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European Council
on Refugees and Exiles

ECRE COMMENTS ON THE RETURN REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A COMMON SYSTEM FOR THE RETURN OF THIRD-COUNTRY NATIONALS STAYING ILLEGALLY IN THE UNION, AND REPEALING DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND THE COUNCIL, COUNCIL DIRECTIVE 2001/40/EC AND COUNCIL DECISION 2004/191/EC

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SUMMARY OF VIEWS

Article 1: Subject Matter

The Return Regulation establishes a common system for returns, placing stronger emphasis on enabling Member States to take "all necessary measures" to ensure effective returns and linking return policy to the broader migration management framework under the Asylum and Migration Management Regulation (AMMR). Although it maintains references to fundamental rights and international law, this emphasis risks prioritising enforcement over procedural guarantees, detention safeguards and access to effective remedies.

ECRE stresses that increasing return rates must not become an objective pursued independently of obligations under EU and international law. Member States must ensure that the objective of ''effective returns'' does not justify restrictive interpretations of safeguards or undermine the rights of individuals subject to return procedures.

Article 2: Scope

The Return Regulation largely maintains the scope and exclusions of the Return Directive, while explicitly linking its application to the AMMR, the Asylum Procedures Regulation (APR) and the Screening Regulation. These interactions increase the complexity of implementation and create risks of gaps in protection as individuals move between screening, asylum and return procedures. People excluded from its scope remain outside the full procedural framework, despite retaining protection against refoulement and certain minimum safeguards.

Member States should ensure continuity of safeguards across these procedures and avoid parallel regimes that provide lower levels of protection, particularly at external borders. The possibility of imposing criminal sanctions for irregular stay also raises concerns regarding proportionality and divergent national practices. Any such sanctions must comply with fundamental rights and CJEU case law and must not delay or frustrate return procedures.

Article 3: Definition

The Return Regulation significantly broadens the list of countries of return to which individuals could be returned against their will, going far beyond the possibilities provided under the current Return Directive. This includes third countries to which individuals have no meaningful connection and where they could be transferred under agreements or arrangements, including through the so called "*return hubs*". ECRE rejects this expansion of countries of return and raises concerns regarding the protection of fundamental rights and the risk of people being stranded in third countries. It is questionable whether such returns can be considered safe, dignified and sustainable.

Member States should avoid transferring people to countries where fundamental rights concerns arise or where no meaningful connection can be established. Particular safeguards are required for people whose applications for international protection have been rejected as inadmissible on the basis of the safe third country concept. In such cases, Member States should seek to return the person to the specific safe third country on which the inadmissibility decision was based, rather than transferring them to another third country under Article 3(3)(g). Where that safe third country does not admit or readmit the person, Article 59(9) Asylum Procedures Regulation (APR) requires that the person has access to the asylum procedure.

Article 4: Fundamental Rights

The Return Regulation maintains the reference to fundamental rights and the principle of *non-refoulement*. However, several provisions reduce procedural safeguards and access to effective remedies, raising concerns regarding their compatibility with the Charter of Fundamental Rights of the European Union (hereafter as Charter) and the principle of *non-refoulement*. Member States must ensure that all provisions of the Return Regulation are interpreted and applied in full conformity with the Charter, particularly Article 19 on protection against refoulement and Article 47 on the right to an effective remedy, as well as their obligations under international law.

Article 5: Return decision

The Return Regulation introduces a broader obligation on Member States to issue return decisions to third-country nationals staying irregularly, including where obstacles to removal exist. This may result in the automatic issuance of return decisions without adequate consideration of individual circumstances, including humanitarian grounds for granting a right to stay, and leave people who cannot be returned in prolonged legal uncertainty. Member States should assess individual circumstances and obstacles to removal before issuing return decisions, consider possibilities for granting legal status, and ensure compliance with the principle of *non-refoulement*.

Voluntary return

The Article 5 (2) (a)) of the Return Regulation removes the seven-day minimum period for voluntary departure provided under the Article 7 (1) of the Return Directive and allows Member States to determine when a person should leave immediately. This may undermine voluntary departure by leaving insufficient time for people to understand their situation, obtain legal advice and return counselling, and make practical arrangements for departure. ECRE argues that Member States should prioritise voluntary departure, ensure that departure periods are sufficient and based on individual circumstances, and avoid making immediate departure the general practice.

Country of return and procedural safeguards

The Article 5 (9) of the Return Regulation allows return decisions to be issued without specifying a country of return or identifying multiple possible countries. This creates legal uncertainty and may undermine access to an effective remedy and compliance with the principle of *non-refoulement*. ECRE argues that Member States should ensure that individuals are informed of the country of return sufficiently in advance, have an effective opportunity to challenge removal to that country, and that any risks of refoulement are assessed before removal takes place, including where circumstances have changed since the return decision was issued.

Article 6: Exceptions from the obligation to issue a return decision

The Return Regulation expands the exceptions to the obligation to issue a return decision, including for transfers under Article 23a of the Schengen Borders Code (SBC) and bilateral arrangements between Member States. These exceptions may lead to parallel return procedures with reduced procedural safeguards, including limited access to effective remedies and legal certainty. Member States should guarantee that such transfers are subject to individual assessments, respect fundamental rights and the principle of *non-refoulement*, and provide access to effective remedies. In particular, transfers under Article 23a SBC should not be used to carry out summary returns without examining potential protection needs. Member States should also ensure consistency between Article 6(2) of the Return Regulation and Articles 37 and 38(1)(c) of the APR concerning persons who have already been granted international protection in another Member State.

Article 7: Recognition and enforcement of return decisions issued by another Member State

The Return Regulation allows Member States to recognise and enforce return decisions issued by another Member State without issuing a new decision. Mutual recognition remains optional, although the European Commission may propose making it mandatory following an assessment two years after the Regulation becomes applicable. Concerns arise regarding differences between national asylum and return systems, the accuracy of information exchanged through SIS, and potential gaps in judicial protection.

Member States should maintain mutual recognition optional and ensure that the relevant provisions of the APR and Asylum and Migration Management Regulation (AMMR) are respected. Before enforcing another Member State's return decision, the enforcing Member State should verify that the decision remains enforceable, that the person concerned has had access to an effective remedy, and that enforcement complies with fundamental rights, particularly the principle of *non-refoulement*. An individual assessment and access to an effective remedy should be ensured, including where new circumstances or protection risks have arisen since the original decision was issued. ECRE also recommends that the practical and fundamental rights implications of mutual recognition be thoroughly assessed before any consideration is given to making it mandatory.

Article 8: Issuance of an entry ban and Article 9: Withdrawal, suspension or shortening of the duration of an entry ban

The Return Regulation expands the circumstances in which entry bans may be imposed, including without an accompanying return decision and where a person has voluntarily departed before a return decision was issued. It also introduces additional requirements for the withdrawal, suspension or shortening of entry bans, including the possibility of making withdrawal conditional on reimbursement of removal costs. These provisions may undermine voluntary return, reduce procedural safeguards and result in disproportionate restrictions on individuals.

Member States should avoid systematically imposing entry bans, particularly in cases of voluntary departure, and make use of the discretion provided under Article 8 to maintain more protective national practices. Any decision to impose an entry ban should be based on an individual assessment of necessity and proportionality, taking into account family and private life, vulnerability and other relevant circumstances. Where entry bans are imposed independently of a return decision, Member States should ensure respect for the right to be heard and access to an effective remedy.

Regarding the withdrawal, suspension or shortening of entry bans under Article 9, ECRE argues that Member States should establish clear and accessible procedures, including for individuals who have already left the EU, and ensure that requests are assessed in light of individual circumstances. In particular, Member States should avoid making the withdrawal of entry bans conditional on reimbursement of removal costs, as this risks unequal treatment based on individuals' financial means. Effective review of lengthy entry bans should also be ensured, including where individuals face practical difficulties in submitting requests from outside the EU.

Article 10: Removal and Article 11: Conditions for postponing removal

The Return Regulation expands Member States' discretion to order and enforce removal, including on grounds considered necessary and proportionate under national law, while introducing additional procedural safeguards. It also allows Member States to impose detention and alternatives to detention where removal has been postponed. The broad grounds for removal, reliance on previous *non-refoulement* assessments, and the risk of detention being imposed on people who cannot be removed are concerning.

Member States should ensure that removal decisions are based on an individual assessment and that any additional grounds for removal are clearly and narrowly defined in national law, applied only in exceptional and duly justified circumstances. Previous assessments of *non-refoulement* should not prevent authorities from examining new risks arising from changes in individual circumstances or the situation in the country of return. Where Member States assign *non-refoulement* assessments to a separate competent authority, effective coordination and information exchange should be ensured. Member States should also ensure access to legal assistance and return counselling where voluntary return remains possible, without undue pressure on the person concerned.

Regarding postponed removal, ECRE argues that detention should not become an automatic consequence of postponement and must remain subject to an individual assessment of necessity and proportionality, with a realistic prospect of removal. Member States should regularly review detention, consider less coercive measures and end detention where removal is no longer realistically possible. Where obstacles to removal persist, Member States should avoid leaving individuals in prolonged legal uncertainty and consider granting a right to stay or another lawful status under national law. Written confirmation of postponement and access to basic rights and essential needs should also be ensured.

Article 12: Monitoring of removal

The Return Regulation requires Member States to establish an independent removal monitoring system but removes several safeguards proposed by the European Commission concerning its mandate, resources and powers. Member States should ensure that monitoring bodies are independent, adequately resourced and have unrestricted access to relevant locations and information, including the possibility of unannounced visits. Monitoring should cover all stages of the removal process, from preparations for removal to the handover of individuals to the receiving country, with effective follow-up on allegations of fundamental rights violations. Where Member States rely on mechanisms established under the Screening Regulation, ECRE recommends ensuring continuous independent fundamental rights monitoring throughout the screening, asylum border and return border procedures, without gaps in oversight.

Article 14: Return to a third country with which there is an agreement or arrangement

The Return Regulation allows Member States to transfer or remove individuals, except unaccompanied minors, to third countries with which they have concluded agreements or arrangements, including so-called *"return hubs"*, even where individuals have no previous connection with those countries. ECRE strongly opposes such transfers due to the serious risks they pose to fundamental rights, including violations of the principle of *non-refoulement*, arbitrary detention, inadequate reception conditions, limited access to effective remedies and the risk of people being left in prolonged legal uncertainty.

Member States should refrain from establishing *"return hubs"* and transferring people to countries with which they have no meaningful connection. Where such arrangements are pursued, Member States must ensure compliance with international human rights standards, including the principle of *non-refoulement*, through individual assessments of protection risks and effective monitoring of conditions in the receiving country. Particular attention should be given to the risk of indirect or chain refoulement, detention, access to legal assistance and effective remedies, and the situation of individuals who cannot be returned onwards to their country of origin or another country.

Article 18: Obligation to cooperate

The Return Regulation significantly expands the obligations on third-country nationals to cooperate with competent authorities throughout the return procedure, including providing information and documents, cooperating with third-country authorities and complying with additional measures under national law. These broad obligations will result in individuals being considered non-cooperative even where they are unable, rather than unwilling, to comply, with potentially serious consequences, including detention, criminal sanctions and other restrictive measures.

Member States should establish clear and consistent criteria for assessing non-cooperation, based on an individual assessment of the person's ability to comply, taking into account vulnerability, lack of documentation, language barriers and circumstances beyond their control. Particular safeguards should be ensured where cooperation with third-country authorities may expose individuals or their family members to protection risks, especially where an asylum claim or appeal is pending. Member States should also ensure that alleged non-cooperation does not automatically lead to detention or other restrictive measures and that individuals receive clear and accessible information about their obligations and the consequences of non-compliance.

Article 19: Risk of absconding

The Return Regulation introduces a broad list of criteria for determining the risk of absconding, including circumstances where such a risk is presumed unless proven These criteria may lead to individuals being considered at risk of absconding based on irregular entry or movement, lack of accommodation, financial resources or non-compliance with obligations, even where these circumstances are beyond their control.

Member States should avoid the automatic application of these presumptions and ensure that the risk of absconding is established through an individual assessment, taking into account the person's circumstances and reasons for irregular movement or non-compliance. Individuals should have an effective opportunity to reject the presumption without facing an excessive burden of proof. In particular, lack of accommodation, financial resources or documentation should not automatically be considered evidence of an intention to abscond. Any decision to impose detention or other coercive measures based on a risk of absconding should be subject to an individual assessment of necessity and proportionality and the individual concerned should have access to legal remedy to challenge the decision.

Article 20: Availability for the return process

The Return Regulation allows Member States to impose measures to ensure individuals remain available for return, including geographical restrictions, residence and reporting obligations. While these measures are optional, their application may unnecessarily interfere with family life, employment, education and other fundamental rights, particularly as a risk of absconding is not required.

Member States should avoid the automatic or systematic imposition of these measures and ensure that any restrictions are based on an individual assessment of necessity and proportionality, taking into account vulnerability, family circumstances and links and the best interests of the child. Such measures should serve as genuine alternatives to detention rather than additional restrictions imposed routinely on people subject to

return or following release from detention. Member States should prioritise the least restrictive measures and ensure that non-compliance does not automatically lead to detention or criminalisation.

Article 21: Investigative measures

The Return Regulation introduces broad investigative powers, including searches of private homes, personal belongings and electronic devices, as well as the use of coercion to obtain biometric data. The intrusive nature of these measures, their impact on fundamental rights, particularly the rights to private and family life and protection of personal data, and their potentially counterproductive effects on trust in public authorities raise serious concers.

Member States should refrain from introducing or exercising these powers. In particular, schools, healthcare facilities, shelters and other places providing essential services should not be used for immigration enforcement, as this may discourage people from accessing essential services. Member States should establish clear limits on the powers of competent authorities and prioritise less intrusive and engagement-based approaches over coercive investigative measures.

Article 22: Consequences of non-compliance with the obligation to cooperate

The Return Regulation requires Member States to impose consequences for non-compliance with cooperation obligations, including reduction or withdrawal of benefits, return and reintegration assistance, work permits, financial penalties and criminal sanctions, including imprisonment. These measures disproportionately penalise people who are unable to comply for reasons beyond their control and undermine voluntary return and sustainable reintegration.

ECRE argues that Member States should establish clear criteria for assessing non-compliance, distinguish deliberate refusal to cooperate from inability to comply, and ensure that any sanctions are based on an individual assessment of necessity and proportionality, including their cumulative impact. Access to basic needs and a dignified standard of living should be maintained, particularly for vulnerable people and those who cannot be returned. Criminal sanctions must remain consistent with CJEU case law and should not penalise the mere fact of irregular stay or inability to return. Member States should also respect the right to remain pending asylum appeals and prioritise incentives and support over punitive measures.

Article 23: Alternatives to detention

The Return Regulation introduces an explicit framework for alternatives to detention (ATDs), including financial guarantees and electronic monitoring, while allowing Member States to provide for additional alternatives under national law. These measures will disproportionately affect people with limited financial resources or vulnerabilities and that alternatives may remain theoretical while detention continues to be applied as the default measure.

Member States should prioritise genuine ATDs wherever less coercive measures are sufficient, ensuring that ATDs are considered before and instead of detention, rather than systematically imposed following release from detention or where there is no ground for detention. ATDs should only be applied where a lawful ground for detention exists and must be based on an individual assessment of necessity and proportionality, taking into account vulnerability, gender, age and the best interests of the child. Member States should prioritise less restrictive, community-based and supportive alternatives, including individual case management, over financial guarantees and electronic monitoring. Effective judicial review should ensure that such measures remain necessary and proportionate and do not become prolonged restrictions on liberty.

Article 24: Right to information and Article 25: Legal assistance and representation

The Return Regulation expands the right to information and introduces more detailed provisions on legal assistance and representation. ECRE welcomes these improvements but raises concerns regarding the limitations on access to free legal assistance, particularly the requirement to request it and the possibility of refusal where an appeal is considered to have no tangible prospect of success or is abusive.

Member States should ensure that information on rights, obligations and available remedies is provided without undue delay, in a language and form the person genuinely understands, including orally where necessary. Effective access to free legal assistance and representation should be ensured through clear and accessible

procedures, particularly for vulnerable persons, individuals in detention and cases involving *non-refoulement* concerns. Restrictions on legal assistance, including assessments of the prospects of success and monetary or time limits, should not undermine access to effective remedies. Decisions refusing legal assistance should be subject to effective judicial review.

and Article 28: Suspensive effect

The Return Regulation introduces important changes to the procedural safeguards governing appeals against return-related decisions. ECRE welcomes the requirement for judicial review and a full examination of facts and law, including the obligation to verify compliance with the principle of *non-refoulement* where the material before the court indicates a possible risk. However, significant concerns remain regarding the removal of the explicit requirement for an *ex nunc* examination, the introduction of a maximum appeal period of 14 days and the absence of automatic suspensive effect of appeals. These changes risk undermining access to effective remedies, particularly for vulnerable persons, individuals in detention and those facing risks of refoulement.

