GAPS

Decentring the Study of Migrant Returns and Return Policies

Legal and Policy Infrastructures of Returns in the EU

Comparative Report (WP2)

Authors:

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

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List of Abbreviations

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

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

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Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The GAPs Project

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

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

GAPs combines its decentring approach with three innovative concepts:

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

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

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1. Introduction

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

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

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

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

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

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

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

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

2. Statistical Overview

2.1. Return Statistics and the EU

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

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

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

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

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

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

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

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

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

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

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

- Returned following an order to leave.

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

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

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

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

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

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

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

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

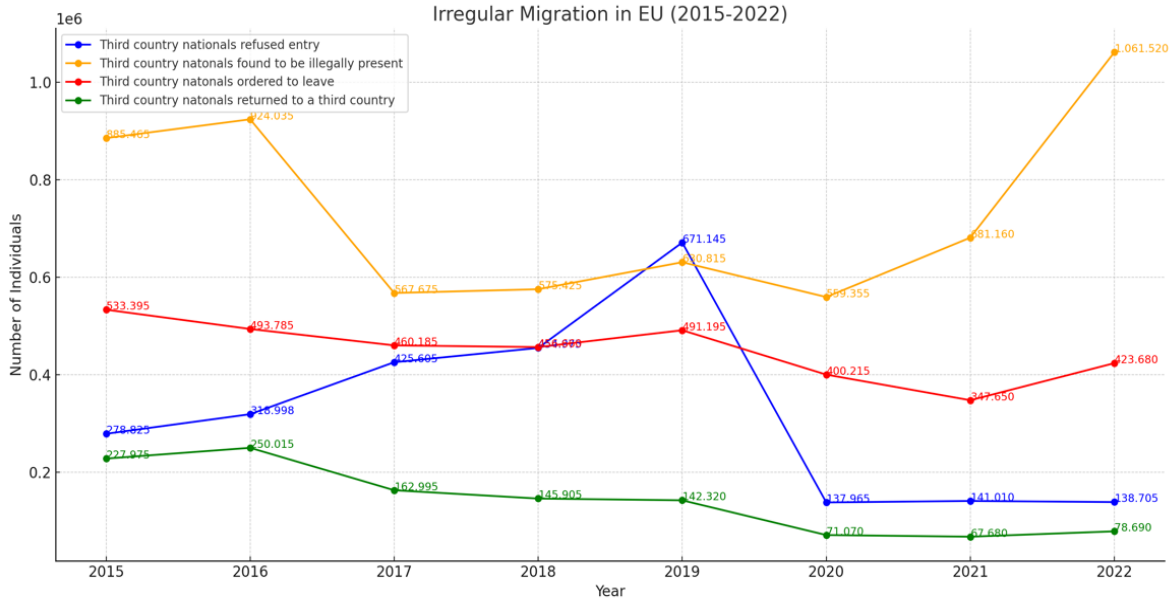
[9] Technical Guidelines For The Data Collection Under Article 5 And 7 Of Regulation 851/2020 Amending Regulation 862/2007– Enforcement of Immigration Legislation (EIL) Statistics, January 2023, Available at: https://ec.europa.eu/eurostat/cache/metadata/Annexes/migr_eil_esms_an_5.pdf (Accessed 8 March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

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

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

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

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



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

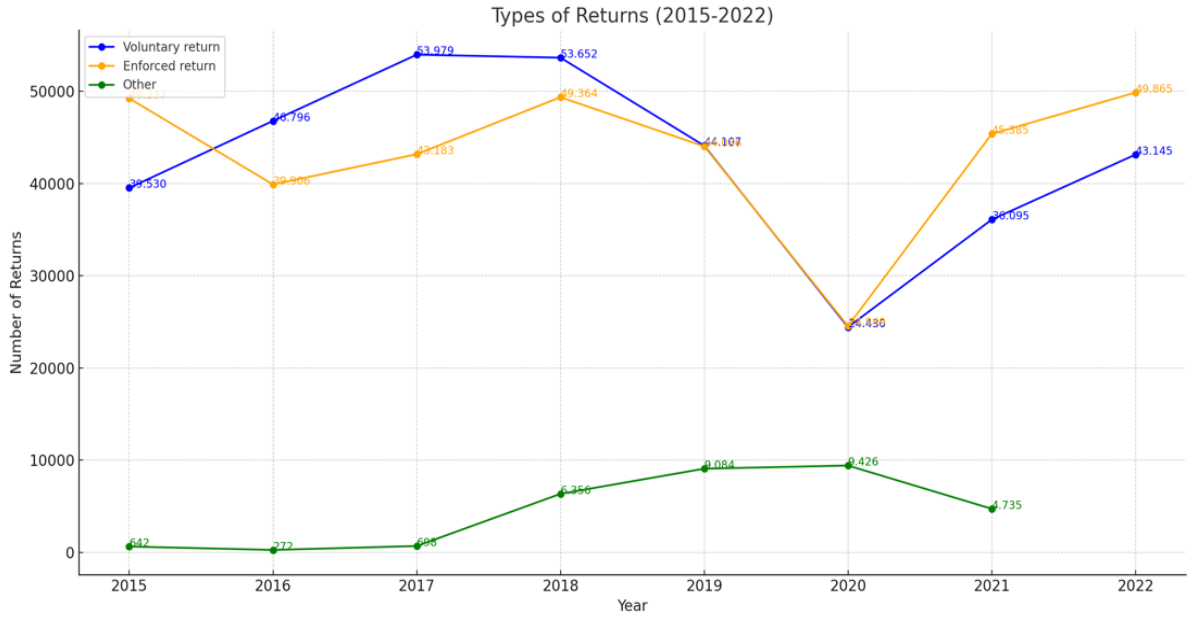
Figure 2 reveals the three types of return — voluntary, enforced, and other — highlighting the EU's multifaceted strategy for returns as part of its broader migration management framework. Return migration and return patterns disclose significant changes over the years,

