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



## D1.1 Policy Brief

### Development of the Return and Readmission policy across Europe: multilevel analysis

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Publication coordinator	Zoran Slavnic
Editors	Zoran Slavnic, Olga Jubany
Authors of the reports on which this publication is based	Svenja Schurade, Sabine Hess, Isabelle Carles, Theodora Morou, Francesca Cimino, Fabio Perocco, Veronika Bajt, Alèxia Rué, Sevda Tunaboylu, Olga Jubany, Marie Mallet-Garcia, Natalia Tapies and Nick Ockenden
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**Coordinated by** Zoran Slavnic

**Edited by** Zoran Slavnic and Olga Jubany

**Authors of the reports on which this document is based:** Svenja Schurade, Sabine Hess, Isabelle Carles, Zoran Slavnic, Theodora Morou, Francesca Cimino, Fabio Perocco, Veronika Bajt, Alèxia Rué, Sevda Tunaboylu, Olga Jubany, Marie Mallet-Garcia, Natalia Tapiés and Nick Ockenden

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## Introduction

The Amsterdam Treaty and Tampere Agenda of 1999 paved the way for the Common European Migration policy and the Common European Asylum System (CEAS). Prior to that, migration and asylum issues were handled exclusively at the member states' national level, with cooperation occurring at the intergovernmental level (third pillar). The Amsterdam Treaty elevated the European Commission's role, ascending cooperation regarding migration and asylum to a supranational level (first pillar).

The European Migration Regime's contours were made evident in the Schengen Agreement from 1985 (in force since 1995), establishing free movement within most EU countries (plus EEA countries), while introducing an expanded visa regime and strengthened border control with third countries. This policy resulted in the emergence of the so-called internal and external dimensions of the European Migration and Asylum Policy. Internal dimensions related to policies within and between member countries, including the abolition of border control barriers, harmonizing the asylum system, and a common visa regime. The external dimension included policies to prevent unauthorized entry and the return of third-country citizens without legal right to stay.

The EU Return Directive (2008/115/EC - in force since 2010) set basic standards for the return policy for all member states (with exceptions for the UK and Denmark), aiming for an *"...effective and humane return policy as a necessary element of a well-managed migration policy..."* (EU DIRECTIVE 2008/115/EC). Voluntary return was seen as more effective than forced return (because it is cheaper and more humane) and was perceived as more sustainable as it ensured the protection of the fundamental rights of returnees and reduced the risk of remigration. Finally, an 'effective' migration policy was expected to be implemented *"... in accordance with fundamental rights as general principles of Community law as well as international law..."* (Ibid.:101). So, the concept of "effectiveness" in the Directive included not only the execution of decisions on return, but also ensuring sustainability and the respect for the returnee's fundamental rights (Majcher & Strik 2021).

According to the first comprehensive evaluation of the Returns Directive (European Commission 2013), it enabled effective return procedures, sustainable returns, and the application of procedural safeguards for returnees, as well as the respect for their rights. These findings led the Commission to refrain from a proposal for a recast of the Directive and instead to intensify its efforts to cooperate with countries of origin on readmission agreements (Ibid.). However, during the so-called "2015/16 refugee crisis, member states pressured the Commission to prioritize return rates as the most important indicator of policy effectiveness, most often at the expense of sustainability and respect for the fundamental rights of migrants. Several important policy documents have been adopted since 2015 that vividly illustrate that turn (Majcher and Strik 2021; Carrera and Allsopp 2017).

This policy brief is part of a larger scientific project on motivations, experiences, and consequences of EU returns and readmission policies. It aims to summarize return policy trends and assess their implications. Five key policy areas will be addressed, encapsulating the most critical aspects of return policy, both at the EU and member state levels.

## **Evidence and analysis**

Historically, all the member states included in the project had some kind of policy towards "unwanted" citizens of third countries, some of them as early as the 1980s, and most of them since the beginning of the 1990s. These policies differed depending on the priorities related to the geographical location of the respective countries, their political and economic priorities, traditions, and path dependencies related to the previous policy paths, attitude towards and experience with migration. Some of them (Greece, Italy, Spain) have traditionally been countries of emigration, and they started to deal with immigration issues only in the 1980s. The countries included in our study became EU members on different dates. In addition to the founding countries (Belgium, Italy and Germany), Greece joined in 1981, Spain in 1986, Sweden in 1995, and Slovenia in 2004. The UK joined in 1973 and left in 2020. All this certainly influenced the creation, development and orientation of their migration policies in the period before the Amsterdam Treaty, and on the strategies of harmonizing their policies after that.