Member States should ensure that judicial review includes an assessment of new evidence and changes in individual circumstances or country conditions, including risks arising after the adoption of a return decision. Courts should examine potential violations of *non-refoulement* of their own motion where the available information indicates such a risk, in accordance with the Charter and CJEU case law. The removal of explicit references to *ex nunc* and *ex officio* examination cannot relieve national authorities and courts of these obligations. Effective access to information, interpretation and legal assistance must also be ensured to enable individuals to exercise their right to an effective remedy.

Regarding appeal deadlines, ECRE recommends that Member States provide the longest possible periods under national law, including retaining existing longer deadlines where permitted, and align them, wherever legally possible, with the one-month period under the APR. Appeal periods should allow sufficient time to understand the decision, obtain legal assistance and prepare an effective appeal, particularly in complex cases involving protection risks. Member States should also ensure that deadlines do not begin to run before decisions have been effectively communicated in a language and form the person understands.

ECRE calls on Member States to retain or introduce automatic suspensive effect of appeals, particularly where international protection claims, *non-refoulement* concerns or other risks of irreversible harm arise. Relying on individual requests for suspension may leave people at risk of removal before they can effectively exercise their rights, especially where access to legal assistance is limited or appeal deadlines are short. Member States should therefore ensure that removal cannot take place before individuals have had a genuine opportunity to challenge the decision and obtain judicial protection, in accordance with the Charter, the ECHR and established European case law.

Article 29: Grounds for detention

The Return Regulation significantly expands the grounds for detention compared to the Return Directive, including detention for identity or nationality verification, readmission, security risks, non-compliance with return obligations and additional grounds established under national law. These expanded grounds, combined with the removal of the explicit requirement to assess less coercive measures before ordering detention, may result in detention becoming a more routine measure of return enforcement, rather than a measure of last resort.

Member States should ensure that detention remains exceptional and is only imposed following an individual assessment of necessity and proportionality, in accordance with Article 6 of the Charter and relevant CJEU case law. Authorities should assess whether less coercive measures can be applied effectively before ordering detention.

Member States should also ensure that detention decisions are issued in writing, clearly specifying the factual and legal grounds and available remedies. Where the grounds for detention change, a new reasoned decision should be issued rather than allowing detention to continue automatically under a different justification. Continued detention must remain subject to regular individual assessment of necessity, proportionality and a reasonable prospect of removal.

Article 30: Detention period

The Return Regulation significantly extends the maximum period of detention compared to the Return Directive, allowing detention for up to 24 months, with a possible additional six-month extension under certain circumstances, bringing the maximum to 30 months. The possibility of applying a new detention period following movement to another Member State raises further concerns about prolonged deprivation of liberty. ECRE strongly opposes these extensions, which risk undermining the exceptional nature of immigration detention and the fundamental right to liberty. Available evidence does not establish that longer periods of detention lead to more effective returns, particularly where removal is prevented by circumstances beyond the individual's control.

Member States should refrain from introducing or systematically applying the maximum detention periods permitted under the Return Regulation. As extensions beyond the initial 12-month period are optional, Member States should maintain shorter maximum periods under national law and ensure that the limits established by the Regulation are treated as exceptional upper limits rather than standard periods of detention. Authorities should continuously assess whether detention remains necessary and proportionate and whether a reasonable prospect of removal continues to exist.

Article 31: Review of detention orders

The Return Regulation requires detention orders to be reviewed at least every six months, and every three months once detention reaches 24 months. ECRE raises concerns that these intervals are insufficient given the significantly extended detention periods permitted under Article 30. The removal of the European Commission's proposed 15-day deadline for judicial review further risks delays in challenging deprivation of liberty.

ECRE calls on Member States to treat the six-month period as a maximum rather than a standard review interval and maintain or introduce more frequent reviews, particularly in cases of prolonged detention or where individual circumstances change. Judicial review must be conducted speedily, with clear and short deadlines established under national law. Member States should also ensure sufficient judicial capacity and effective access to legal assistance, particularly where individuals need to challenge detention alongside return, removal or entry-ban decisions.

Article 32: Detention conditions

Article 32 of the Return Regulation sets standards for detention conditions but weakens several existing safeguards compared to the Return Directive. In particular, the requirement to separate immigration detainees from ordinary prisoners applies only "to the extent possible", while the Regulation also allows additional restrictions on access to open-air space, visits and enhanced security arrangements. These changes may lead to more restrictive and prison-like detention conditions, contrary to the principles established in CJEU case law and the fundamental rights of persons deprived of their liberty.

Member States should ensure that immigration detention takes place in appropriate specialised facilities and refrain from using prisons to compensate for insufficient detention capacity. The reference to separation "to the extent possible" should not be used to lower existing standards or undermine the safeguards established by the CJEU, particularly in *Pham, Bero and Bouzalmate and Landkreis Gifhorn.* Any restrictions on open-air access, visits or additional security measures should remain exceptional, individually justified and proportionate, with effective judicial oversight.

ECRE further recommends that Member States prioritise addressing existing shortcomings in detention conditions, including overcrowding, inadequate accommodation and sanitation, insufficient access to healthcare and mental health services, and restrictive detention regimes. Particular attention should be given to the specific needs of women, children, survivors of violence, persons with disabilities and other vulnerable individuals. Implementation should focus on ensuring dignified conditions and effective access to legal representatives, family members, healthcare and independent monitoring organisations, rather than expanding detention capacity at the expense of fundamental rights safeguards.

INTRODUCTION

Following the adoption of the Return Regulation establishing a common system for the return of third-country nationals staying irregularly in the European Union (hereafter, the Return Regulation), ECRE maintains its serious concerns about the direction of EU return policy and the implications of the new rules for fundamental rights, procedural safeguards and the treatment of people subject to return procedures.

The Return Regulation forms part of a broader shift in EU migration and asylum policy towards increasingly restrictive and coercive measures, a trend also reflected in the reform of the Common European Asylum System (CEAS) under the Pact on Migration and Asylum. The European Commission presented its proposal for the Return Regulation on 11 March 2025, with the stated objective of ''establishing a more effective and harmonised EU return system'' and increasing the number of returns. However, rather than addressing some of the structural challenges that have long affected return procedures, including addressing the situation of those who cannot return beyond their control, the Return Regulation places greater emphasis on enforcement, expanded obligations on individuals and sanctions for non-compliance.

During the legislative negotiations, ECRE, alongside other civil society organisations, legal experts, international organisations and UN human rights experts, repeatedly raised concerns about the potential impact of the proposed measures on fundamental rights and their compatibility with EU and international law. Despite these warnings, the Return Regulation has further expanded restrictive measures in several areas, weakening existing fundamental rights safeguards. These include broader grounds for detention and longer detention periods, increased obligations to cooperate with return procedures which will also lead to detention and criminalisation of people in return procedures,[1] expanded possibilities for imposing entry bans, restrictions on access to effective remedies, and new measures facilitating the recognition and enforcement of return decisions across Member States. The Return Regulation also introduces externalisation schemes aimed at outsourcing return procedures to third countries through so-called *"return hubs"*, raising significant legal and practical questions, particularly regarding the protection of individuals against refoulement and other types of human rights violations.

ECRE remains concerned that the increased reliance on coercive measures will have serious consequences for people subject to return procedures without necessarily achieving the stated objective of 'making returns more effective'. The experience of implementing existing EU return rules has shown that many of the obstacles to return lie beyond the control of the individuals concerned, including the lack of cooperation from countries of origin, difficulties in obtaining travel documents and situations in which return is not legally or practically possible. Increasing detention, imposing additional obligations or introducing sanctions cannot, in themselves, resolve these challenges. Instead, such measures risk criminalising people and place them in prolonged situations of uncertainty, insecurity and deprivation of liberty, particularly where there is no realistic prospect of return.

ECRE continues to advocate for an approach to return policy that respects fundamental rights, prioritises 'voluntary return', and recognises the importance of providing regular pathways to regularisation and residence for people who cannot be returned, particularly where there is risk of refoulement or obstacles to return are beyond their control. Such an approach would not only better protect individuals' rights and dignity but could also provide a more sustainable and proportionate response to the challenges faced by Member States.

With the adoption of the Return Regulation, attention now turns to its implementation at national level. While the Return Regulation is directly applicable, a number of its provisions leave considerable discretion to Member States, particularly concerning the use and duration of detention, alternatives to detention, enforcement measures, procedural arrangements and safeguards. The way in which Member States exercise this discretion will have significant consequences for the rights of people subject to return procedures. It may also lead to substantial differences in national practices, despite the Return Regulation's stated objective of greater 'harmonisation'.

The implementation phase therefore presents an important opportunity for Member States to limit the negative consequences of the new rules and ensure that their national legal frameworks and administrative practices remain consistent with their obligations under EU primary law, particularly the Charter of Fundamental Rights of the European Union (hereafter as Charter), as well as international human rights law and the established case law of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR). The fact that certain restrictive measures are permitted under the Return Regulation does not

1. Article 22 (1)(e) of the Return Regulation

necessarily mean that Member States are required to introduce or apply them to their fullest extent. Where discretion exists, Member States should make use of it to maintain higher protection standards, preserve existing safeguards and avoid unnecessary restrictions on fundamental rights.

The Return Regulation provides for a transitional period of one year before most of its provisions become applicable, while certain provisions, including those relating to the so-called *"return hubs"* and readmission arrangements, apply from its entry into force on 16 October 2026. This phased application makes it particularly important that Member States carefully assess the legal, practical and fundamental rights implications of the new framework and take the necessary steps to ensure that adequate safeguards are in place before the relevant provisions become applicable.

The analysis also provides recommendations to Member States, the European Commission and other relevant actors on measures that could help mitigate the risks associated with the new rules. Particular attention is given to areas where Member States retain discretion and where national legislation, administrative practices and judicial oversight will be essential to ensuring compliance with fundamental rights.

Although ECRE continues to oppose many of the restrictive measures introduced by the Return Regulation, the purpose of these comments is to contribute to an implementation process that limits their harmful consequences, preserves fundamental rights safeguards and reduces the risk of practices that would be incompatible with EU and international law. The adoption of the Return Regulation does not diminish the legal obligations of Member States, nor does it remove the need to ensure that return procedures respect the rights, dignity and individual circumstances of every person affected.

These comments follow the structure of the Return Regulation and will assess most but not all its articles. They will focus on their implications for fundamental rights, potential legal uncertainties and challenges arising during implementation. They do not provide a detailed account of the negotiations between the co-legislators or systematically compare the final text with the European Commission's original proposal, except where such references are useful for understanding specific provisions. The analysis builds on ECRE's previous comments on the Commission's proposal for the Return Regulation[2] and should be read alongside ECRE's comments on the relevant instruments of the Pact on Migration and Asylum, particularly the Asylum Procedures Return Regulation (APR) and the Return Border Procedure Return Regulation (RBPR).

2. ECRE, Comments on the proposal for a Return Regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC, June 2025, available here.

ANALYSIS OF KEY PROVISIONS

CHAPTER I: GENERAL PROVISIONS

ARTICLE 1: SUBJECT MATTER

Article 1 of the Return Regulation establishes a Common system for the return of third-country nationals (TCNs) staying illegally on the territory of the Member States[3] (here after, the Return Regulation). Similar to the 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[4] (Here after, the Return Directive), it states that the system must operate in accordance with fundamental rights, the Charter of Fundamental Rights of the European Union (Here after, the Charter), general principles of Union law, and applicable international human rights obligations including under international refugee law. However, the Return Regulation goes beyond the Return Directive by explicitly defining its objective as enabling Member States to take "all necessary measures" to ensure effective returns and by linking the return system to the "comprehensive approach" to migration management established under the Asylum and Migration Management Return Regulation (AMMR).

The Return Directive merely established common standards and procedures for returning irregularly staying TCNs. By cross-referring to the AMMR, return policy is no longer presented as an autonomous procedure but as one element of a broader migration management framework, alongside border management, asylum, solidarity and external cooperation. This reflects the European Commission's stated objective[5] of increasing the ''effectiveness of returns'' while ensuring greater coherence between the asylum and return systems.

Implementation considerations

The Return Directive sought to harmonise national return procedures by establishing common standards while ensuring that return decisions remained fully compliant with fundamental rights and international law. Article 1 of the Return Regulation marks a significant paradigm shift, rather than focusing on common procedural standards, the Return Regulation establishes a common system whose stated objective is to enable Member States to take all necessary measures to ensure ''effective returns''.

ECRE has consistently argued[6] that improving return rates cannot become an objective pursued independently of the legal safeguards established under EU and international law. Although Article 1 reiterates that implementation must respect the Charter and international human rights obligations, the stronger emphasis on ''effectiveness'' risks influencing the interpretation of later provisions in favour of enforcement where competing considerations arise. In practice, this may encourage a more restrictive interpretation of procedural guarantees, detention safeguards and access to remedies if focus on increasing return rates becomes the overriding objective guiding implementation.

ARTICLE 2: SCOPE

Article 2 largely maintains the scope of the Return Directive by applying the Return Regulation to all the TCNs staying ''illegally'' on the territory of the Member States, while excluding persons enjoying the right to free movement under EU law. It also preserves the existing exclusions for persons refused entry at the border, apprehended following an irregular border crossing, subject to return as a criminal law sanction, or extradition proceedings. However, the Return Regulation introduces several important changes.

First, it expressly provides that the Return Regulation is without prejudice to the AMMR, the Asylum Procedures Return Regulation (APR) and the Screening Return Regulation. Second, Article 2 clarifies that Member States may apply the Return Regulation to certain categories of persons otherwise excluded from its scope, including

3. European Commission, Regulation (EU) 2026/2280 of the European Parliament and of the Council of 7 October 2026 establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and of the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC, October 2026, available here.
4. European Commission, 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, 2008. Available here.
5. European Commission, New common European system for returns, March 2025, available here.
6. ECRE, Joint Civil Society Statement on the Council's Position on the Return Regulation Proposal, December 2025. Available here.

those returned as a criminal law sanction, while exempting them from specific provisions. Finally, the Return Regulation explicitly confirms that national criminal sanctions for irregular stay remain permissible, provided they do not jeopardise the objective of effective returns.

Implementation considerations

Unlike the Return Directive, the Return Regulation explicitly links its scope to specific instruments of the Pact on Migration and Asylum. While this may improve consistency between asylum, screening and return procedures, it also increases the complexity of implementation[7] and raises questions about the interaction between different legal frameworks, particularly when individuals move between screening, asylum and return procedures. These questions remain relevant despite the Return Regulation explicitly providing that its provisions apply without prejudice to the relevant provisions of the AMMR and the APR.

The Return Regulation expressly preserves the possibility for Member States to impose criminal penalties, including imprisonment, for irregular stay, provided this does not undermine effective returns. This reflects the case law[8] of the Court of Justice of the EU (CJEU), which permits criminal sanctions only where they do not delay or frustrate the return procedure. Nevertheless, differences in national criminal laws may continue to result in divergent practices across Member States and raise proportionality concerns where criminal enforcement interferes with return procedures or fundamental rights.

Although the Return Regulation requires Member States to respect the principle of non-refoulement and certain minimum safeguards for persons excluded from its scope, these individuals remain outside the full procedural framework of the Return Regulation. This may lead to varying levels of practices,[9] particularly for people apprehended at the external borders or following irregular entry.

ARTICLE 3 (3): DEFINITIONS

The Return Regulation maintains the initial European Commission's proposal's broad list of countries of return to which individuals could be returned against their individual will. This goes far beyond the list of possible countries of return provided by the Return Directive. The list of countries of return now includes:

a) a third country that is the country of origin of the third-country national;

b) a third country that is the country of former habitual residence of the third-country national;

c) a third country of transit on the way to the Union in accordance with Union or Member States' readmission agreements or arrangements;

d) a third country, other than the one referred to in points (a) and (b), where the third-country national has a right to enter and reside;

e) a safe third country in relation to which the application for international protection of a third-country national has been rejected as inadmissible, pursuant to Article 38(1), point (b), of Regulation (EU) 2024/1348 or, in the case of Member States not bound by that Regulation, in accordance with equivalent provisions where they have introduced such provisions in national law;

f) the first country of asylum in relation to which the application for international protection of a third-country national has been rejected as inadmissible, pursuant to Article 38(1), point (a), of Regulation (EU) 2024/1348 or, in the case of Member States not bound by that Regulation, in accordance with equivalent provisions where they have introduced such provisions in national law;

g) a third country, other than the one referred to in point (a), (b) or (d), with which there is an agreement or arrangement on the basis of which the third-country national is accepted, in accordance with Article 14 of this Regulation; (d) a third country, other than the one referred to in points (a) and (b), where the third-country national has a right to enter and reside;

7. For example, see Pro Asyl DeReturn Regulation & Deportation, dismantling of EU standards, disguised as ''common return system'' prepared by Minos Mouzourakis, June 2026. Available here.