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

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

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

Figure 2: Types of Returns (2015–2022)



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

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

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

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

2.2.1. General Information

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

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

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

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

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

2.2.2. Comparative Statistical Analysis

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

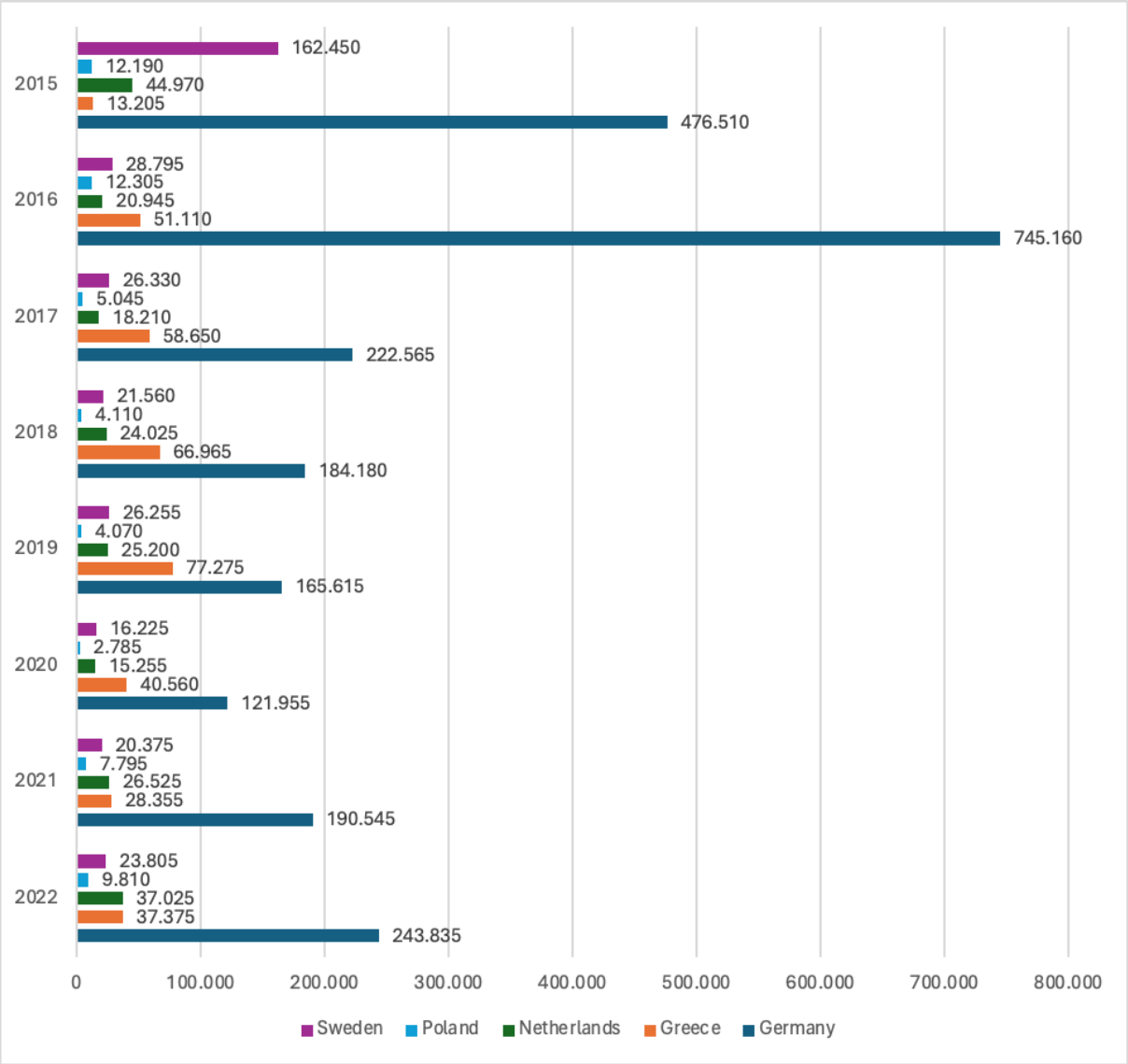
2.2.2.1. Asylum Applicants

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

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