### ***Relationship between Protective and Enforcement Policy Intentions***

Our national reports indicate that at the time of the adoption of the Directive in 2008 and its entry into force in 2010, R&R policies in Italy, Greece and Slovenia were stricter than the Directive itself, with a dominance of enforcement measures and quite limited protective safeguards. After 2015, which can be called a crisis-driven phase in the development of R&R policy, both at the EU level and at the national level of the member states, the balanced approach to the relationship between protective and enforcement measures began to change radically to the detriment of protective measures and with an increasing focus on effectiveness in terms of increasing deportation rates and shortening the deportation procedure.

After 2019 and until today, the trends started in the previous phase have consolidated and expanded. The main characteristic of these trends is the systematic erosion of the human rights of returnees, combined with discursive strategies of legitimizing these new policy measures. Further, new strategies are invented with the aim of formally fulfilling the criteria and obligations of protection, while at the same time violating them in practice.

Two additional policy trends emerged from our national reports, both reflecting the interplay between protective measures and enforcement measures within the R&R policies.

Firstly, a deterrence policy aimed at reducing immigrants' rights and benefits to the extent that they voluntarily leave the country, while dissuading potential immigrants. This trend, evident since the 1980s in some countries and explicitly formulated as the "Unfriendly Environment" policy by the British Home Office in 2012, seeks to discourage immigration through systematic reductions in immigrants' rights. Elements of this policy were observed in most studied countries, notably in Greece since the 1980s and 1990s, and in the UK and Sweden since the 2010s. The European Commission's European Agenda on Migration from 2015 also adopted this policy within its strategy to reduce incentives for irregular migration.

Secondly, Italy, Germany, Sweden, Spain and the UK have, in parallel with increased restrictiveness, also implemented initiatives allowing individuals facing deportation to remain if they secure employment. These initiatives, tied to self-reliance and employment contracts, permit individuals awaiting deportation to switch their status to migrant worker if they secure a job for a specified period. However, such arrangements expose migrants to economic exploitation and disenfranchisement, creating a state of deportability as described by DeGenova (2002, 2013, 2018), where migrants are vulnerable to exploitation by employers and lack autonomy and protection in their labor market participation.

### ***(Assisted) Voluntary return (AVR)***

The Return Directive emphasized voluntary return as the primary approach to repatriation. It was viewed as the most politically acceptable, sustainable, and cost-effective strategy, while also providing the safest and most sustainable outcome for the returnees themselves.

However, our national reports' findings highlight significant challenges in translating these policy objectives into effective practice. A noticeable disjunction arises between the lofty objectives outlined in national AVR programs – emphasizing sustainability, legal certainty, and human rights – and the practical implementation thereof. Those programs disproportionately focused on return rates, while the sustainable reintegration of returnees was generally less important. Empirical evidence also shows that "voluntary" returns are often not voluntary, thanks to limited access to legal remedies, prolonged detention, coercion, and threats undermine the voluntariness of decisions. Linking social assistance to cooperation with return procedures further underscores this issue.

In the reintegration phase, responsibility often shifts to local NGOs, leading to insufficient monitoring and returnees are often left in extremely vulnerable situations. The results of the report prepared for our project by our partners from Red Barnet indicate that ineffective reintegration programs result in fueling re-migration, a lack of sustainability to re-integration support, returning migrants to the wrong location, inability to deter migration, and creating new and higher risk migration routes.

### ***Formal and Informal Readmission Agreements/Arrangements***

The prevailing trend in reassessment agreements indicates a shift towards informalization. This shift finds its political backdrop in several policy initiatives dating back to 2015. These initiatives have led to the conclusion of over 300 bilateral agreements between EU member states and third countries, many of which are informal in nature. Unlike formal readmission agreements, informal readmission arrangements are non-reciprocal and entail commitments solely from third countries, without any obligations for the EU or its member states. These arrangements lack binding force and do not entail additional responsibilities or legal obligations, including commitments to uphold international law. For all these reasons, informal readmission arrangements seem to have been appealing to EU countries (see EMN 2022). However, they have also attracted growing criticism for their perceived violations of returnees' rights, erosion of the EU's foundational values, and loss of credibility.

The notorious lack of monitoring and evaluation of these arrangements suggests their deliberate nature, rather than mere oversight. This strategy, characterized by the informalization, secrecy, and lack of transparency, affords greater flexibility in implementing an ostensibly "effective" return policy, potentially diverging from legal and ethical principles on which the EU is founded. These developments indicate that the informalization of EU member states' "cooperation" with third countries is likely to persist. However, there is scant evidence to suggest that this strategy enhances the effectiveness of return policy (Stutz and Trauner 2021). The EU R&R policy development report, alongside an EU internal non-paper presented in 2022 (COM 2022), in which Commission acknowledges that informal arrangements have resulted in lower return rates compared to formal agreements.