8. For example, see CJEU, Alexandre Achughbabian v Préfet du Val-de-Marne, Case C-329/11, Judgment of 6 December 2011, available here, ECLI:EU:C:2011:807.

9. The European Parliament report on the implementation of the Return Directive showed that Member States make use of the possibility offered in the current Return Directive Article 2(2)(a) not to apply the Directive in such "border cases" The report concludes that this creates parallel regimes and procedures falling outside the scope of the Directive that offer fewer safeguards compared to the regular return procedure. They highlight the following: no term for voluntary return, no suspensive effect of an appeal and fewer restrictions on the length of detention, as well as lower levels of protection increasing the risks of pushbacks and refoulement.

Although the Return Regulation does not expressly exclude persons whose applications have been rejected as inadmissible on safe-third-country grounds from transfer to a country of return under Article 3(3)(g), the impossibility to conduct such transfers can be interfered from reading this provision in conjunction with the specific safeguards laid down in the APR. Where an application has been rejected as inadmissible on the basis of the safe-third-country concept, the APR envisages admission or readmission to the third country in relation to which the inadmissibility decision was taken. Where that country does not admit or readmit the person, Article 59(9) APR requires that the applicant has access to the asylum procedure. Transfer to a 'return hub' (See Article 14) should therefore not be used to circumvent this consequence by replacing the safe third country with another third country under Article 3(3)(g), particularly with a view to onward return to the country of origin despite the applicant's protection claim never having been examined on the merits.

Implementation considerations

There are several concerns arising from the Return Regulation's broad approach to determining the country of return. Given that the list includes countries that the person has not visited, the term "country of return" is a misnomer: countries of deportation or countries of transfer would be more accurate terms. Under the current Return Directive Article 3(3), people can only be returned or removed to their country of origin, to a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or to another third country to which the third-country national concerned voluntarily decides to return and in which they will be accepted. ECRE has strongly opposed[10] returns or removals to a country under other (non-formal) arrangements permitted under the current Return Directive and rejects this further expansion of countries of return and deportation.

The range of possible countries of 'return' raises questions regarding the protection of fundamental rights of the people concerned. These include what would happen to people who are then stranded in third countries, whether the return/removal can be considered safe and dignified in these instances and whether possibilities for reintegration are sustainable. Irrespective of the changes to EU law introduced by the reform, several practical, political and financial obstacles to such arrangements remain. Should a potential third country be identified to host such return or transit hubs, it would also be important to consider whether the resulting arrangements and agreements could withstand judicial scrutiny, particularly in light of the significant questions they may raise regarding respect for fundamental rights.

Member States should avoid transferring people to countries that may raise any fundamental rights considerations or where no meaningful connection could not be established. Particular safeguards are required for people whose applications for international protection have been rejected as inadmissible on the basis of the safe third country concept. In such cases, Member States should seek to return the person to the specific safe third country on which the inadmissibility decision was based, rather than transferring them to a third country where they have no connection with. This reflects the fact that the person's protection claim has not been examined on its merits and that the inadmissibility decision rests on the availability of protection in that particular third country.

Where that safe third country does not admit or readmit the person, the safeguards under the APR must apply. In accordance with Article 59(9) APR, the person must have access to the asylum procedure.

Recommendation:

» Member States should only return to countries with which the individual has a meaningful connection, including the country of origin or former habitual residence.

ARTICLE 4: FUNDAMENTAL RIGHTS

The Return Regulation maintains the reference to the fundamental rights and the principle of non-refoulement.

Implementation considerations:

While Article 4 of the Return Regulation requires respect for fundamental rights and the principle of *non-refoulement*, a number of provisions of the Return Regulation reduce procedural safeguards and access to

10. ECRE, ECRE comments on the Proposal for a Return Regulation of the European Parliament and of the Council establishing a common system for the return of the third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC and Council decision 2004/191/EC, June 2025, available here.

effective remedies and may, depending on their implementation, give rise to incompatibilities with the Charter and the principle of *non-refoulement*.

The explicit reference to fundamental rights in Article 4 does not exhaust the obligations of Member States under EU law. The Return Regulation, as an act of secondary EU law, must be interpreted and applied in full conformity with the Charter, including protection against refoulement under Article 19, and the right to an effective remedy under Article 47. Member States, when implementing and applying the Return Regulation, remain fully bound by these requirements[11] as well as their obligations under international law.

11. CJEU, Ararat, Case C-156/23, Judgment of 17 October 2024, available here, ECLI:EU:C:2024:892; CJEU, Adrar, Case C-313/25 PPU, Judgment of 4 September 2025, available here, ECLI:EU:C:2025:647; CJEU, Shamsi, Case C-877/24, Judgment of 13 May 2026, available here, ECLI:EU:C:2026:397.

CHAPTER II: RETURN PROCEDURE

SECTION 1: PROCEDURES ORDERING RETURN

ARTICLE 5: RETURN DECISION

Article 5 of the Return Regulation introduces an obligation on Member States to issue a return decision to any TCN staying ''illegally'' on their territory. Compared to Article 6 of the Return Directive, the Return Regulation provides for a more systematic and broad issuance of return decisions.

Under the Return Directive, Member States have the discretion to refrain from issuing a return decision in certain circumstances. In particular, Article 6(4) allows Member States to grant an autonomous residence permit or other authorisation conferring a right to stay on compassionate, humanitarian or other grounds. Where such authorisation is granted, no return decision shall be issued, and any existing return decision must be withdrawn or suspended for the duration of the authorisation. Furthermore, Article 6(5) allows Member States to consider refraining from issuing a return decision where a TCN is subject to a pending procedure for the renewal of a residence permit or other authorisation offering a right to stay. However, the Return Regulation removes these provisions.

The Return Regulation provides that a return decision "shall be issued to any TCN staying illegally" and clarifies that the existence of a hindrance to removal does not, in itself, preclude the issuance of such a decision. Where removal cannot lawfully or practically be carried out, however, its enforcement must be postponed. In particular, where a country of return has been determined and removal to that country would violate the principle of *non-refoulement*, the person cannot be removed to that country for as long as that risk persists.

The possibility of issuing a return decision despite an existing obstacle to removal may provide a degree of legal certainty by ensuring that the person receives a formal decision that is subject to procedural safeguards and can be challenged through an effective remedy, rather than remaining in an undefined legal situation. At the same time, the Return Regulation does not clearly define what constitutes a "hindrance to removal". This creates uncertainty as to the range of circumstances covered, including whether the concept encompasses legal barriers to removal, practical obstacles such as the absence of travel documents or difficulties in obtaining cooperation from the country of return, or situations in which removal is temporarily impossible for other reasons. This lack of clarity risks divergent practices across Member States and could result in return decisions remaining in force for prolonged periods despite there being no realistic possibility of removal. Implementation should therefore ensure that the concept of a "hindrance to removal" is interpreted consistently with fundamental rights, the principle of *non-refoulement* and the requirement of an individual assessment, and that persons who cannot be removed are not left in prolonged legal uncertainty.

ECRE discussed earlier[12] about the broader obligation to issue a return decision, particularly where other options may be available. The fact that a person is staying irregularly does not necessarily mean that return is the appropriate outcome in their individual circumstances. There may be humanitarian or other grounds for granting an authorisation to stay, or the person may be unable to return for reasons beyond their control.

The final text does not include an explicit obligation in the substantive provision to assess such alternatives before issuing a return decision. ECRE previously recommended that an individual assessment be incorporated directly into the provision on the issuance of return decisions and that Member States consider the possibility of granting a legal status to people who cannot be returned, vulnerable people and those with strong family, social or employment links.

The issuing of return decision should not result in a legal limbo for people who cannot be returned, and "hindrance" should be interpreted in line with human rights obligations under EU and international law. The final text distinguishes between the existence of a return decision and the possibility of carrying out removal but does not provide a clear solution for people who remain unable to return over a prolonged period.

This distinction should not, however, be understood as allowing Member States to issue or enforce return decisions regardless of the circumstances preventing removal. CJEU jurisprudence has placed limits on the adoption and enforcement of return decisions where legal or practical obstacles to removal are already

12. ECRE, ECRE Comments on the proposal for a Return Regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union and repealing Directive 2008/115/EC Available here.

identifiable. In TQ (C-441/19),[13] CJEU held that, in the case of an unaccompanied minor, the Member State must establish before adopting a return decision that adequate reception is available in the country of return.

In *Abdida*[14] (C-562/13), the CJEU established that an effective remedy must have suspensive effect where the enforcement of a return decision would expose an individual to a serious risk of grave and irreversible deterioration in their state of health. Furthermore, in Ararat[15] (C-156/23), the Court confirmed that national courts must examine compliance with the principle of *non-refoulement* of their own motion where the material before them indicates a potential risk, including where relevant circumstances have changed since the adoption of the return decision and in *Tadmur* (C-202/25)[16] The CJEU has clarified that the principle of *non-refoulement* must be respected not only at the stage of removal but also when adopting a return decision.

Implementation considerations

During the implementation phase, Member States will need to determine which authorities are competent to issue return decisions and establish procedures for assessing relevant individual circumstances before such decisions are issued. The broader obligation to issue a return decision should not result in an automatic approach whereby the mere finding of an irregular stay leads directly to the issuance of a return decision without adequate consideration of the individual circumstances of the person concerned. In particular, before issuing a return decision, competent authorities should assess whether there are grounds under EU or national law for granting the person a right to stay, including for compassionate, humanitarian or other reasons. Implementation should therefore ensure that the obligation to issue a return decision does not undermine Member States' ability to regularise a person's stay or result in return procedures being initiated where there are grounds for allowing the person to remain.

The separation between the issuance of a return decision and the practical possibility of removal also requires clear procedures for identifying and recording obstacles to removal. The European Commission should provide a clear guidance on when a hindrance to removal requires postponement of removal and when circumstances may instead justify not issuing a return decision or subsequently withdrawing it. Without clear procedures, there is a risk that people who cannot be returned for reasons beyond their control will accumulate return decisions without any realistic prospect of enforcement and remain in situations of legal and practical limbo, a situation that would infringe on their fundamental rights including right to dignity under Article 1 of the Charter. Furthermore, automatic issuing of return decisions to every person who cannot be returned due to the principle of non-refoulment or those who cannot be returned due to other reasons beyond their control will further widening the gap between return decisions and actual returns and thus make the return rate look lower.

Member States should also have mechanisms in place for reviewing return decisions where circumstances preventing removal persist or change and the individual concerned should have access to an effective remedy[17]. This is particularly important where the obstacle is linked to the principle of *non-refoulement*. Where new information indicates[18] that removal would expose a person to a risk of refoulement removal must be postponed or the return decision should be withdrawn and the individual concerned should be either channelled again to asylum procedure or provided with an appropriate status under EU or national law.

The implementation of Article 5 should also be coordinated closely with procedures for granting residence permits or other authorisations to stay. Where national authorities identify humanitarian, compassionate or other grounds for allowing a person to remain, these possibilities should be considered before or alongside the issuance of a return decision. This would avoid the unnecessary issuance of return decisions to people who may subsequently obtain a legal status.

In the context of asylum, Member States will need to ensure that the issuance of a return decision following rejection of an application for international protection does not undermine the safeguards provided by the

13. CJEU, TQ v Staatssecretaris van Justitie en Veiligheid, Case C-441/19, Judgment of 14 January 2021, available here, ECLI:EU:C:2021:9.
14. CJEU, Centre public d'action sociale d'Ottignies-Louvain-la-Neuve v Moussa Abdida, Case C-562/13, Judgment of 18 December 2014, available here, ECLI:EU:C:2014:2453.
15. CJEU, K, L, M and N v Staatssecretaris van Justitie en Veiligheid (Ararat), Case C-156/23, Judgment of 17 October 2024, available here, ECLI:EU:C:2024:892.
16. CJEU, Tadmur, Case C-202/25, Judgment of 26 March 2026, available here, ECLI:EU:C:2026:25
17. CJEU, Shamsi, Case C-877/24, Judgment of 13 May 2026, available here, ECLI:EU:C:2026:397, paras 62–63.
18. CJEU, K, L, M and N v Staatssecretaris van Justitie en Veiligheid (Ararat), Case C-156/23, Judgment of 17 October 2024, available here, ECLI:EU:C:2024:892.

APR[19]. In particular, where the applicant has a right or is allowed to remain pending an appeal, the return decision must not produce effects that result in removal or cause the period for voluntary return to run during that period. This is consistent with the CJEU's judgment in *Gnandi* (C-181/16),[20] which established that a return decision may be adopted following a rejection of an asylum application but that its legal effects must be suspended where the applicant is entitled to remain pending the appeal.

Recommendations:

- Member States should assess circumstances preventing removal and ensure that the issuance and enforcement of return decisions remain consistent with EU law and the principle of *non-refoulement*.
- Despite the removal of the explicit provision under the Return Directive, Member States retain the competence to grant residence permits or other authorisations conferring a right to stay on humanitarian, compassionate or other grounds and should continue to make full use of this discretion.

Voluntary return

During the negotiations phase, the Council of the EU has merged the European Commission's proposed Article 13 on 'voluntary return'[21] with Article 5, on Return decision.

The Article 5 (2)(a)) of Return Regulation introduces a significant change to the framework governing voluntary return. Under Article 7 (1) of the Return Directive, a return decision must provide for ''an appropriate period for voluntary departure between seven and thirty days'', subject to specified exceptions. The period may be extended where the specific circumstances of the individual case require this.

Ther Return Regulation removes the seven-day minimum. It provides that the departure period should not exceed 30 days, while allowing a longer period where the individual circumstances justify this. At the same time, Member States may determine in national law when a person is granted a period for voluntary departure and when the person is required to leave immediately. The period may also be shortened in cases of non-compliance with the obligation to cooperate.

The removal of the seven-day minimum is a significant change. Under the Return Directive, seven days is the minimum period that must generally be provided, with shorter periods or no period permitted only in the circumstances expressly provided for in Article 5(4). Under the Return Regulation, there is no equivalent EU-level minimum.

ECRE is concerned that this may make voluntary departure less meaningful. The objective of providing a period for voluntary departure should be to allow people to comply with the obligation to leave without being subjected to forced removal. This requires sufficient time to understand the return decision, obtain legal advice as well as return counselling about available options and make practical preparations for departure and reintegration.

This is particularly important for those whose asylum claims have been rejected and who may have spent a significant period in the asylum procedure and may need time to understand the consequences of a negative decision. ECRE previously[22] recommended reinstating the seven-day minimum and noted that there is little evidence that periods shorter than seven days increase the use of voluntary departure.

The Danish Refugee Council's (DRC) long standing experience in the fields shows[23] that people need time to understand their situation, consider their options and making plans for the future including the option of voluntary return.

Implementation considerations

19. European Commission, Return Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU. Available here.
20. CJEU, Sadikou Gnandi v État belge, Case C-181/16, Judgment of 19 June 2018, available here, ECLI:EU:C:2018:465.
21. While the Return Regulation uses the term "voluntary return", the concept as defined in the Return Regulation more closely corresponds to "voluntary departure", namely compliance with the obligation to return within the time limit set in the return decision, rather than a genuinely free choice to return. Nevertheless, for consistency with the terminology of the Return Regulation, ECRE uses the term "voluntary return" throughout this paper.
22. ECRE, Policy Note: Voluntary departure and return: Between a rock and a hard place, July 2018, available here.
23. According to the Danish Refugee Council (DRC), which has extensive experience in return counselling, providing sufficient time is important to establish trust and provide information about options. Read more here.

During the implementation phase, Member States should ensure a harmonised approach to determining the circumstances in which a period for voluntary departure is granted and those in which a person may be required to leave immediately. Clear and sufficiently aligned criteria are necessary to avoid significant disparities in implementation across Member States.

Prioritisation of voluntary departure is firmly grounded in EU law, particularly in the principle of proportionality. In *Z.Zh. and I.O.*[24] (C-554/13), CJEU confirmed that proportionality must be respected at all stages of the return procedure, including when deciding whether to grant a period for voluntary departure. Against this background, unduly short voluntary departure periods risk undermining the effectiveness of return procedures.

The individual should normally be given a meaningful opportunity to comply voluntarily with the return decision, and any decision to require immediate departure should be based on an individual assessment and the specific grounds provided for in the Return Regulation. This is consistent with the CJEU's preliminary ruling in joined cases C-636/23 (Al Hoceima) and C-637/23 (*Boghni*),[25] which ruled that under the Return Directive a ''refusal to grant a voluntary departure window is not merely a mechanical enforcement step. Because a refusal triggers immediate escalations such as the potential for pre-removal detention and automatic entry bans, it directly impacts a person's fundamental rights''.

