedures, arguing that only by fundamentally reshaping the rules and practices governing the treatment of non-expellable TCNs can the Union and its Member States live up to their international human rights obligations.

Evidence and analysis

Key finding 1 - There are severe disparities among EU Member State approaches to non-returnable TCNs in irregular situations, with diverse and inconsistent mechanisms to documentation, accessing residency rights and providing socio-economic support and access to effective remedies. While the Return Directive offers a basic, applicable framework, there are no consistent mechanisms across these countries that are well-poised to protect human dignity and justice.

Reasons for not enforcing deportation orders may arise from international obligations, including humanitarian grounds anchored by the principle of *non-refoulement*, as well as medical, familial or technical considerations that can compel authorities to at least temporarily delay removal. At the same time, national policies – no doubt based on EU-wide objectives – increasingly prioritise immigration enforcement without due assessment of existing circumstances that stand in the way of issuing returns decisions and enforcing removal orders. While these grounds are often anchored by pre-existing international, regional and EU legal obligations, they tend to be framed as ‘obstacles’ to the ‘effective’ migration management instead of legitimate, rights-based reasons that protect the life and limb of human beings irrespective of their administrative status.

Even when national law provides for temporary residence permits and access to provisional documentation, in practice, most individuals rarely have the information to pursue such avenues, let alone effective access tailored support to guide them through the administrative processes and bureaucratic hurdles, leading them to ‘fall through the cracks’ of any existing support frameworks, destitution and hyper-precarity.

Key finding 2 - The lives of irregularised TCNs in such administrative limbo are marked by extremely limited and conditional access to socio-economic rights, exacerbated lack of sufficient legal support and effective access to justice in cases of human rights violations which are often intrinsic to enforcing expulsions at all costs. This comparative analysis yielded insights into how certain policies hamper or completely prevent access to healthcare, social assistance, employment, secure housing and justice.

Notably, there are grave impediments to healthcare access across the Member States examined, mostly because access tends to be contingent on strict eligibility requirements or on navigating aforementioned administrative challenges. Particularly for non-emergency or long-term, consistent medical care – but also to secure other rights -, TCNs often must rely on civil society organisations.

Likewise, individuals often live in fear of 'being found out' by authorities and to avoid deportation, they often forgo necessary medical treatment or decide against taking steps towards social assistance or housing that may be provided by state actors. The inaccessibility of the labour market means that TCNs have no choice but to engage in irregular employment, where they are at risk of being exploited, not paid a living wage and receiving no benefits from the employer, which leads to unfair and non-decent working conditions.

Additionally, the absence of support and information prevents individuals from making use of available legal recourse and aid against unjust removal orders or the refusal to formally suspend deportation despite the existence of legitimate grounds that should prevent expulsion. These barriers to effective remedies, while serving the purpose of indeed accelerating procedures, ultimately re-frame the rights of TCNs as 'secondary' and open the rights towards systemic violations with little opportunity for redress. Crucially, many hesitate or choose not to assert their entitlements and rights due to fear of sanctioning and forced expulsions.

Key finding 3 - Despite all of this, the enforcement of return decisions, just like the access to justice and human rights, remains low. The fact that the return rates are not increasing as rapidly as expected by some policy makers are also attributable to policy- and lawmakers' failure to consider the circumstances that lead and uphold irregularity.

Furthermore, there is a high heterogeneity in the national authorities involved in the issuing of return decisions, the enforcement of removal orders and the handling of decisions on the suspension/postponement of expulsion and appeals/effective remedies. This leads to coordination issues and blame and responsibility-shifting games among these actors so as not to be the ones to be blamed for not meeting the overall priority to increase the numbers of enforced removal orders.

There is also a stark dissonance between EU policy priorities and practical realities, and what is qualified as 'success' and by whom, where 'alternatives to return' are proving to be a more effective and humane policy response. Despite the overriding policy priority focusing on increasing the percentage of enforced expulsions, the research highlights that a policy that involves suspending or halting expulsions and facilitating the transition to regularisation is often the most practiced and effective response across the selected EU Member States. This approach is not only practically the only one which is feasible, with the number of regularisations and suspensions of removal often prevailing and, in some cases, even outweighing that of enforced returns, but is also one aligning with international, regional and EU human rights standards.

Conclusions and policy recommendations

The research finds that the prevailing fragmented and often punitive approaches towards irregularised TCNs who cannot be expelled have contributed to the creation of a deeply unjust system that is a chronic misalignment with the Union's international obligations and own primary law standards. These systemic deficiencies have led to precarity, insecurity and the further victimisation of groups that were already rendered vulnerable by the virtue of being deemed 'irregular'.

Regardless of administrative status, respect for human dignity and access to fundamental rights might be provided to all persons on EU territory. The article this calls on the Union and Member States to radically re-evaluate their policy approaches and legal frameworks and start building a system that prioritises a humanising approach above expulsion-driven effectiveness goals going at the expense of human dignity, instead of the other way around.

1. **Effectively enforce the protective elements of the Return Directive:** The European Commission should ensure in a more effective and timely manner the proper implementation of the protective elements of the EU Return Directive, including the provisions covering the situation of non-removable TCNs. The upcoming reform or recast of the EU Returns Directive currently being prepared by the European Commission should mandate that fundamental rights and safeguards of non-removable irregularised TCNs are mandatory and cannot be narrowly or differently interpreted by Member States as 'facultative' or options. This will help ensure a common level playing field characterised by legal certainty across the Union regarding the administrative status and rights of TCNs in irregularised situations.
2. **Harmonisation instead of fragmentation:** The new Return legal instrument must also address the existing regulatory fragmentation and deficits/gaps in the policy area of non-returnability by establishing clear and uniform rules governing the treatment and documentation of irregularised TCNs. This way, inconsistencies can be reduced and establish a more uniform policy landscape across the Union.
3. **Ensure effective accessibility of socio-economic rights and effective remedies:** In the new Return instrument, the EU and its Member States should also promote and uphold to a comprehensive catalogue of socio-economic human rights granted to all individuals irrespective of administrative status under international and regional law, in alignment with the objectives enshrined in the UN Global Compact on Migration. A Ministries of Interior or Home Affairs-approach focusing on policing should be taken over by one giving priority to policies focused on social inclusion, the eradication of poverty, employment, health, etc. Authorities must be obliged to provide and promote policies allowing access to healthcare, employment, housing and assistance as a matter of upholding human dignity and avoid destitution and hyper-precariety.
4. **Establish a 'firewall for confidentiality in essential social services and the work of civil society actors:** In line with the UN Global Compact on Migration, any reform of EU expulsions policy must make sure that medical staff, employers, education professionals, social workers and other essential service providers in civil society are not obligated to report if someone is found to be in an irregular situation to law enforcement authorities. This 'firewall' will ensure that irregular TCNs can seek help, access to basic social services and support whenever they need it without fear of deportation.



more |

Motivations, experiences and consequences of returns and readmissions policy: revealing and developing effective alternatives