### ***Detention***

The expansion of detention facilities was observed as a general trend in studied countries, accompanied by legislative changes enabling more frequent and extensive use of detention. Poor living conditions in detention centers, as well as practice of detaining vulnerable populations, including children and pregnant women garnered criticism across various countries. These practices, combined with systematic rights limitations, align with the unfriendly environment policies noted in both our national reports and prior research (Cholewinski 1998; Crawley et al. 2011).

The privatization of detention facilities, especially evident in Italy, Germany, and the UK, has raised concerns about service quality, including allegations of inhumane treatment, overmedication, and limited access to legal and healthcare services. The externalization of detention policies has also been implemented or is nearing implementation by several countries.

Concurrently, alternatives to detention are increasingly marginalized in national R&R policies. This systematic expansion of detention grounds in EU member states contradicts research findings indicating that detention, as a tool for restrictive border control, neither prevents nor reduces migrant arrivals (Czaika & De Haas 2013; Sampson 2015). Instead, it can result in people taking greater risks to achieve their goal, also exposing themselves to greater dangers (Cornelius 2005). Detention also does not guarantee an increased number of returns, nor does it result in a more efficient return policy (Black et al. 2004; Bathily 2014; Sampson 2015). There is no correlation between the number of detainees and the number of returns (Majcher and Stik 2021).

### ***Conceptualization of 'Effectiveness' within the EU System***

Effectiveness in the Return Directive strives for a balanced approach, emphasizing both the efficient execution of return policies and sustainable return, characterized by adherence to the rule of law, respect for human rights, and constructive cooperation with recipient countries.

However, post-2015, the concept of "effectiveness" narrowed to mere "rates of return," often achieved through heightened forced measures. Sustainability and procedural safeguards for returnees were sidelined, reflecting a shift toward a "soft law" approach, where policy orientation changed without altering core principles (Slominski and Trauner 2021). While "hard laws" remain intact, their interpretation and application have evolved,

creating a disparity between official policy objectives and practical execution, often filled with legitimizing discursive tactics. This gradual policy realignment, occurring between 2015 and 2019, impacted both the internal and external dimensions of the R&R policy.

By 2017, a more stringent "hard law" approach emerged, marked by initiatives like the Renewed Action Plan on Returns (EU Commission 2017a) and subsequent Recommendation on making returns more 'effective' when implementing the Return Directive (EU Commission 2017b) proposing reduction of certain safeguards, extension of detention periods, and redefinition of voluntary return criteria by introducing the request for cooperation during the return process (Majcher & Strik 2021). The Recast of the EU Return Directive (EU Commission 2018) aimed to bolster the effective return of irregular migrants, prioritizing increased return rates, and streamlined procedures.

In summary, the trends outlined in other topics within this report – including the gradual prioritization of enforcement measures coupled with the simultaneous neglect of protective measures, the shift towards forced return over voluntary return, the informalization of readmission agreements, the expansion of detention measures, and the growing threat to human rights alongside the disregard for alternative detention methods – all serve the purpose of enhancing the effectiveness of "return at any costs" while rejecting any ambition to achieve a sustainable return.

### ***Discursive Aspects in R&R Policy Formulation, Promotion, and Application***

The discursive trends in R&R policy creation, implementation, and legitimization reflect a diverse toolbox of strategies observed at both national and EU levels. Initially, from the 1980s to the implementation of the Return Directive in 2010, migration policy experienced politicization and securitization, accompanied by a rise in populist influence in Europe. Dominant discourses portrayed migration as an invasion, framing migrants as threats to national security or welfare, which influenced further militarization, securitization, and externalization of borders. The "numbers game" strategy involved manipulating migration statistics to support these narratives, exemplified by exaggerated estimates of "illegal" migrants within the EU. This manipulation of statistics persists in R&R policies, contributing to debates on credibility and transparency.