The removal of the seven-day minimum also means that Member States will need to establish safeguards to ensure that the departure period is sufficient in the individual case. In setting the period, authorities should ensure that the measure suggested is proportionate and take into account factors such as the length of stay, family and social links, children attending school, vulnerability, the person's access to travel documents and the practical arrangements required for return. Where participation in a return and reintegration programme is envisaged, sufficient time should be provided to allow the person to receive counselling.

There is a particular risk that the deletion of the EU minimum will lead to very short departure periods being established in national law. Member States should therefore monitor the periods actually granted in practice and their impact on voluntary departure and forced removal. Data should be collected on the length of departure periods granted, the proportion of people receiving no period or an immediate departure order, and the relationship between the length of the period and the subsequent use of voluntary or forced return.

The link between the cooperation obligation and the departure period will also require careful implementation. Member States should establish clear and realistic criteria for determining non-compliance and should ensure that assessments are individual, objective and proportionate. People should not be detained or in any other way sanctioned for not fulfilling the obligations to leave in accordance with a return decision within a specific deadline if they are cooperating on the return procedure. People should be informed clearly of what is required of them and of the consequences of failing to comply. Difficulties arising from language, literacy, vulnerability or lack of understanding of the procedure should not automatically be treated as non-cooperation.

Access to information, legal assistance and return counselling will be particularly important given the shorter timeframes that may result from the Return Regulation and should comply with the fundamental rights obligations under EU primary law. The Return Regulation provides for a written or oral translation of the main elements of the return decision upon request. Given that the departure period may be very short, Member States should ensure that people are proactively informed of their rights and obligations, are able to understand the return decision and are provided with the relevant translation.

Recommendations:

- Voluntary return should always be prioritised and the TCNs in the return procedure should be able to voluntarily choose the third country to which they wish to return, provided that they will be accepted by that country.
- Member States should refrain from granting periods for voluntary departure shorter than seven days and ensure that the duration of the period is determined with due regard to the specific circumstances of each individual case.

24. CJEU, Z.Zh. and I.O., Case C-554/13, Judgment of 11 June 2015, available here, ECLI:EU:C:2015:377
25. CJEU, Al Hoceima and Boghni, Joined Cases C-636/23 and C-637/23, Judgment of 1 August 2025, available here, ECLI:EU:C:2025:603.

Country of return and procedural safeguards

The Return Regulation allows a return decision to be issued without specifying a country of return or to identify multiple possible countries of return[26]. This creates legal uncertainty for the person and may undermine their ability to effectively challenge the return decision, if the country to which they will ultimately be removed is unknown. It may also make it difficult for courts to meaningfully assess compliance with the principle of *non-refoulement* if the actual destination of removal has not been determined[27].

At the same time Article 24 (3) obliges the competent authorities to inform the TCN concerned 'sufficiently in advance of the removal'. However, 'sufficiently in advance' should be interpreted in line with the principle of effectiveness and should allow the TCN concerned sufficient time to challenge designation of the country of return in the return decision or in decision ordering removal in line with the Charter.

These concerns are compounded by the absence of an automatic suspensive effect of appeals (see Article 28). Where the country of return is determined only at a later stage, the TCN concerned must have sufficient time and an effective opportunity to challenge removal to that specific country. Otherwise, there is a risk that a removal could be carried out before a competent court has been able to effectively examine whether return to the identified destination would expose the person to a risk of refoulement.

Implementation considerations

Member States should establish procedures for determining and including the country of return and for updating the information where circumstances change. Where the country of return has been specified in the initial return decision, the person concerned must be informed of that country sufficiently in advance and in accordance with the requirements of EU law. The person must have an effective opportunity to challenge the return and must be afforded safeguards ensuring compliance with the principle of *non-refoulement*.

Where several countries are identified, Member States should ensure that removal does not take place to a country in respect of which the person has not had an effective opportunity to raise relevant protection concerns. The assessment should also be capable of being updated where new information becomes available. This is particularly important in the context of *non-refoulement*, where conditions in the country of return may change after the adoption of the return decision.

ARTICLE 6: EXCEPTIONS FROM THE OBLIGATION TO ISSUES A RETURN DECISION

Article 6 of the Return Regulation sets out the circumstances in which Member States are not required to issue a return decision. While some of these exceptions already exist under the Return Directive, the Return Regulation expands them. In particular, it introduces new exceptions for transfers carried out under Article 23a of the Schengen Borders Code (SBC)[28] and for transfers between Member States under bilateral arrangements or cooperation pursuant to Article 44 and where the mutual recognition procedure under Article 7 applies. It also clarifies that no return decision should be issued where a TCN is detected during exit border checks or where the procedure under Article 7 applies. As under the Return Directive, Member States must not issue a return decision where the person holds a valid residence permit or other right to stay issued by another Member State but may do so where the person fails to leave or where public policy, public security or national security require immediate action.

Implementation considerations

The expanded exceptions increase the number of situations in which individuals may be transferred between Member States without a formal return decision. This risks creating parallel return procedures outside the Return Regulation's main procedural framework, potentially resulting in reduced procedural safeguards, including more limited access to remedies and legal certainty[29].

The inclusion of transfers under Article 23a of the SBC reinforces the growing link between internal border

26. Article 5 (9) & Article 10 (4) of the Return Regulation.
27. CJEU, HG v Minister van Asiel en Migratie (Tadmur), Case C-202/25, Judgment of 26 March 2026, available here, ECLI:EU:C:2026:257
28. European Commission, Return 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), available here.
29. ECRE, Comments on the Return Regulation of the European Parliament and of the Council amending Return Regulation (EU) 2016/399 on a Union code on the rules governing the movements of the persons across borders (page 10 – 12), March 2025. Available here.

controls and return procedures. This may raise legal concerns if such transfers are used in practice as summary returns without adequate individual assessment or effective procedural safeguards, particularly where protection needs have not been properly examined. Furthermore, Article 6(2) prevents Member States from issuing a return decision where the person concerned holds a right to stay in another Member State. This appears to be at odds with Articles 37 and 38(1)(c) of the APR, which require Member States to issue a return decision immediately where an application for international protection is rejected as inadmissible on the ground that the applicant has already been granted international protection in another Member State[30].

ARTICLE 7: RECOGNITION AND ENFORCEMENT OF RETURN DECISIONS ISSUES BY ANOTHER MEMBER STATE

Article 7 of the Return Regulation allows a Member State to recognise and enforce a return or removal decision issued by another Member State against a TCN who is irregularly staying on its territory. This means that, instead of issuing a new return decision, the Member State where the person is currently staying may rely on the existing decision issued by another Member State and proceed with its enforcement. The information necessary to identify and recognise the existing decision will be made available through the European Return Order (ERO)[31]. While this may reduce duplication of return procedures, it raises important questions regarding the allocation of responsibility between the issuing and enforcing Member States and the procedural safeguards available to the person concerned.

Mutual recognition was one of the most contentious elements of the negotiations among Member States, and the final text significantly modifies the European Commission's proposal. While the European Commission envisaged making mutual recognition mandatory following a transitional period, the adopted Return Regulation maintains it as a "may" provision. Following an assessment two years after the Return Regulation becomes applicable, the European Commission may submit a legislative proposal with a view to introduce mandatory recognition which is therefore not automatic from the entry into force of the Return Regulation.

The provision represents an attempt to strengthen a system of mutual recognition which, despite existing EU legislation since 2001[32] and the availability of return alerts in the Schengen Information System (SIS), has been little enforced in practice. ECRE previously highlighted practical obstacles including differences between national return systems, data quality and protection concerns, administrative burdens and Member States' reluctance to take responsibility for decisions issued elsewhere[33]. Significant differences in the quality of asylum decision making in certain Member States, recognition rates and national forms of protection also raise fundamental rights concerns where one Member State is asked to enforce a decision originally taken by another.

Implementation considerations

As mutual recognition remains optional, Member States are not required to recognise and enforce another Member State's return decision and can continue to issue their own decision where appropriate. The Return Regulation should also be read together with the AMMR and APR: where those instruments apply, their rules take precedence, meaning that in relevant cases Member States may use the take-back procedure under Article 36 AMMR rather than mutual recognition under Article 7.

Where a Member State nevertheless chooses to recognise and enforce another Member State's decision, implementation should ensure effective access to a legal remedy and an individual assessment of whether enforcement would comply with the principle of *non-refoulement* and other fundamental rights safeguards. Particular attention will also be required to the accuracy and completeness of information exchanged through SIS. Given the limited use of mutual recognition to date and the potential administrative and judicial burden, the forthcoming assessment of its operation will be important before any consideration is given to making the system mandatory.

30. Pro Asyl and RSA, Deregulation and Deportation, dismantling of EU standards, disguised as ''common return system'', prepared by Minos Mouzourakis, June 2026. Available here.
31. The Return Regulation introduces the European Return Order (ERO), a standard form containing the key information from a return decision. Its purpose is to make the relevant information available to other Member States and thereby facilitate the mutual recognition and enforcement of return decisions.
32. European Commission, Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of return decisions on the expulsion of third country nationals, available here.
33. ECRE, Comments on the proposal for a Return Regulation (page 19 - 21) June 2025. Available here.

Recommendations:

- Member States should ensure that mutual recognition remain optional as it is under the 2001 Directive on mutual recognition of expulsion decisions and does not result in gaps in judicial protection.
- Before enforcing another Member State's return decision, the enforcing Member State should verify that the decision remains enforceable and that its execution complies with fundamental rights, in particular the principle of non-refoulement.
- The person concerned should also have effective access to a remedy, including where new circumstances or risks have arisen since the original decision was adopted.

SECTION 2: ENTRY BAN

ARTICLE 8: ISSUANCE OF AN ENTRY BAN

Article 8 of the Return Regulation significantly expands the circumstances in which entry bans may be imposed compared to the Return Directive. Member States must accompany a return decision with an entry ban:

- Where the TCN subject to removal under Article 10,
- Has failed to comply with the obligation to leave within the prescribed period under Article 5,
- Poses a security risk under Article 14.

These categories are broad and partly overlap with Article 10. As a result, the mandatory grounds in Article 8(1) are likely to lead to entry bans being imposed in most cases involving removal.

The Return Regulation nevertheless introduces greater discretion in cases outside of the scope of Article 8 (1). Article 8(2) provides that Member States "may" accompany a return decision with an entry ban following an individual assessment and the level of cooperation of the TCN concerned with the relevant authorities. Member States are therefore not required to systematically impose entry bans outside the mandatory situations under Article 8(1).

More significantly, the Return Regulation considerably expands the possibility to impose entry bans without an accompanying return decision. Under the Return Directive, entry bans are intrinsically linked to return decisions, while the European Commission proposal only envisaged an autonomous entry ban where irregular stay was detected during exit border checks. The final Article 8 of the Return Regulation retains this possibility but removes the explicit reference to the individual circumstances, proportionality and rights of defence contained in the Commission proposal. The final text goes further than the European Commission proposal by allowing an entry ban where a person voluntarily leaves before a return decision has been issued (Article 8 (5)), and where grounds for imposing an entry ban arise after the return decision has already been adopted (Article 8(6)).

On a slight positive note, the Return Regulation allows competent authorities to exercise discretion in individual cases by refraining from issuing an entry ban on humanitarian grounds. This flexibility may apply where a TCN concerned is a victim of trafficking in human beings or has cooperated fully with the competent authorities, including by enrolling in a return and reintegration programme.

These additions represent an important shift in the function of entry bans. The CJEU on *Ouhrami*, (C-225/16)[34] on the Return Directive has described an entry ban as supplementing a return order and producing its effects following the person's departure from Member State territory. The Return Regulation increasingly allows entry bans to operate as autonomous migration-control measures, including before or independently of a formal return decision. Article 8(5) is particularly concerning as a person who leaves voluntarily before a return decision is issued may nevertheless receive an EU-wide entry ban. This risks undermining the Return Regulation's broader objective of encouraging voluntary departure by reducing the practical distinction between voluntary compliance and enforced return.

Implementation considerations

Several of the new possibilities under Article 8 are formulated as "may" clauses. Member States are therefore not required to systematically impose entry bans under Articles 8(2), 8(4), 8(5) or 8(6), and can maintain more

34. CJEU, Ouhrami, Case C-225/16, Judgment of 26 July 2017, available here, ECLI:EU:C:2017:590, para. 32.

protective national practices. In particular, voluntary return before the adoption of a return decision should not automatically trigger an entry ban. Where Member States use entry bans, an individual assessment of necessity and proportionality remains important given the potentially significant consequences of an EU-wide prohibition on entry and stay.

Particular attention will also be required to procedural safeguards where an entry ban is imposed independently of, or after, a return decision. The CJEU in *Boudjlida* (C-249/13)[35] confirmed that the right to be heard forms part of the rights of defence in return proceedings and requires the individual to have an effective opportunity to express their views before a decision adversely affecting them is adopted. Where an entry ban is adopted separately under Articles 8(4), 8(5) or 8(6), Member States should therefore ensure that the person has an effective opportunity to present relevant individual circumstances such as family ties before the decision is taken, rather than limiting procedural guarantees to subsequent notification and appeal.

Implementation should also avoid automatic entry bans based solely on the fact that a person falls within one of the new situations permitted by the Return Regulation. Particular consideration should be given to family and private life, vulnerability, prospects of lawful re-entry and other individual circumstances when deciding whether an optional entry ban is necessary and determining its duration.

ARTICLE 9: WITHDRAWAL, SUSPENSION OR SHORTENING OF THE DURATION OF AN ENTRY BAN

The Return Regulation substantially modifies both the Return Directive and the European Commission's initial proposal by narrowing the specified grounds on which an entry ban may be withdrawn, suspended or shortened, while simultaneously introducing new procedural requirements and potential hurdles. It also introduces new provisions concerning the review of entry bans exceeding ten years and the possibility of making withdrawal conditional on reimbursement of removal costs.

Under the European Commission proposal, an entry ban could be withdrawn, suspended or shortened on three specified grounds:

- where the TCN demonstrated that they had returned voluntarily in compliance with a return decision;
- where they had not previously been subject to a return decision or removal order;
- or where they had not entered the territory of a Member State while an entry ban was still in force.

By contrast, the adopted Return Regulation retains only voluntary return as an expressly specified ground under Article 9(1).

The Return Regulation removes these objective eligibility criteria and instead provides the issuing Member State with broad discretion to withdraw, suspend or shorten an entry ban where the TCN demonstrates that they have returned voluntarily. At the same time, Article 9(3) requires that any request be well-grounded and may only be submitted after departure from the territory of the Member States, introducing an additional procedural threshold that was absent from the European Commission proposal. The Return Regulation does not define what constitutes a "well-grounded" request, leaving considerable discretion to national authorities and increasing the risk of divergent practices across Member States.

The adopted text also introduces a new review mechanism for entry bans exceeding ten years. While requiring Member States to review such bans ten years after departure represents an improvement compared to the European Commission's proposal which contained no mandatory review. However, this remains conditional upon a request by the TCN and does not establish any obligation for Member States to conduct periodic reviews on their own initiative. Given the practical difficulties individuals may face in accessing legal assistance or obtaining information from outside the EU many years after they have left the Schengen area, the effectiveness of this safeguard is likely to be limited.

Particularly concerning is new Article 9(5), which allows Member States to make the withdrawal of an entry ban conditional upon reimbursement of the costs of removal. This provision effectively introduces a financial condition for accessing a more favourable legal status and risks creating unequal treatment based solely on an individual's financial means. Individuals who cannot afford to reimburse removal costs may remain subject to lengthy entry bans despite otherwise meeting the relevant criteria for withdrawal. Such an approach

35. CJEU, Khaled Boudjlida v Préfet des Pyrénées-Atlantiques, Case C-249/13, Judgment of 11 December 2014, available here, ECLI:EU:C:2014:2431.

raises questions regarding compatibility with the principles of proportionality and equality before the law under Articles 20 and 52 of the Charter. Conditioning access to an administrative remedy on an individual's ability to pay also risks disproportionately affecting people in situations of vulnerability or destitution.

SECTION 3: ENFORCEMENT OF RETURN

ARTICLE 10: REMOVAL

Article 10 of the Return Regulation which deals forced returns, has been substantially expanded compared to the Return Directive and even the European Commission proposal, granting Member States greater discretion in ordering and enforcing removals. While several procedural safeguards have been strengthened, the adopted text also raises concerns regarding legal certainty, effective judicial protection and compliance with fundamental rights.

A positive development is the strengthening of procedural guarantees surrounding removal decisions. The Return Regulation requires removal decisions to state reasons in fact and law, inform the person of available remedies, and provide, upon request, written or oral translation of the main elements of the decision. These additions reinforce the effective judicial protection under Article 47 of the Charter.

The adopted text also elaborates the assessment of the principle of *non-refoulement* by requiring authorities to refer individuals to the appropriate procedure, including the asylum procedure where applicable, where indications of a risk arise. However, the provision simultaneously limits further assessments by allowing authorities to rely on previous assessments and requiring any new examination only where the individual has substantiated relevant new information. In practice, this may create obstacles for TCNs concerned and particularly for vulnerable groups who are unable to promptly produce evidence despite changed country conditions or personal circumstances, potentially undermining the absolute nature of the principle of *non-refoulement* under Articles 4 and 19 of the Charter and Article 3 of European Convention on Human Rights (ECHR).