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

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



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

2.2.2.2. Stock of Irregular Migrants

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

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

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

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

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

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

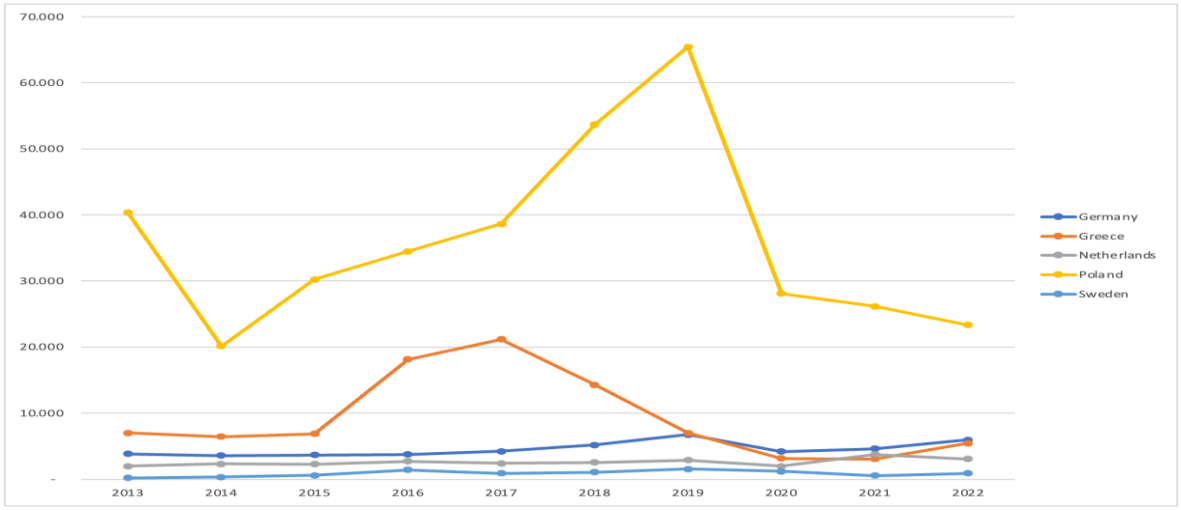
2.2.2.3. TCNs Refused at the Border

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

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

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

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

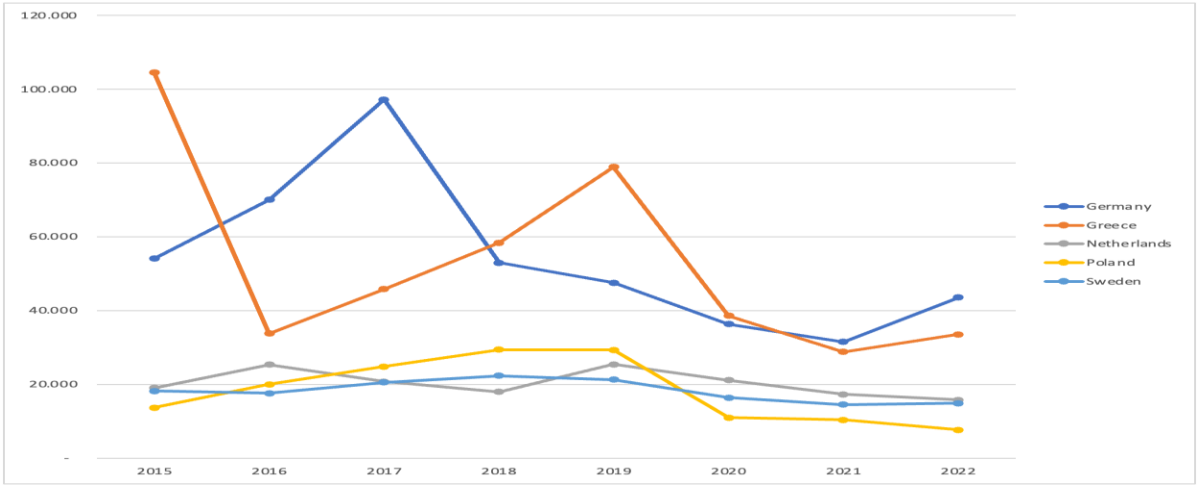


Source: Prepared by the authors for the selected countries based on Eurostat data.[17]