Following the 2015 migration crisis, discourses shifted towards criminalizing migrants, emphasizing cultural and security threats. Discrepancies in statistics regarding irregularity and deportations across countries highlight policy interpretation and evaluation challenges. Euphemistic language is employed to justify detention practices, obscuring intention, and complicating statistical analysis. A growing dissonance exists between EU's foundational values (human dignity, freedom, democracy, equality, rule of law, and human rights), and R&R policies, increasingly divergent from these values, while at the same time justified with rhetoric emphasizing adherence to legal frameworks and respect for fundamental rights. The controversial 2018 recast of the EU Return Directive exemplifies this. Labeled by analysts as the "Directive of shame" due to its radical proposals for deportation, euphemistically concludes the presentation of the new policy measures with the following statement: The Directive continues to ensure the full respect of the fundamental rights of the migrants, particularly the principle of nonrefoulement (EU Commission 2018).



Another strategy involves justifying R&R policies as necessary for maintaining social stability, public safety, and the rule of law, downplaying humanitarian concerns.

### **Conclusion**

The objective of this policy brief was to provide a comprehensive summary of the development and implementation of R&R policy, both at the EU and participating state levels, spanning from its inception to the present, while also considering potential future trajectories. Five specific topics were explored across three distinct historical periods.

The initial historical period under scrutiny, spanning from 1990 to 2010, witnessed the formulation of fundamental principles guiding R&R policy, emphasizing human rights and constructive engagement with third countries. Concurrently, national R&R policies during this period experienced a trajectory towards the politicization and securitization of migration. Consequently, most countries examined in this study exhibited harsher and more restrictive policies than those outlined in the Directive upon its implementation. Subsequent years saw gradual alignment with Directive-prescribed formulations.

The refugee crisis of 2015 marked a paradigm shift towards enforcement measures in R&R policy, prioritizing effectiveness over sustainability and rights. This period, characterized by a "soft law" approach, witnessed a reorientation of policy objectives without fundamental amendments, creating a disconnect between stated aspirations and practical implementation, often mitigated through discursive strategies.

This policy shift had widespread effects on all aspects of Return and Readmission (R&R) policy. Enforcement measures became dominant, overshadowing protective measures, while Assisted Voluntary Return also shifted focus towards prioritizing return rates rather than sustainability. Cooperation with third countries moved towards informal readmission arrangements marked by secrecy and unequal obligations. Detention facilities increased in capacity, privatization, and externalization, leading to deteriorating living conditions of detainees. Comprehensive monitoring and evaluation mechanisms were notably absent across all policy domains.

From 2019 to the present, these trends solidified, with increased legislative support and heightened severity and scope. Novel policy initiatives emerged, notably the Whole of Government Approach (WoG), aiming to enhance policy effectiveness through closer collaboration across institutions and policy domains, both domestically and at the EU level. Externally, WoG sought to strengthen member state coordination to leverage negotiations with third countries, often linked to conditions imposed on international aid. Despite these developments, rigorous monitoring and policy evaluation remained lacking across both internal and external dimensions of R&R policy.

Another notable trend is the amalgamation of asylum and return procedures at EU borders, proposed by the New Pact on Migration and Asylum (EU Commission 2020). This proposed procedure, comprising pre-entry screening, expedited asylum processing, and swift return procedures, aims to integrate presently separate processes.

In tandem with this trend, there has been a notable expansion of the role and involvement of Frontex, the European Border and Coast Guard Agency. Empirical research suggests that Frontex has contributed to further criminalizing migration and migrants, besides facing accusations of engaging in illegal and inhumane treatment of migrants.

Lastly, an often-overlooked trend in R&R policy studies, yet significant within the broader research domain of the political economy of international migration, is the concurrent emergence of initiatives allowing individuals facing deportation to remain if they secure employment. However, such measures frequently expose migrants to conditions of "deportability," characterized by extensive economic exploitation and vulnerability in the labor market.

These trends do not lead to a more effective R&R policy. For instance, the implementation of a forced return policy, as opposed to a voluntary return policy, does not increase the number of returnees, thus failing to enhance effectiveness. Similarly, informalization of readmission agreements does not boost the number of returns. Detention fails to escalate deportations, and the number of people in detention does not necessarily correlate with an increase in returnees. Furthermore, detention does not stem the flow of foreigners or deter their entry into the country; rather, it compels them to resort to riskier routes to achieve their objectives.

Given these findings, and acknowledging that the tightening of return policies outlined in this policy brief undermines fundamental values of the EU project, it begs the question: why do these trends persist?

A potential explanation for this question lies partly within the findings of our study and partly within the conclusions of previous research. Our policy analysis clearly reveals two conflicting trends in Return and Readmission policy. One trend involves tightening return policies, focusing on increasing return rates and streamlining return procedures. Conversely, there is a surge in policy initiatives offering opportunities for individuals to remain if they secure employment and demonstrate self-sufficiency. These opposing trends reflect politicians' attempts to navigate two competing political pressures. On one side, there is the emergence of right-wing populist movements, which perceive migration as a threat to national sovereignty, cultural identity, and social welfare. Conversely, there is mounting pressure from corporate interests for the importation of inexpensive labor. Politicians are compelled to address these conflicting political pressures while also balancing the competing political forces advocating for them.