The introduction of a new ground permitting removal whenever the competent authorities consider it "necessary and proportionate" under national law, for reasons other than those expressly listed in the Return Regulation, significantly broadens Member States' discretion. This open-ended clause may lead to divergent implementation across Member States, reduce legal certainty and risk undermining the objective of harmonised return procedures.

Furthermore, the Return Regulation expressly allows Member States to continue facilitating voluntary return even where the conditions for removal are fulfilled[36]. While this provides useful flexibility and may encourage return and sustainable reintegration, practical implementation will require clear safeguards such as access to legal assistance and return counselling to ensure that consent to voluntary return remains genuinely voluntary and is not influenced by the imminent prospect of forced removal.

The adopted text strengthens certain procedural safeguards, notably regarding notification, translation and remedies. It also grants Member States considerably wider discretion in enforcing removals. Particular concerns arise regarding the open-ended removal ground in Article 10(1), the reliance on previous *non-refoulement* assessments, and the possibility of changing the country of return at a later stage.

Implementation considerations

In implementing Article 10, Member States should ensure that removal is based on an individual assessment and that the open-ended possibility to order removal on other grounds considered "necessary and proportionate" under national law does not become a general or automatic ground for removal. Any such grounds should be clearly defined in national law and applied consistently with the principles of necessity, proportionality and legal certainty.

Particular attention should be paid to the assessment of *non-refoulement*. Reliance[37] on an earlier assessment should not prevent authorities from considering relevant changes in the individual's circumstances or in the

36. Article 10 (2) of the Return Regulation: This Regulation shall not prevent Member States from permitting or facilitating voluntary return of a third-country national who is otherwise subject to removal pursuant to paragraph 1, in particular where it is considered as leading to a faster and more effective return.

37. CJEU, Case C-202/25, *Tadmur (HG v Minister van Asiel en Migratie)*, judgment of 26 March 2026, ECLI:EU:C:2026:257, available here.

situation in the country of return. Where new information indicates a potential risk of refoulement, this should be assessed before removal is carried out, including where the individual may face difficulties in substantiating the risk.

It is positive that Article 10(8) allows Member States to entrust the assessment of *non-refoulement* to an authority other than the authority responsible for issuing or enforcing the return decision. This may enable such assessments to be carried out by competent authorities with relevant protection expertise[38] and provide a degree of institutional separation between the assessment of protection risks and the enforcement of removal. Where Member States make use of this possibility, however, effective coordination and information exchange between the relevant authorities will be essential, particularly where new circumstances relevant to *non-refoulement* arise before removal.

Recommendations:

- Member States should ensure that removal decisions are based on an individual assessment of each case and establish clear, narrowly defined criteria in national law for invoking other grounds considered "necessary and proportionate". Such grounds should be applied only in exceptional and duly justified circumstances, subject to an individual assessment of necessity and proportionality, and should not be used as a general or automatic basis for ordering removal.
- Where Member States allow individuals to return voluntarily, even when the conditions for enforcing their removal have been met, they should ensure that the individuals concerned have access to adequate legal assistance and return counselling, are fully informed of their available options, and can make a genuinely voluntary and informed decision without undue pressure.

ARTICLE 11: CONDITIONS FOR POSTPONING REMOVAL

Article 11 of the Return Regulation largely maintains the grounds for postponing removal contained in Article 9 of the Return Directive. Removal must be postponed where it would violate the principle of *non-refoulement* or where the return decision has been suspended following an appeal. The Return Regulation also retains the possibility of postponing removal based on the specific circumstances of the individual case and introduces additional procedural safeguards, including the obligation to provide written confirmation of the postponement and to review it where relevant circumstances change. It further requires Member States to take account of the person's basic needs, family unity, healthcare, education for minors and the needs of vulnerable persons during the period of postponement.

A significant change, however, is that where removal is postponed, Article 11(7) allows Member States to apply the measures provided for in Articles 18, 23 and 29, including detention, provided that the conditions laid down in those provisions are met. This goes significantly further than the Return Directive, which, in cases of postponed removal, refers only to certain measures aimed at preventing a risk of absconding.

Implementation considerations

A significant change is that Article 11(7) of the Return Regulation explicitly allows detention (Article 29) and Alternatives to detention (Article 23) where removal has been postponed. As per Article 29 detention is permitted provided it follows individual assessment, subject to the principle of proportionality, imposed for the purpose of return, readmission or removal, subject to the grounds under Article 29(3) and ordered by a written decision. In line with the CJEU detention related jurisprudence,[39] imposition of detention should be interpreted strictly and should not result in detention becoming an automatic consequence of postponement. Consistent with *Kadzoev* (C-357/09 PPU)[40] and relevant ECtHR case law,[41] detention must remain linked to a realistic prospect of removal and cease where such a prospect no longer exists. Member States must therefore regularly reassess its necessity and proportionality and consider less coercive measures.

38. UNHCR, Conclusion no 8: Determination of refugee status – adopted by the Executive Committee 1977, October 1977, available here.
39. CJEU, A v Rikoskomisario B (Aroja), Case C-150/24, Judgment of 5 March 2026, available here, ECLI:EU:C:2026:148.
40. CJEU, Said Shamilovich Kadzoev (Huchbarov), Case C-357/09 PPU, Judgment of 30 November 2009, available here, ECLI:EU:C:2009:741.
41. For example: Any deprivation of liberty under the second limb of Article 5 § 1(f) will be justified only for as long as deportation or extradition proceedings are in progress. If such proceedings are not implemented, the detention will cease to be permissible under Article 5 § 1(f) (Khlaifia and Others v. Italy [GC], 2016, § 90; A. and Others v. the United Kingdom [GC], 2009, § 164; Amie and Others v. Bulgaria, 2013, § 72; Shiksaitov v. Slovakia, 2020, § 56).

The Return Regulation also does not resolve the situation of persons who remain non-removable for prolonged periods. Repeated postponement may leave individuals in extended legal uncertainty where obstacles to return persist. While the Return Regulation does not require regularisation, Member States retain the possibility to grant a right to stay or another lawful status under national law. The requirement to provide written confirmation of postponement and to take account of basic rights and essential needs is positive and should help ensure greater legal certainty during this period.

ARTICLE 12: MONITORING OF REMOVAL

Article 12 of the Return Regulation requires Member States to provide for an independent removal monitoring system and allows them to rely on existing monitoring mechanisms, including structures and expertise established pursuant to the Screening Return Regulation (EU) 2024/1356. This represents an improvement compared to the Return Directive, which only requires an "effective" forced-return monitoring system without explicitly requiring its independence.

However, the final provision is considerably weaker than the European Commission's proposal. The European Commission had proposed more detailed requirements concerning the functioning and powers of the monitoring mechanism, including adequate resources, risk-based selection of removal operations, desk reviews and on-the-spot and potentially unannounced checks, access to relevant locations, and procedures for communicating and following up on substantiated allegations of fundamental rights violations. These safeguards have not been retained in the final text.

ECRE considers independent and effective monitoring essential to ensure respect for fundamental rights and human dignity during removal operations. While the explicit requirement of independence is welcome, the absence of minimum requirements concerning the mandate, resources, access, methodology, transparency and follow-up powers of monitoring bodies risks perpetuating some of the shortcomings experienced under the Return Directive. In particular, considerable discretion is left to Member States as to what constitutes an effective and independent monitoring system.

Implementation considerations

Member States should ensure that monitoring bodies are functionally and operationally independent from the authorities responsible for return and removal and are provided with sufficient financial and human resources, expertise and unrestricted access to relevant locations and information. Monitoring should include the possibility of on-the-spot and unannounced monitoring where necessary. Mechanisms should also be established to ensure that allegations of fundamental rights violations identified by monitors are effectively investigated and followed up by the competent authorities. Regular publication of monitoring findings would further strengthen transparency and accountability.

The possibility of relying on structures and expertise established under the Screening Return Regulation[42] is a positive development and should be used to strengthen continuity in fundamental rights monitoring across the Pact procedures[43]. Where Member States rely on these mechanisms,[44] they should ensure that the same standards of independence, expertise and adequate resources apply throughout the return process, irrespective of whether the person is at the border or within the territory. Monitoring should therefore extend to relevant places of detention and other locations where return procedures and removal operations are carried out.

Particular attention should be given to the return border procedure. The transition from screening to the asylum border procedure and subsequently to the return border procedure should not result in gaps in fundamental rights monitoring. Member States should ensure continuity of independent monitoring throughout these procedures, including monitoring of detention conditions, treatment during removal operations and access to applicable procedural safeguards and legal counselling.

42. European Commission, Return Regulation (EU)2024/1356 of the European Parliament and of the Council of the May 2024 introducing the screening of third country nationals at the external borders and amending Return Regulation (EC) no 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (pages – 15-16), available here.
43. For example, see ECRE's Comments on the Return Regulation of the European Parliament and of the Council introducing the screening of third-country nationals at the external borders and amending Return Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU)2019/817, (Page 22 – 27), February 2025, available here.
44. At the time of drafting this comments paper, it appears that most Member States have not yet established a fully functioning monitoring mechanism as provided under the Pact on migration and asylum, see ECRE's Policy Note: The EU pact on asylum and migration: putting the new rules to the test, October 2026, available here.

Recommendations:

- Member States should ensure continuous and effective independent fundamental rights monitoring throughout the screening, asylum border and return border procedures, without any gaps in oversight during the transition between these procedures.
- Member States should ensure that the monitoring mechanism provided for under Article 12 covers all stages of the removal process, including preparations for removal, transfers to departure points, pre-departure procedures, transportation and the handover of individuals to the authorities of the receiving country.

ARTICLE 14: RETURN TO A THIRD COUNTRY WITH WHICH THERE IS AN AGREEMENT OR ARRANGEMENT

Article 14 of the Return Regulation provides the legal basis for Member States to externalise return and removal procedures through so-called *"return hubs"*, allowing them to transfer TCNs subject to return decisions to non-EU countries with which they have concluded an agreement or arrangement.

The introduction of *"return hubs"* was one of the most contentious elements of the Return Regulation during the legislative negotiations, including among Member States, given the significant legal, political and practical questions surrounding their establishment and operation. The provision represents a substantial departure from the framework established under the Return Directive which provides for:

- return to the country of origin,
- a country of transit under a readmission agreement or other arrangement,
- or another third country to which the person voluntarily decides to return and where they will be accepted.

Under the Return Regulation, individuals except for Unaccompanied Minors (UAMs) may be transferred/ forcefully removed to a third country with which they have no previous connection and to which they have not voluntarily agreed to go.

ECRE has consistently opposed the transfer or removal of individuals to third countries with which they have no connection or where they have never been to, including through the so-called *"return hubs"*, due to the serious risks such arrangements pose to fundamental rights. These include violations of the principle of non-refoulement, arbitrary detention and prolonged detention, inadequate reception conditions, limited access to effective remedies and legal assistance, and insufficient safeguards to ensure effective monitoring and accountability for fundamental rights violations and the significant uncertainty surrounding their practical operation.

Transferring or removing people to countries where they may have no family, social networks, community ties or knowledge of the language could expose them to considerable hardship, insecurity and isolation. People who have already experienced displacement, persecution or prolonged uncertainty may find themselves transferred once again to unfamiliar environments, without clarity about the conditions of their stay or their future prospects. Such transfers prolonging rather than resolving situations of uncertainty and may leave individuals in return procedures in a legal and practical limbo, particularly where onward return to their country of origin or another country is not possible.

The establishment of the so-called *"return hubs"* also raises serious concerns regarding the risk of arbitrary detention,[45] inadequate reception and living conditions, restrictions on freedom of movement, limited access to legal assistance and effective remedies, and exposure to ill-treatment or onward refoulement.

Article 14(1) provides that agreements or arrangements may only be concluded with third countries where international human rights standards and principles, including the principle of *non-refoulement*, are respected. While this requirement is important, the Return Regulation provides limited guidance on how Member States should assess compliance with these standards, what evidence should inform such assessments or how compliance should be monitored over time. A general assessment of the human rights situation in a third country cannot replace an individual assessment of the risks that a person may face following transfer, including risks arising from their personal circumstances, vulnerabilities or the possibility of subsequent removal to another

45. *Even if there is no detention in the third country concerned, as indicated in the joint statement issued by five Member States (Austria, Germany, Greece, the Netherlands and Denmark) on 4 September in Copenhagen available here:, there is still a risk of detention before and during transfer or removal to that third country.*

country. In this respect, compliance with the principle of *non-refoulement*, as protected under Articles 4 and 19(2) of the Charter, requires particular attention, including to the risk of indirect or chain refoulement.

Recommendation:

» Member States should refrain from returning TCNs to countries with which they have no prior connection or in which they have never resided. Returns should be limited to the individual's country of origin, country of former habitual residence, or another third country to which the individual voluntarily chooses to return and where they will be accepted.

CHAPTER III: OBLIGATIONS OF THE THIRD-COUNTRY NATIONAL

ARTICLE 18: OBLIGATION TO COOPERATE

Article 18 introduces a significantly expanded obligation on TCNs to cooperate with the competent authorities throughout the return procedure. While the Return Directive allowed Member States to impose certain obligations, such as reporting, providing documents or residing at a designated place during the period for voluntary departure, Article 18 establishes a much broader and more detailed set of obligations. Member States are allowed to impose other relevant additional measures under national law.

The below table provides a comparison of the list of obligations under the Return Directive and the Return Regulation:

Return Directive	**Return Regulation**
a) regular reporting to the authorities b) deposit of an adequate financial guarantee c) submission of documents or the obligation to stay at a certain place may be imposed for the duration of the period for voluntary departure	a) remain available to the competent authorities on the territory of the Member State competent for the return procedure of which the third-country nationals are the subject, not abscond, including to another Member State, and present themselves for the departure of the transportation for return as determined by the competent authority; b) not physically or verbally obstruct the return; c) provide without undue delay, all information and physical and digital documents and documentation, including copies and electronic records thereof, relevant for establishing or verifying identity or nationality or otherwise relevant within the return procedure that they possess or are reasonably presumed to be able to obtain, in particular by providing the competent authorities with an identity or travel document or cooperating on obtaining an identity or travel document; d) not destroy, withhold or otherwise dispose of information, documents and documentation, referred to in point (c), use aliases with fraudulent intent, provide other false information in an oral or written form, or otherwise mislead the authorities or fraudulently oppose the return procedure; e) provide an explanation in the event that they are not in possession of an identity or travel document; f) provide information on the third countries transited, the travel routes used, or other third countries with which they may have other connections that might facilitate return; g) provide biometric data as defined in Union and national law, including Article 2(1), point (s), of Return Regulation (EU) 2024/1358 of the European Parliament and of the Council33; h) comply with travel requirements of carriers and entry requirements of third-country authorities, including health requirements, when such requirements are generally imposed on international travellers; i) provide, when requested by the competent authorities precise contact details, including current place of residence, address, telephone number where they may be reached and, where available, an electronic mail address; j) provide, without undue delay, information on any changes to the contact details referred to in point (i); k) comply with any measure imposed under Article 20(1) and Article 23(1), throughout the return procedure; l) provide all required information and statements in the context of requests lodged with the competent authorities of relevant third countries for the purpose of obtaining travel documents and cooperate with these authorities of third countries, as necessary; m) appear in person or by means of videoconference, as required by the competent authorities, before the competent national or third-country authorities at the location indicated by such authorities for the purpose of acquiring travel documents and establishing their identity or nationality; n) where required by competent authorities, participate in return and reintegration counselling; o) comply with other relevant additional measures in relation to return under national law.

Implementation considerations

The breadth of these obligations places a significant burden on TCNs and may result in individuals being considered non-cooperative even where they are unable, rather than unwilling, to comply. Several provisions leave considerable discretion to national authorities, including the obligation to provide information that is 'otherwise relevant' to the return procedure and to explain the absence of identity or travel documents. In practice, it may be difficult to establish whether documents have been deliberately destroyed, lost, stolen or taken by smugglers, or whether a person simply never possessed them. This is particularly problematic for stateless persons, who may be unable to provide the information required or obtain documentation from a country that recognises them as a national.

The implementation of Article 18 will therefore require clear and consistent criteria for assessing compliance and, importantly, an individual assessment of whether the person is actually able to fulfil the obligation. Authorities should distinguish genuine non-cooperation from situations e.g. due to lengthy asylum procedures or they have family in a certain area of the country or those arising from vulnerability, lack of documentation, trauma, language or digital barriers, or circumstances beyond the person's control which should not be considered as an obligation. Without such safeguards, the broad obligations risk being applied inconsistently across Member States and may lead to arbitrary decisions regarding what constitutes non-cooperation.

Particular concerns arise from the obligation to cooperate with third-country authorities in the context of obtaining travel documents. Requiring a person to approach or provide information to the authorities of a country to which they claim they cannot safely return may expose them or their family members to persecution or serious harm. This is especially problematic where a person is simultaneously challenging a negative asylum decision and a return decision. Requiring them to seek documentation or otherwise cooperate with their country of origin could undermine their protection claim or create the perception that they have re-availed themselves of the protection of that country. Individuals should not be forced to choose between complying with return obligations and maintaining their ability to challenge a return that may expose them to serious harm.

The obligations to cooperate should also be read in conjunction with the broad range of obligations imposed on applicants under Article 9 of the APR. These provisions place a significant burden on third-country nationals to cooperate with the authorities. Failure to comply with the obligations under the APR may lead to an application for international protection being considered implicitly withdrawn.

Article 18 also raises concerns because non-compliance with the cooperation obligations can have severe consequences including criminal sanctions due to the alleged lack of cooperation under Article 22 (1)(e) under Article 19 in the Return Regulation, including in relation to the assessment of the risk of absconding, voluntary departure and the use of detention and other restrictive measures. This makes the clarity and proportionality of the underlying obligations particularly important. Any restrictive measure based on alleged non-cooperation must be based on an individual assessment and cannot be justified solely by a person's inability to comply with an obligation. In line with EU and human rights law, detention must remain a measure of last resort and there must be a realistic prospect of removal.

The implementation of the new communication requirements may present practical difficulties. Article 18 requires TCNs to remain reachable and provides for communication through methods established under national law or digital systems. However, the provision does not sufficiently address situations where individuals cannot understand official communications because of language barriers, illiteracy, limited digital literacy or vulnerability. Effective implementation therefore requires that information concerning rights and obligations and the consequence of non-compliance is communicated in a manner that the individual can genuinely understand.

Recommendations:

- Member States should ensure that the cooperation obligations under Article 18 are clearly and narrowly defined and interpreted and applied in accordance with the principles of necessity and proportionality. Any assessment of non-cooperation should be based on an individual examination of the person's actual ability to comply, taking into account vulnerabilities and circumstances beyond their control. Inability to comply should not be treated as deliberate non-cooperation or used to justify restrictive measures or sanctions.
- Member States should ensure that cooperation obligations relating to obtaining travel documents do not require individuals to contact or cooperate with third-country authorities where doing so could

expose them or their family members to a risk of persecution or serious harm. In particular, such obligations should not be imposed while an appeal against a negative asylum decision or return decision involving protection concerns is pending.

» Member States should ensure that individuals have access to an effective judicial remedy to challenge any determination of non-cooperation by the competent authorities, given its potentially serious consequences for access to voluntary return, return and reintegration assistance, the imposition of entry bans and the use of detention or other restrictive measures. Such determinations should be subject to effective judicial scrutiny before any adverse consequences are imposed.

ARTICLE 19: RISK OF ABSCONDING

Article 19 of the Return Regulation significantly changes the approach to determining a risk of absconding compared to the Return Directive. The Return Directive does not establish a list of EU-wide criteria but defines the risk as the existence of reasons in an individual case, based on objective criteria defined by law. The Return Regulation instead establishes a broad and vague list of circumstances as follows:

a) The third-country national has entered or moved without authorisation to the territory of a Member State, including following transit through a third country, or attempts to do so;

b) The third-country national is subject to a return decision issued by a Member State other than the one on the territory of which he or she is currently staying illegally, including as detected through the alerts entered into the Schengen Information System pursuant to Return Regulation (EU) 2018/1860;

c) The third-country national does not comply with one or more of the measures imposed in accordance with Article 20(1), and Article 22, or expresses or demonstrates intent to do so;

d) The third-country national has re-entered the territory of the Member States in violation of a valid entry ban.

If any of these circumstances are fulfilled, a risk of absconding is presumed. The burden of proof otherwise is on the applicant. In addition, other criteria for which an overall assessment is required are listed in Article 19(2).

Importantly, the Return Regulation appears broader than the European Commission's proposal regarding irregular movement. whereas the proposal referred to a TCN who had "moved without authorisation to another Member State'', the final Return Regulation refers to a person who has **"**entered or moved without authorisation to the territory of a Member State**"**. The presumption may therefore also capture initial irregular entry rather than primarily unauthorised secondary movement between Member States. This is particularly concerning because irregular entry or movement does not in itself demonstrate that a person intends to abscond from a return procedure.

As long as the secondary movement is concerned, as ECRE previously highlighted, secondary movement may result from poor reception conditions, family links, employment opportunities or other circumstances unrelated to an intention to evade the authorities. Similarly, irregular entry is a common feature of the journeys of people seeking international protection and cannot in itself demonstrate likely future conduct during a return procedure. The presumption also reverses the burden by requiring the individual to demonstrate that they do not pose a risk of absconding.

The criteria under Article 19 (2) are not subject to the same presumption and require an overall assessment of the circumstances of the individual case. Nevertheless, the list remains very broad and includes lack of a residence or reliable address, failure to leave voluntarily, anticipated non-cooperation, use of false documents, failure to attend return counselling, lack of social anchoring or sufficient means of subsistence and non-compliance with cooperation obligations. Some of these circumstances may be beyond the person's control or even result from Member State policies. For example, withdrawal of accommodation following a return decision may itself leave a person without a fixed address and increases the chances of secondary movement as people do not want to live in destitution. A finding of risk of absconding may have consequences throughout the return procedure, including ATDs under Article 23 and detention under Article 29.

Implementation considerations

Implementation will require particular attention to avoiding an automatic application of the presumptions in Article 19 (1). Although the Return Regulation provides that a risk of absconding exists in situations pre-determined by this provision "unless proven otherwise", authorities should ensure that the presumption remains genuinely rebuttable and that individuals have an effective opportunity to explain their circumstances.

Moreover, to allow for an effective use of this provision burden of proof on the person concerned should not be excessive. Irregular entry or movement, the existence of another Member State's return decision or non-compliance with an obligation should therefore not automatically result in detention or other coercive measures without consideration of the circumstances of the individual case. The definition of absconding under the Dublin Return Regulation III provided by the CJEU,[46] could be useful when implementing the present provision as it makes a deliberate nature of absconding a component of the individual assessment.

This is also relevant in light of existing case law guidance. In Al Chodor (C-528/15),[47] the CJEU emphasised that objective criteria for establishing a risk of absconding must be clearly established in binding national law provisions of general application. The European Commission's Return Handbook[48] has further stressed that the assessment under the Return Directive must be individual and that circumstances such as irregular entry or lack of documentation should not automatically lead to a finding of a risk of absconding. These safeguards remain particularly relevant given the broader consequences attached to the concept under the Return Regulation.

To apply criteria under Article 19(2), authorities will need to preserve a genuine overall assessment and consider circumstances that may explain or counterbalance an individual criterion. For example, lack of accommodation or financial resources should not be treated in the same way as deliberate attempts to evade the return procedure[49]. Assessment of individual circumstances for the purposes of identifying whether absconding takes place should consider whether non-compliance results from vulnerability, inability to obtain documentation, or other circumstances outside the person's control.

46. CJEU, Jawo, Case C-163/17, Judgment of 19 March 2019, available here, ECLI:EU:C:2019:218, paras 54–57.
47. CJEU, Al Chodor, Case C-528/15, Judgment of 15 March 2017, available here, ECLI:EU:C:2017:213
48. European Commission, Commission Recommendation (EU) 2017/2338 of 16 November 2017 establishing a common 'Return Handbook' to be used by Member States' competent authorities when carrying out return-related tasks. Available here.
49. CJEU, Jawo, Case C-163/17, Judgment of 19 March 2019, available here, ECLI:EU:C:2019:218, mutatis mutandis.

CHAPTER IV: MEASURES TO PROMOTE RETURN AND ALTERNATIVES TO DETENTION

ARTICLE 20: AVAILABILITY FOR THE RETURN PROCESS

Article 20 of the Return Regulation allows Member States to impose measures aimed at ensuring availability for return, including obligations to remain in a determined geographical area, residence at a specific address, reporting obligations or other measures provided for in national law. This considerably expands the scope of the Return Directive, where similar obligations may be imposed to avoid a risk of absconding during the period for voluntary departure.

The final text nevertheless represents an important improvement compared to the European Commission's proposal. Whereas the European Commission proposed that individuals "shall" be subject to one or more of these measures throughout the return procedure, Article 20 now provides that Member States "may" impose them. Member States are not required to introduce or systematically apply these restrictions. ECRE concerns that such measures could unnecessarily interfere with employment, education, family life and other aspects of individuals' lives nevertheless remains, particularly as the Return Regulation does not explicitly require the existence of a risk of absconding before they are imposed. The possibility to impose measures on persons who cannot be removed due to a lack of cooperation further extends their potential application.

Implementation considerations

As Article 20 of the Return Regulation is a "may" clause, Member States retain discretion not to impose these measures and should avoid their automatic or systematic application. Where used, an individual assessment of necessity and proportionality should precede their imposition, taking into account the person's circumstances, including family life, employment, education, vulnerability and the best interests of the child. This is particularly important for geographical and residence restrictions, which may interfere with rights protected under the Charter and the ECHR.

The measures should also operate as genuine alternatives to detention, rather than additional restrictions routinely imposed on everyone subject to return or following release from detention. Member States should therefore prioritise the least restrictive measure capable of ensuring availability and avoid unnecessarily burdensome reporting requirements or geographical restrictions. Non-compliance should not automatically result in detention or criminalisation; the necessity and proportionality of detention must remain subject to a separate individual assessment.

ARTICLE 21: INVESTIGATIVE MEASURES

Article 21 of the Return Regulation introduces a broad range of investigative measures which may be used for the purpose of preparing or ensuring return. This represents a significant expansion compared to the European Commission's proposal which only allowed for searches of the TCN and their personal belongings where necessary and duly justified for the purpose of return or readmission[50]. The much broader investigative powers were introduced through the Council's position and retained in the final text. These include searching the person and their place of residence or other relevant premises, searching and seizing personal belongings and electronic devices, and imposing other investigative measures provided for under national law. Article 21 also allows Member States to take measures to obtain biometric data, including the use of coercion as a last resort.

In practice, the provision allows authorities to conduct searches of private homes and other premises and to search and seize mobile phones and other electronic devices without the consent of the person concerned. NGOs documented[51] existing practices and proposals involving home raids and searches in the context of immigration enforcement, as well as enforcement activities affecting places such as shelters and hospitals. Such practices can also discourage TCNs staying irregularly from accessing essential services for fear of detection and immigration enforcement.

The final text of the Return Regulation included a number of safeguards compared to the Council's initial position. In particular, searches of a person's residence or other relevant premises are subject to a prior judicial order or, where provided for under national law, an administrative order where this is justified by

50. Article 21 of the European Commission Proposal for a Return Regulation

51. PICUM and Medecins du Monde, the new draft EU deportation law: what you need to know about the EU's push for detection and immigration raids – and how you can mobilise against it, February 2026, available here.

the urgency of the search. Investigative measures must also be necessary, proportionate and duly justified, respect fundamental rights and be subject to safeguards and remedies under Union and national law. While these safeguards are important, significant concerns remain regarding the scope and use of these powers.

Searches of private homes and electronic devices may constitute serious interferences with the right to respect for private and family life, the home and communications under Article 7 of the Charter and, particularly where personal data are accessed or processed, the right to protection of personal data under Article 8. The CJEU[52] recognised that access to data contained in electronic devices may reveal detailed information about a person's private life and must therefore comply with the requirements of necessity and proportionality under Article 52(1) of the Charter.

The broad references to "other relevant premises" and "other investigative measures" provided for under national law also leave considerable discretion to Member States. This may result in significant differences in implementation and raises questions regarding legal certainty and the limits of the powers available to immigration authorities. It will also create practical and legal complexities regarding the division of responsibilities between immigration authorities, police and other authorities that are authorised under national law to conduct searches or seize property.

Implementation considerations

It is important to note that Article 21 is formulated as a "may" clause. Member States are therefore under no obligation to introduce or make use of these investigative powers. Given their highly intrusive nature, the risks they pose to fundamental rights and their potentially counterproductive effects, Member States should refrain from introducing or exercising such powers. Increasing coercive powers to locate and remove individuals may undermine trust in public authorities and discourage people in an irregular situation from engaging with them, including in return procedures themselves.

Immigration-related searches in such places risk creating a chilling effect whereby people avoid healthcare, education, accommodation or other essential services because of fear of detection or removal. This may affect not only the person concerned but also children, family members and other people using these services. The existence of a judicial or administrative authorisation for an individual search does not address these broader consequences. Member States should therefore establish clear safeguards preventing essential-service providers from becoming extensions of immigration enforcement.

Searches of private homes and electronic devices should equally not become routine instruments of return enforcement. Where Member States nevertheless make use of the powers provided under Article 21, they should be exceptional and based on an individual assessment demonstrating that the measure is strictly necessary and proportionate and that the objective cannot reasonably be achieved through less intrusive means. Prior judicial authorisation should be the rule for searches of private residences. The possibility of relying on an administrative order on grounds of urgency should be interpreted narrowly and should not develop into an alternative route for avoiding judicial scrutiny.

Implementation will require a clear division of responsibilities between immigration authorities, police and other competent authorities. The Return Regulation should not be interpreted as giving immigration authorities general criminal-investigative powers through the return procedure. Any use of investigative measures must remain subject to the Charter, in particular the rights to private and family life and protection of personal data, as well as the principles of necessity and proportionality. Less intrusive and engagement-based approaches should be prioritised over coercive investigative measures.

Recommendations:

- Member States should refrain from introducing or exercising the investigative powers provided for under Article 21, given their intrusive nature, the significant risks they pose to fundamental rights and their potential to undermine trust in public authorities and cooperation with return procedures. As Article 21 is discretionary in nature, Member States are under no obligation to introduce or make use of these powers.
- In particular, schools and other educational establishments, healthcare facilities, shelters and other places providing essential services should not become sites of immigration enforcement or be used for the purpose of locating people for return.

52. CJEU, CG v Bezirkshauptmannschaft Landeck, Case C-548/21, Judgment of 4 October 2024, available here, ECLI:EU:C:2024:830.

ARTICLE 22: CONSEQUENCES OF NON-COMPLIANCE WITH THE OBLIGATION TO COOPERATE

Article 22 of the Return Regulation requires Member States to impose one or more measures in cases of non-compliance with the obligation to cooperate including refusal or reduction of benefits and allowances, reduction or withdrawal of return and reintegration assistance, refusal or withdrawal of work permits, extension of entry bans, criminal sanctions including imprisonment where provided for in national law, financial penalties and other consequences provided for under national law.

While it is argued that one of the main objectives of the Return Regulation is to establish a more "common EU return system'', several provisions, including this Article, continue to leave considerable discretion to Member States to introduce additional measures under national law beyond those expressly provided for in the Return Regulation. This may result in significant differences in implementation and practice across Member States and risks undermining the objective of greater harmonisation of return procedures across the EU.

The breadth and severity of these measures, particularly given the extensive cooperation obligations imposed on TCNs under Article 18 is concerning. The possibility of sanctions for non-compliance risks penalising and criminalising people who are unable to comply for reasons beyond their control, including difficulties obtaining identity or travel documents, lack of access to information, language barriers or circumstances in the country of origin. The possibility of imposing several measures also raises concerns about cumulative and disproportionate sanctions.

If the objective is to promote voluntary return and sustainable reintegration, allowing Member States to refuse or reduce return and reintegration assistance as a consequence of non-compliance is a measure that may be counterproductive and may particularly affect people whose alleged non-compliance results from circumstances outside their control.

The possibility of criminal sanctions, including imprisonment, raises additional concerns. While CJEU case law does not exclude criminal sanctions in the return context, it places important limits on their use. In El Dridi[53] (Case C-61/11) and *Achughbabian*[54] (C-329/11) the Court held that imprisonment cannot be used for the mere fact of illegal stay where this would undermine the effectiveness of the common return procedure. Any national criminal sanctions introduced under Article 22 (e) and envisaged under MS national law must therefore concern clearly defined conduct and must not delay, frustrate or replace the return procedure. The provision should not be interpreted as allowing Member States to criminalise a person's inability to comply with return where removal is legally or factually impossible.

Implementation considerations

During the implementation phase, Member States will need to establish which authorities are responsible for assessing non-compliance and imposing the different consequences available under Article 22. Given the significant discretion left to national law, there is a risk of considerable divergence in the measures applied and their severity. Member States should establish clear criteria for determining non-compliance and ensure that authorities distinguish deliberate refusal to cooperate from an inability to comply for reasons beyond the person's control.

The application of any consequence should follow an individual assessment and comply with the principles of necessity and proportionality. Member States should also assess the cumulative impact where more than one measure is imposed. Particular safeguards are needed for children, vulnerable people and persons who cannot be returned because of legal or practical obstacles.