In parallel, we encounter conceptions regarding the nature of migration, often referred to as the "root causes" of international migrations, which dominate political, media, and public discourses. The prevailing "root causes" creating migration waves include unstable economic and political conditions in developing countries resulting from chronic underdevelopment, poverty, corruption, and a lack of democratic culture. Contrary to these political and media narratives, relevant research suggests that the primary driver of South-North migration is the labor market needs of Global North countries (Haas et al. 2019). In such circumstances, politicians, torn between these competing and incompatible demands, often adopt a duplicitous stance. They ostensibly tighten anti-immigration policies while simultaneously opening possibilities for increased immigration, as it aligns with important labor market objectives (Castles 2004, 2017). This could clarify the political hypocrisy evident in R&R policy, also providing an answer to the question posed above.

## **Policy Implications**

The EU Return and Readmission (R&R) policy is characterized by several deep structural contradictions that cannot be resolved with simple policy recommendations.

These contradictions include:

- The disparity between the fundamental values, moral, and legal norms on which the EU is based, and the practice of implementing R&R policies, which increasingly diverges from these norms and principles.
- The growing gap between the actual practice of implementing R&R policies and the discursive strategies aimed at mitigating the negative effects of those policies.
- An ever-deepening contradiction between increasingly restrictive policies that fail to deliver practical results and the undiminished enthusiasm with which these policies continue to be implemented.
- The contradictions arising from politicians' efforts to reconcile the anti-immigration demands of increasingly strong right-wing populist forces in all EU societies with the equally strong political demands of corporate capital seeking to secure cheap labor.

Simultaneously, the notorious lack of monitoring and evaluation of current policies, the secrecy of contracts and arrangements with third parties, and the lack of relevant statistics or the use of different methods in collecting and presenting data on current policy results indicate that these are not random mistakes or administrative oversights, but deliberate, carefully planned policy strategies.

## **Policy recommendation**

In the political climate which engenders criminalization of migrants, restrictive migration and integration policies across EU member states and undermines fundamental rights simple policy recommendations are not applicable here. The current policy direction does not need minor adjustments to achieve its goals; it is increasingly at odds with the fundamental principles and values of the EU. What is needed is a broad and inclusive political debate on whether European citizens wish to maintain this course or uphold the EU's Charter of Fundamental Rights which guarantees human rights and dignity to all regardless of legal status, contains the rights to asylum and forbids forced expulsion and removal of persons against the harm and threat to their life.

The main recommendation is to forge the alternative policy which strengthens the role and tools of the EU Fundamental Rights Agency to effectively monitor intergovernmental and national human rights systems. Against the national policy shifts towards restrictive 'whole of a government' (WoG) approach to R&R policy, which increasingly focuses on detention and forced returns, it is crucial to mobilize civil society and a 'whole of a society' approach (WoS) for migrants' rights to address the vulnerabilities and rightlessness faced by rejected migrants in detention centers, return and readmission processes.

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## **The MORE PROJECT**

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

MORE is a collaborative academic initiative, funded by the European Union under grant agreement 101094107, that critically examines the Returns and Readmissions policy of the European Union and the United Kingdom.

Based on a comprehensive desk and fieldwork research including interviews with irregularised migrants, supporting organisations, implementing agents, policy makers and academics in seven EU member states (Spain, Italy, Belgium, Greece, Slovenia, Sweden and Germany), as well as the UK and three to five countries of origin, the project explores how dynamics of securitisation of borders, economic interests, and political imperatives have converged to define the Returns and Readmissions policy, its transposition, and its implementation.

Through an eminently ethnographic approach the project focuses on how the Return and Readmission policy is 'made real' through the political discourse of policymakers and political representatives, the role of public opinion, the enactment of laws and regulations and the decisions and day-to-day work of frontline agents. Through and in-depth, multi-sited ethnographic research MORE also provides a unique ground-breaking analysis of the lived experiences of migrants at risk of detention and deportation, as well as of the consequences of returns policy for society. Finally, the project explores alternative approaches beyond return that tackle the structural causes of irregularity and provide dignified solutions.

## **The MORE CONSORTIUM**

### **Coordinator**

UNIVERSITAT DE BARCELONA, SPAIN

### **Partners**

UNIVERSITA CA' FOSCARI VENEZIA, ITALY

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