Where benefits or allowances are reduced, Member States should establish clear safeguards ensuring continuous access to basic needs and a dignified standard of living. Withdrawal of return and reintegration assistance should not be applied where it would undermine the possibility of voluntary return and sustainable reintegration or where non-compliance results from circumstances beyond the person's control.

Member States should also ensure that Article 22 is implemented consistently with the APR. In particular, where a return decision following an asylum rejection is suspended because the applicant has a right or is allowed to remain pending an appeal, consequences for non-compliance with that return decision should not be applied in a manner that bypasses the applicant's right to remain or the suspensive effect of the appeal.

53. CJEU, Hassen El Dridi, Case C-61/11 PPU, Judgment of 28 April 2011, available here, ECLI:EU:C:2011:268

54. CJEU, Achughbabian v Préfet du Val-de-Marne, Case C-329/11, Judgment of 6 December 2011, available here, ECLI:EU:C:2011:807.

Recommendation:

» ECRE repeats[55] its recommendation that incentives and support mechanisms including access to sustainable reintegration schemes and to independent counselling on return and reintegration should be seen as part of a well-functioning return system and be prioritised over punitive measures.

ARTICLE 23: ALTERNATIVES TO DETENTION

Article 23 of the Return Regulation provides that Member States may impose alternatives to detention, taking into account the individual circumstances of the third-country national and the level of the risk of absconding. The article lists the deposit of a financial guarantee and electronic monitoring, while allowing Member States to provide for other alternatives in national law. Decisions must provide reasons in fact and law, be communicated in writing and be subject to judicial review.

The provision represents a more explicit framework for alternatives to detention (ATDs) compared to the Return Directive, which does not provide a list of alternatives but establishes an important underlying principle: detention may only be used where other sufficient but less coercive measures cannot be applied effectively in the individual case. However, the Return Regulation no longer lists reporting obligations, surrender of documents and residence at a designated location as ATDs under Article 23. Similar measures are instead regulated separately under Article 20 (Availability for the return process). This distinction is important, as measures intended to ensure availability for return should not replace the obligation to consider genuine alternatives before resorting to detention.

Concerns also remain regarding the nature of the alternatives expressly listed. Financial guarantees may disproportionately affect people with limited financial resources, while electronic monitoring constitutes a significant interference with privacy and liberty and may have particular consequences for vulnerable persons, including survivors of trauma. Although Article 23 requires individual circumstances to be taken into account, the final text does not expressly require consideration of vulnerability, gender or age when selecting an alternative.

Implementation considerations

Article 23 is a “may” clause whereby Member States are not required to introduce or use financial guarantees or electronic monitoring. They retain the possibility to provide for other, less intrusive alternatives under national law, including community-based measures and case-management approaches. Existing national systems which provide more supportive or less coercive alternatives should therefore not be replaced by the more restrictive measures expressly listed in the Return Regulation.

Importantly, ATDs should operate as genuine alternatives to detention, rather than additional restrictions imposed systematically on people subject to return. Consistent with the principle already established under the Return Directive, authorities should assess whether a less coercive measure can be applied effectively before detention is ordered. The CJEU has repeatedly stressed the exceptional nature of detention in return procedures and the need to respect necessity and proportionality. The choice of an ATD should similarly follow an individual assessment, with particular caution regarding electronic monitoring and financial guarantees[56].

Implementation may also prove challenging given considerable differences in the availability and use of ATDs across Member States. Existing practice demonstrates a gap between the formal availability of ATDs and their application in practice. Recent comparative research conducted by ECRE through its AIDA database shows[57] considerable variation across European countries regarding the requirement to assess ATDs, the types of alternatives available in national law and their practical use. It further found that, in most Member States covered, the assessment of whether to impose detention or an ATD is undertaken simultaneously with the assessment of the existence of grounds for detention. This underlines the importance of ensuring that Article 23 does not result in alternatives remaining merely theoretical while detention is applied as the default measure.

At the same time, ATDs should not become independent migration-management measures. They are alternatives to detention, rather than alternatives to liberty, and should therefore only be imposed where a lawful ground

55. ECRE, Policy Not: Voluntary departure and return: Between a rock and ha hard place, October 2018, available here.
56. CJEU, Mahdi, Case C-146/14 PPU, Judgment of 5 June 2014, available here, ECLI:EU:C:2014:1320.
57. ECRE/AIDA, The Legal Framework for the Detention of Asylum Seekers in Europe, AIDA Comparative Report, July 2026, (pp. 37 – 38), available here.

for detention exists but detention is unnecessary because a less coercive measure can effectively achieve the objective pursued[58] ATDs must themselves comply with the principles of necessity and proportionality, with preference given to the least restrictive measure available. Judicial review should ensure that an alternative remains necessary and proportionate over time and does not become a prolonged restriction simply because it is less severe than detention.

Furthermore, the listed alternatives, while more humane than detention – still lean toward mechanisms of control rather than support. They may inadvertently reproduce the punitive logic of detention when applied without sensitivity to gender, age, or trauma. To truly fulfil the protective purpose of alternatives to detention, the framework should explicitly include community-based, supportive, and rights-based measures that account for the lived realities of vulnerable groups. A shift in emphasis is required from control to care, from standardisation to individualisation, and from a compliance to protection. Therefore, it is important to introduce gender- and age-sensitive alternatives, such as case management programs, open and safe accommodation tailored for women and children, community-based sponsorship mechanisms, and referral to specialised support services.

Recommendations:

- Member States should prioritise genuine alternatives to detention (ATDs) wherever less coercive measures are sufficient. ATDs should be considered before and instead of detention, rather than systematically imposed following release from detention.
- The possibility under Article 30 of applying measures under Articles 20 and 21 after release should not result in ATDs becoming additional post-detention measures, as their purpose is to provide alternatives to deprivation of liberty in the first place.

58. EUAA, Guidelines on Alternatives to Detention: Practical Guide, December 2024, (p. 12), available here.

CHAPTER V: SAFEGUARDS AND REMEDIES

SECTION 1: PROCEDURAL SAFEGUARDS

ARTICLE 24: RIGHT TO INFORMATION

Article 24 of the Return Regulation expands the right to information compared to Article 12 of the Return Directive. While the Directive focuses mainly on providing written and reasoned return, removal and entry-ban decisions and information on available remedies, the Return Regulation introduces a broader obligation to inform TCNs about the purpose of the procedure, their obligations and the consequences of non-compliance, available return and reintegration programmes, and procedural rights, including access to legal assistance and representation.

ECRE welcomes this broader right to information and the requirement that information be provided without undue delay in a language the TCN understands or can reasonably be presumed to understand. ECRE also welcomes the specific provision on unaccompanied minors and the requirement to provide information in an age-appropriate manner with the involvement of their representative.

The reference to a language which the person is "reasonably presumed" to understand nevertheless raises concerns. This should not allow authorities to rely on assumptions based on nationality or country of origin rather than ensuring actual comprehension. Information should be provided in a form and language that enables the person to understand their rights and obligations and to effectively exercise available remedies.

Implementation considerations

During implementation, Member States should establish clear procedures to ensure that information is provided, including orally at all relevant stages of the return procedure and updated where circumstances change. Standard information sheets should not replace individual explanations where necessary, taking into account literacy, age, vulnerability and other individual circumstances. Effective access to information is particularly important given the broad range of obligations imposed on TCNs under the Return Regulation and the potentially significant consequences of non-compliance, including sanctions, criminalisation, restrictions and detention.

ARTICLE 25: LEGAL ASSISTANCE AND REPRESENTATION

Article 25 of the Return Regulation significantly expands the provisions on legal assistance and representation compared to Article 13 of the Return Directive. While the Return Directive provides for the possibility of obtaining legal advice and representation and requires necessary legal assistance and/or representation to be granted free of charge on request, subject to conditions under national law, the Return Regulation provides more detailed rules on eligibility, providers, procedural arrangements and possible exclusions. However, an important limitation remains as free legal assistance and representation at the appeal stage is not provided automatically but only at the request of the person concerned and may also be subject to limitations under national law**.** This may create barriers to accessing an effective remedy, particularly for individuals who are unaware of their entitlement to legal assistance, face language or literacy barriers, or are in detention or otherwise unable to make a request effectively.[59]

Article 25 retains the possibility of excluding free legal assistance on the grounds that an appeal has no tangible prospect of success or is abusive and allows Member States to impose monetary or time limits, provided these are not arbitrary or do not unduly restrict access. The text includes additional procedural safeguards, notably the possibility of judicial review where a non-judicial authority refuses free legal assistance on the grounds that an appeal has no tangible prospect of success or is abusive (Article 25 (8)), however, significant discretion remains with Member States. In particular, assessing the prospects of an appeal before legal assistance has been provided risks creating a circular situation in which a person may need legal assistance precisely to identify and substantiate the grounds of appeal. The assessment of whether an appeal has no tangible prospect of success should therefore not itself prevent a person from obtaining the legal assistance necessary to assess and effectively present their case.

ECRE is also concerned that the possibility of restricting legal assistance may have particularly serious

59. ECRE, Policy Note: The guarantees of the EU Charter of Fundamental Rights in respect of legal counselling, assistance and representation in asylum procedures, June 2024, available here.

consequences where return raises *non-refoulement* concerns. Legal assistance is essential for identifying relevant protection grounds and ensuring that the person can effectively challenge the return decision.

Implementation considerations

During implementation, Member States will need to establish clear and accessible procedures for requesting free legal assistance and representation. These should not create additional procedural barriers, particularly where short deadlines apply. Information on how to request legal assistance should be provided in a language and form the person understands.

Member States should establish clear and objective criteria for assessing whether an appeal has "no tangible prospect of success" or is "abusive". Such assessments should not be used to prevent access to legal assistance before the person has had a genuine opportunity to present their case.

The monetary and time limits allowed under Article 25(7) should also be applied in a way that does not prevent effective preparation of an appeal. Particular attention should be given to complex cases, vulnerable persons and cases involving possible violations of the principle of *non-refoulement*.

Where legal assistance is refused on the grounds that an appeal has no tangible prospect of success or is abusive, the right to challenge that decision before a court or tribunal under Article 25(8) must be effective in practice.

Recommendations:

- Member States should ensure effective and broad access to legal assistance, including at the appeal stage, and provide individuals with clear, accessible and timely information on their right to legal assistance and the procedures for requesting it.
- Member States should ensure that any provisions restricting access to legal aid are clearly defined, narrowly interpreted and applied only in exceptional circumstances, in full compliance with the right to an effective remedy and the principle of effective judicial protection.

SECTION 2: REMEDIES

ARTICLE 26: THE RIGHT TO AN EFFECTIVE REMEDY

Article 26 of the Return Regulation provides that TCNs shall have an effective remedy to challenge return decisions under Article 5(1), entry bans under Article 8 and removal decisions under Article 10(2) before the court or tribunal competent under national law. In a positive change compared to Article 13 of the Return Directive, challenges must be brought before a judicial authority. Article 26(2) further requires a full examination of both points of fact and points of law.

These safeguards strengthen access to judicial review and should be understood in light of Article 47 of the EU Charter of Fundamental Rights as interpreted by the CJEU. It is also positive that Article 26(3) requires compliance with the principle of *non-refoulement* to be verified where the material before the court suggests that it might be undermined.

However, the removal of the explicit reference to an ex nunc examination, which was included in the European Commission's initial proposal, is concerning (*This Article should be read in conjunction with Article 28 on the suspensive effect*). The removal of the explicit requirements for a full and ''ex nunc'' examination and for ''ex officio'' judicial review of *non-refoulement* would constitute a significant weakening of the procedural safeguards in the Return Regulation. It would, however, not remove the underlying obligations arising from EU primary law. In *K, L, M and N (Ararat)*,[60] the CJEU confirmed that, in light of Articles 4, 19(2) and 47 of the Charter, compliance with *non-refoulement* must be assessed on the basis of the relevant and current information and that national courts must examine a possible breach of *non-refoulement* of their own motion where the material before them indicates such a risk.

60. CJEU, *K, L, M, N v Staatssecretaris van Justitie en Veiligheid (Ararat)*, C-156/23, judgment of 17 October 2024, ECLI:EU:C:2024:892, on the obligation to assess compliance with the principle of non-refoulement when enforcing a return decision and for national courts to examine a possible breach of non-refoulement of their own motion, available here.

Removing these guarantees from the Return Regulation could therefore create legal uncertainty and divergent national practice but cannot relieve Member States and national courts of their obligations under the Charter and CJEU jurisprudence.

Implementation considerations

Member States should ensure that the requirement for a "full examination" allows courts to take into account new evidence and subsequent changes in the individual or country situation. The *non-refoulement* safeguard should also be applied, where necessary, ex officio, and should not depend on the TCN being able to identify and substantiate the risk themselves.

The effectiveness of the remedy will also depend on access to timely and comprehensible information and legal assistance. Information on available remedies and applicable deadlines should be provided proactively and, in a language, and format the person can understand. The removal should be suspended to ensure that the right to an effective remedy is genuinely effective, particularly where *non-refoulement* concerns arise.

ARTICLE 27: APPEAL BEFORE A COMPETENT JUDICIAL AUTHORITY

Compared to Article 13 of the Return Directive, Article 27 of the Return Regulation introduces more detailed rules on the time limit for appealing return-related decisions. While the Return Directive does not prescribe a specific time limit for lodging an appeal, leaving this to national law, the adopted Return Regulation requires Member States to set a time limit that does not exceed 14 days. The time limits referred to in paragraph (1) shall start to run from the date on which any of the decisions referred to in Article 5(1), Article 8 and Article 10(3) is notified to the TCN, or is considered to have been notified under national law. Member States which, at the time of the Return Regulation's entry into force, already provide for an appeal period of 30 days or more may retain a longer period, subject to a maximum of 30 days. The European Commission's 2017 Return Handbook similarly recognised that deadlines should be reasonable and should not disproportionately interfere with the right to an effective remedy.

The procedural time limits must allow sufficient time in practice to understand the decision, obtain legal assistance and prepare an effective appeal, as per the CJEU's judgments in *Samba Diouf* and *Y.N and more broadly* the Court's judgment in *LH* confirms that procedural time limits must not undermine the effective exercise of procedural rights and the right to effective judicial protection[61].

ECRE remains concerned that a maximum period of 14 days may be insufficient in complex return cases, particularly where the person is detained, lacks legal assistance, requires interpretation or needs to obtain evidence concerning risks upon return.

Implementation considerations

During implementation, Member States should ensure that the appeal period is sufficiently long in practice to allow the person to understand the decision, access legal assistance and prepare an effective appeal. The period should not be applied mechanically where the individual circumstances require additional time.

Particular safeguards are necessary for vulnerable persons, including unaccompanied minors, persons in detention and persons requiring interpretation or assistance to obtain relevant evidence. Member States should also ensure that the period does not begin to run before the return decision has been effectively communicated in a language and form the person understands and nor it should begin when 'considered' to have been notified in light of access to effective remedy.

The possibility under Article 27(3) of applying the national deadline for appealing a decision refusing or ending legal stay should be carefully coordinated with national asylum procedures. Where a return decision accompanies an asylum decision, Member States should avoid applying a shorter return appeal period in a way that fragments the person's procedural rights or prevents an effective challenge to the asylum and return decisions together.

The different time limits under the Return Regulation and the APR require particular attention. The APR provides for appeal periods ranging from 14 days to one month, depending on the procedure and circumstances. A general maximum of 14 days under the Return Regulation may therefore result in a shorter period for

61. CJEU, Brahim Samba Diouf v Ministre du Travail, de l'Emploi et de l'Immigration, Case C-69/10, Judgment of 28 July 2011, available here, ECLI:EU:C:2011:524; CJEU, LH v Bevándorlási és Menekültügyi Hivatal, Case C-564/18, Judgment of 19 March 2020, available here, ECLI:EU:C:2020:218; CJEU, Y.N. v Republika Slovenija, Case C-58/23, Order of 27 September 2023, available here, ECLI:EU:C:2023:748.

challenging a return decision than the period available to challenge the underlying asylum decision. This creates a risk of procedural fragmentation where the return decision is issued together with, or follows closely after, an asylum rejection. Member States should ensure that the shorter return deadline does not effectively prevent the person from exercising their rights under the APR or from presenting arguments concerning protection against refoulement.

Where the return decision is based on the rejection of an asylum application, particular care is required to ensure that the appeal periods and suspensive-effect rules under the APR are respected.

Recommendation:

» Member States should provide the longest possible appeal deadlines under national law and align them, wherever legally permitted, with the one-month period under the APR, rather than introducing shorter deadlines that undermine access to an effective remedy.

ARTICLE 28: SUSPENSIVE EFFECT

The Return Regulation significantly changes the approach to the suspensive effect of appeals compared with the Return Directive. While the Return Directive requires Member States to ensure access to an effective remedy and gives the competent body the possibility to temporarily suspend enforcement, it does not set out a detailed EU-level procedure. The European Commission's 2017 Return Handbook has nevertheless clarified that appeals must have suspensive effect where removal would expose a person to a real risk of refoulement or a serious and irreversible deterioration in health.

The Return Regulation introduces a more detailed but considerably more complex system. An appeal before a first-instance court or tribunal does not automatically suspend removal. Instead, the TCN must request suspension, unless national law provides for automatic suspensive effect. The court may suspend removal during the period for lodging the appeal and, where an appeal is lodged, pending its outcome. For subsequent appeals, suspension is again dependent on national law or a specific request to the court.

Although the Return Regulation provides (Article 28 (1)) that ''it does not provide for automatic suspensive effect of an appeal, Member States shall ensure, fully respecting Article 47 of the Charter, that removal can be suspended by the competent court or tribunal of first instance prior to the enforcement of the decisions issued pursuant to Article 5 and Article 10(3)''.

Implementation considerations

The compatibility of these provisions with the case law of the European Courts, notably the CJEU judgment in *Gnandi*[62] (C-181/16) can be questioned. In that judgment, the Court held that, although a return decision may be adopted following the rejection of an application for international protection at first instance, all legal effects of that decision must be suspended pending the outcome of an appeal against the rejection of the asylum application, and the individual must be permitted to remain on the territory during that period. The removal of automatic suspensive effect under the Return Regulation undermines the safeguards established by the Court and raises serious concerns regarding compliance with the right to an effective remedy under Article 47 of the Charter, which Recital (45) of the Return Regulation expressly requires the rules to respect.

Member States should ensure that removal cannot take place before a person has had a genuine opportunity to request judicial suspension, including through accessible procedures and timely access to legal assistance.

Recommendations:

» ECRE recommends that Member States retain or introduce automatic suspensive effect, particularly in cases involving international protection claims, non-refoulement or other risks of irreversible harm, rather than relying primarily on individual requests for suspension. This will ensure compliance with their obligations under international law including ECHR.[63] The latter requires a remedy with the automatic suspensive effect of return in case of an arguable claim that such return could result in a breach of Convention obligations under Articles 2, 3 and Article 4 Protocol 4.

62. CJEU, Sadikou Gnandi v État belge, Case C-181/16, Judgment of 19 June 2018, available here, ECLI:EU:C:2018:465.
63. ECtHR, Gebremedhin [Gaberamadhien] v. France, Judgment of 26 April 2007, available here, para. 66; ECtHR, Hirsi Jamaa and Others v. Italy [GC], Judgment of 23 February 2012, available here, para. 200; ECtHR, Čonka v. Belgium, Judgment of 5 February 2002, available here, paras 81–83; ECtHR, Hirsi Jamaa and Others v. Italy [GC], Judgment of 23 February 2012, available here, para. 206.

CHAPTER VI: DETENTION

ARTICLE 29: GROUNDS FOR DETENTION

Compared to Article 15 of the Return Directive, the Article 29 of the Return Regulation significantly expands the grounds for detention and removes reference to assessment of application of less coercive measures prior to application of detention. While the Return Directive limited detention to preparing return and/or carrying out removal, primarily where there was a risk of absconding or where the person avoided or hampered the preparation of return or removal, Article 29 allows detention for readmission, identity or nationality verification, security risks, non-compliance with a broader range of return obligations, and other grounds provided for in national law.

The Return Regulation retains the principles of individual assessment and proportionality. However, unlike the Return Directive, Article 29 of the Return Regulation does not expressly state in the operative provision that detention may only be used where less coercive measures cannot be applied effectively. ECRE's previous concerns therefore remain relevant, as detention should continue to be understood as a measure of last resort.

This expansion risks making detention a more routine tool of return enforcement. In particular, detention for identity or nationality verification may affect persons who are unable to obtain documentation for reasons beyond their control, while the new grounds relating to non-compliance may risk conflating an inability to comply with a failure to cooperate. The possibility for Member States to establish "other relevant grounds related to return" in national law may also lead to divergent practices and an expansion of detention beyond the grounds currently foreseen under EU law and creates different grounds for detention across Member States.

Implementation considerations

In light of the requirements of Article 6 of the Charter, as interpreted by CJEU, any detention of a migrant or asylum applicant constitutes a serious interference with the right to liberty enshrined in Article 6. In view of the importance of the right to liberty enshrined in Article 6 of the Charter and the gravity of the interference with that right which detention represents, limitations on the exercise of the right must apply only insofar as is strictly necessary.[64]

In practice, the broader grounds will make the individual assessment of detention particularly important. This means that even if necessity doesn't feature in the provision itself, it should be assessed accordingly due to the Charter. Experience under the current framework shows that concepts such as 'risk of absconding' and 'non-cooperation' can be interpreted broadly, including on the basis of lack of documentation or difficulties in establishing a person's identity.[65] Under the new framework, this may become more significant as identity verification and non-compliance constitute explicit grounds for detention. The distinction between genuine non-cooperation and circumstances beyond the person's control will therefore require careful assessment, particularly for stateless persons, vulnerable individuals and persons whose authorities of nationality do not cooperate with documentation or readmission.

The interaction between the different grounds may also create practical difficulties. For example, a person may initially be detained because of difficulties establishing identity or nationality and subsequently remain detained on the basis of non-cooperation or a risk of absconding. In implementation, authorities should pay attention to the guarantees under paragraph (4) which provides that ''detention shall be ordered by administrative or judicial authorities. Detention shall be ordered by a written decision giving the reasons for fact and of law on which it is based as well as information on available legal remedies''. This means that it would be unlawful to detain someone under one ground and then change the ground without any written decision.

This also raises questions as to how authorities will demonstrate that continued detention remains necessary and proportionate and that there continues to be a reasonable prospect of removal, in line with the CJEU's judgments in *Mahdi*[66] (C-146/14 PPU) and *Kadzoev*[67] (C-357/09 PPU). The inclusion of return as an explicit purpose of detention should not alter these requirements.

64. CJEU, Ministerio Fiscal v VL, Case C-36/20 PPU, Judgment of 25 June 2020, available here, ECLI:EU:C:2020:495.
65. Dr Izabella Majcher & Dr Mark Provera (2020), The Return Directive 2008/115/EC European Implementation Assessment, European Parliamentary Research Service, available here.
66. CJEU, Mahdi, Case C-146/14 PPU, Judgment of 5 June 2014, available here, ECLI:EU:C:2014:1320, paras 60, 62–64 and 74.
67. CJEU, Kadzoev (Huchbarov), Case C-357/09 PPU, Judgment of 30 November 2009, available here, ECLI:EU:C:2009:741, para. 65.

The possibility for Member States to introduce additional grounds under Article 29(3)(f) may further result in different approaches to detention across Member States even though such grounds should be proportionate and necessary to ensure effective return procedures. This is particularly relevant given existing disparities in national detention practices and in the availability and application of alternatives to detention.

ARTICLE 30: DETENTION PERIOD

Article 30 of the Return Regulation significantly extends the maximum periods of detention compared to the Return Directive. While the Directive provides for detention of up to six months, extendable by a further 12 months in limited circumstances, the Return Regulation allows an initial period of up to 12 months, extendable to 24 months. The final text goes considerably further than the European Commission's proposal by allowing an additional period of up to six months where there is a risk of absconding and specified changes in circumstances indicate a reasonable prospect of removal, bringing the possible maximum period to 30 months. Moreover, where a TCN moves to another Member State and their conduct constitute a ground for detention under Article 29(3), a new period of detention may apply.

ECRE had already raised serious concerns regarding the European Commission proposal's extension of immigration detention to 24 months, noting that such lengthy periods of deprivation of liberty risk undermining the right to liberty and the requirements that detention remain a measure of last resort, be necessary and proportionate, and be maintained only for the time necessary to prepare return or carry out removal. ECRE also expressed particular concern regarding prolonged detention resulting from circumstances beyond the individual's control, including delays in obtaining documentation from third countries.[68] These concerns are further reinforced by the final text.

CJEU and ECtHR case laws[69] consistently linked the lawfulness of immigration detention to its purpose of preparing and executing removal and to the continued existence of a reasonable prospect of removal. Prolonged detention is particularly difficult to justify where obstacles to return, including difficulties in obtaining documentation or cooperation from third countries, cannot be resolved through continued deprivation of liberty.

Importantly, existing practice demonstrates considerable disparities[70] in the duration and use of detention across Member States, while available evidence does not establish that longer periods of detention lead to more effective returns[71]. Extending detention periods will require Member States to devote additional financial, administrative and detention capacity to implementing the Return Regulation and these should be assessed when providing for national measures in line with the Return Regulation.

Implementation considerations

The longer periods of detention permitted under Article 30 should not become standard practice in national law or implementation. Importantly, the extension of detention beyond 12 months is optional rather than mandatory. Article 30(3) provides that detention "may" be extended beyond this period, while the additional six-month extension under Article 30(4) is similarly framed as a possibility rather than an obligation. Member States therefore retain the discretion to maintain shorter maximum detention periods in their national legislation and should refrain from introducing or systematically applying the maximum periods permitted under the Return Regulation. This approach is particularly important in light of the fundamental right to liberty and security of person, as guaranteed by Article 6 of the Charter, which provides that "Everyone has the right to liberty and security of person." Accordingly, any deprivation of liberty must comply with the requirements of necessity, proportionality and applicable safeguards under EU primary law and international human rights law. The maximum detention periods established by the Return Regulation should therefore be understood as exceptional upper limits, rather than standard periods of detention to be routinely applied in practice.

Authorities will in any event need to continuously assess whether detention remains necessary and proportionate

68. ECRE, Comments on the Proposal for a Return Regulation establishing a Common System for the Return of Third-Country Nationals staying illegally in the Union, June 2025, pp. 46–50, available here.
69. The CJEU and ECtHR have both emphasized that detention of asylum seekers or migrants must be strictly limited in duration and justified by legitimate purposes. In J.N. (C601/15 PPU), the CJEU stated that detention is only lawful if it respects the guarantees of Article 5(1) ECHR, including that it be "proportionate in relation to the ground relied on" and devoid of bad faith or arbitrariness. CJEU, Judgment of 15 February 2016, J.N. v Staatssecretaris van Veiligheid en Justitie, C601/15 PPU, ECLI:EU:C:2016:84, paras 78, 81. In M.K.v.Hungary, the ECtHR held that detention exceeding what is "reasonably required for the purpose pursued" violates Article 5 § 1(f), finding that continued detention after an asylum application becomes arguable fails the standard of lawful and non-arbitrary deprivation of liberty. ECtHR, Judgment of 9 June 2020, M.K.v. Hungary, Application no. 46783/14, paras. 20–21
70. ECRE/AIDA, The Legal Framework for the Detention of Asylum Seekers in Europe, July 2026, available here.
71. European Parliament, The Return Directive 2008/115/EC: European Implementation Assessment, p. 47, available here.

and whether a reasonable prospect of removal continues to exist. Where removal is prevented by structural or practical obstacles, such as difficulties in obtaining travel documents or cooperation from third countries, extending detention is unlikely to resolve those obstacles and may instead result in considerable financial and administrative costs without increasing the likelihood of return.

Recommendation:

» Member States should ensure that the necessity and proportionality of detention, as well as the existence of a reasonable prospect of removal, are continuously **and** regularly assessed throughout the period of detention, and that individuals are released without delay where these conditions are no longer met.

ARTICLE 31: REVIEW OF DETENTION ORDERS

Article 31 of the Return Regulation requires detention to be reviewed, either upon application or ex officio, at least every six months and at least every three months once 24-month detention period is reached. Where detention is ordered or extended by an administrative authority, judicial review must be available and decided as speedily as possible within a period established in national law. Compared to the Return Directive, which requires review at "reasonable intervals" and judicial supervision of prolonged detention, the Return Regulation establishes at least six-month maximum interval. This is concerning given the significantly longer detention periods permitted under Article 30. The final text also removes the European Commission's proposal's 15-day maximum for judicial review initiated by the TCN, leaving the timeframe to national law.

Implementation considerations

The six-month period should be treated as a maximum rather than a standard interval, and Member States should maintain or introduce more frequent reviews, particularly in cases of prolonged detention or where the need arises or circumstances requires. Similarly, the removal of the proposed 15-day deadline should not lead to lengthy national procedures: judicial review of deprivation of liberty must remain genuinely speedy. Sufficient judicial capacity and access to legal assistance will also be necessary, particularly as individuals may simultaneously need to challenge return, removal, entry-ban and detention decisions.

ARTICLE 32: DETENTION CONDITIONS

Article 32 of the Return Regulation provides standards on detention conditions, including the general requirement to use specialised facilities, access to open-air space, contact with legal representatives and family members, healthcare and access for relevant organisations.

However, several concerning changes are introduced compared to the Return Directive. Most notably, where prison accommodation is used, the Return Directive requires TCNs to be kept separated from ordinary prisoners, whereas Article 32 of the Return Regulation requires separation only "to the extent possible". This significantly weakens an existing safeguard and raises questions regarding its relationship with the CJEU's interpretation of the Return Directive in Pham[72] (C-474/13), where the Court held that the requirement to separate immigration detainees from ordinary prisoners is not subject to any exception and constitutes a substantive condition of detention.

Furthermore, in *Landkreis Gifhorn*[73] (C-519/20) the CJEU clarified that immigration detention facilities must, as far as possible, avoid resembling a prison environment and must ensure respect for the fundamental rights of those detained. The Court also emphasised the importance of effective judicial oversight, including the obligation of national courts to verify whether the conditions permitting detention in prison facilities are met and to disapply national legislation allowing such detention where the requirements under EU law are not satisfied.[74] These judgments provide important guidance for Member States when implementing Article 32, particularly in ensuring that immigration detention remains distinct from criminal imprisonment and that the use of prison accommodation does not undermine the fundamental rights of those detained.

The Return Regulation text also allows temporary restrictions on access to open-air space, broader restrictions on visits to detention facilities and new "enhanced security arrangements" for persons considered a security

72. CJEU, Pham, Case C-474/13, Judgment of 17 July 2014, available here, ECLI:EU:C:2014:2096, paras 17–21.
73. CJEU, Landkreis Gifhorn, Case C-519/20, Judgment of 10 March 2022, available here, ECLI:EU:C:2022:178
74. CJEU, Landkreis Gifhorn, Case C-519/20, Judgment of 10 March 2022, available here, ECLI:EU:C:2022:178.

risk.

The absence of more specific requirements addressing the needs of women, children, survivors of violence, persons with disabilities and other vulnerable groups remain a concern. Such safeguards should be applied in order to ensure Member States obligations under international law including ECHR. In this regard, the ECtHR in Saadi v. the United Kingdom[75] established that detention must be carried out in good faith; it must be closely connected to the purpose of preventing unauthorised entry of the person to the country; the place and conditions of detention should be appropriate, bearing in mind that the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country; and the length of the detention should not exceed that reasonably required for the purpose pursued.

Implementation considerations

Member States should not interpret Article 32 as allowing prison accommodation simply because specialised detention capacity is insufficient. Existing CJEU case law requires Member States to organise their detention systems so that detention for the purpose of removal takes place, as a rule, in appropriate specialised facilities. In *Bero and Bouzalmate* (C-473/13 and C-514/13),[76] the CJEU held that the absence of a specialised detention facility in part of a Member State cannot in itself justify recourse to prison accommodation. In implementing Article 34, Member States should therefore not respond to shortages in specialised detention capacity through increased reliance on prisons and should prioritise less coercive measures where appropriate.

The reference to separation “to the extent possible” should similarly not be used to lower existing national standards or practices which ensure full separation from ordinary prisoners. Restrictions on open-air access, visits and enhanced security arrangements should remain exceptional, individually justified and proportionate.

Given well-documented shortcomings in detention conditions across Member States as illustrated,[77] including overcrowding and inadequate material and sanitary conditions in Member States such as Cyprus, Spain, Italy and Greece, poor hygiene in Belgium, Bulgaria, Greece and Italy, inadequate heating, ventilation and temperature control in Belgium, France, Greece, Italy and Spain, shortages in healthcare staff and inadequate access to medical and mental healthcare, including in Bulgaria, Greece and Italy; and highly restrictive or prison-like detention regimes and insufficient access to meaningful activities in countries such as Greece, Italy, Malta and the Netherlands, implementation should focus on addressing these existing structural deficiencies and strengthening safeguards rather than expanding detention capacity at the expense of existing standards.

75. ECtHR, Saadi v. the United Kingdom [GC], Application No. 13229/03, Judgment of 29 January 2008, available here.
76. CJEU, Bero and Bouzalmate, Joined Cases C-473/13 and C-514/13, Judgment of 17 July 2014, available here, ECLI:EU:C:2014:2095, paras 25–32.
77. See ECRE/AIDA, At the Margins: Places and Conditions of Detention, Comparative Report, June 2026, available here.



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