2.2.2.4. TCNs Ordered to Leave

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

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



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

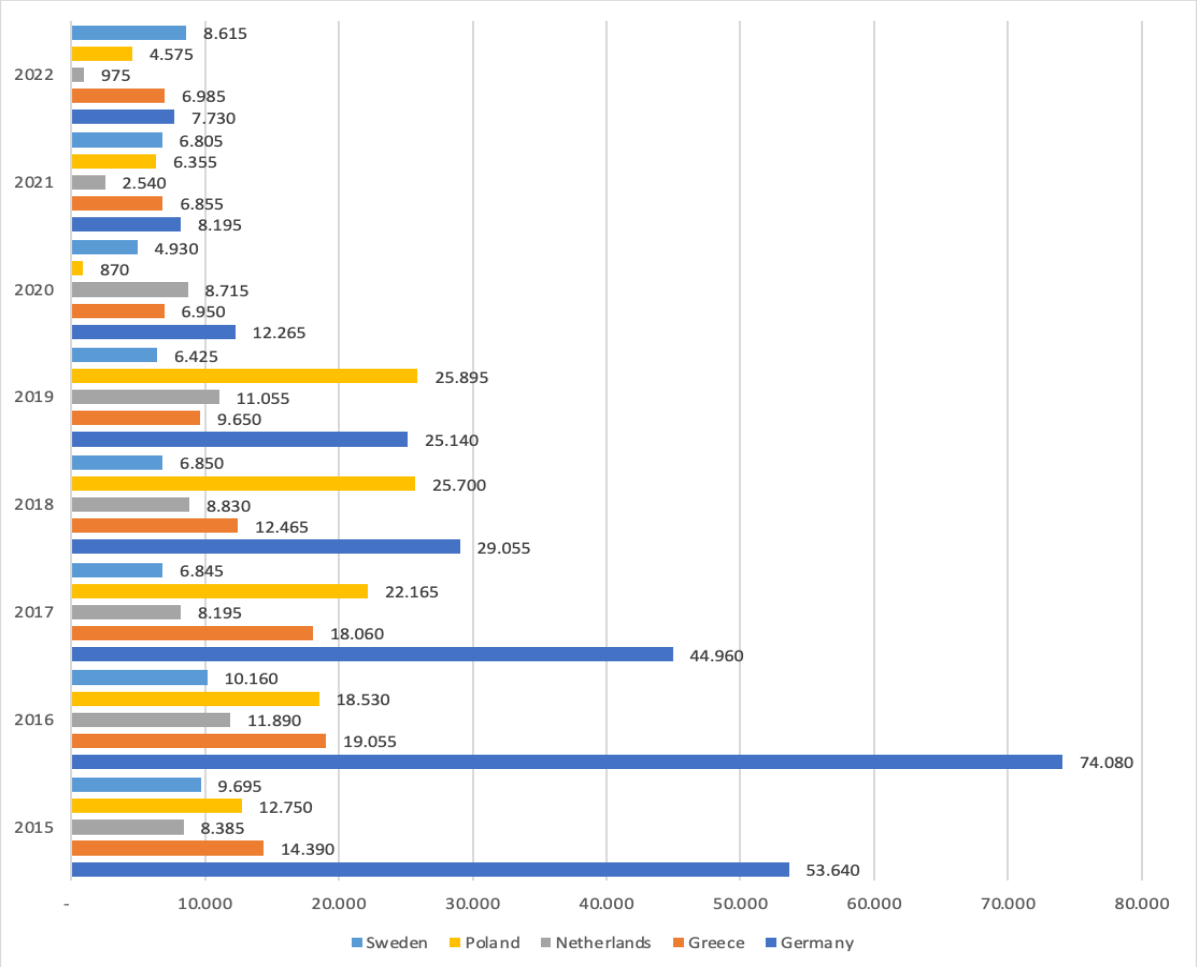
[17] Prepared for the selected countries based on Eurostat data. Third country nationals refused entry at the external borders–annual data (rounded), Available at: https://ec.europa.eu/eurostat/databrowser/view/migr_eirfs/default/table?lang=en (Accessed 8 March 2024).

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

2.2.2.5. TCNs Returned Following Order to Leave

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[24] Ibid.

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

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

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

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

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

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

[27] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115 (Accessed 2 February 2024).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

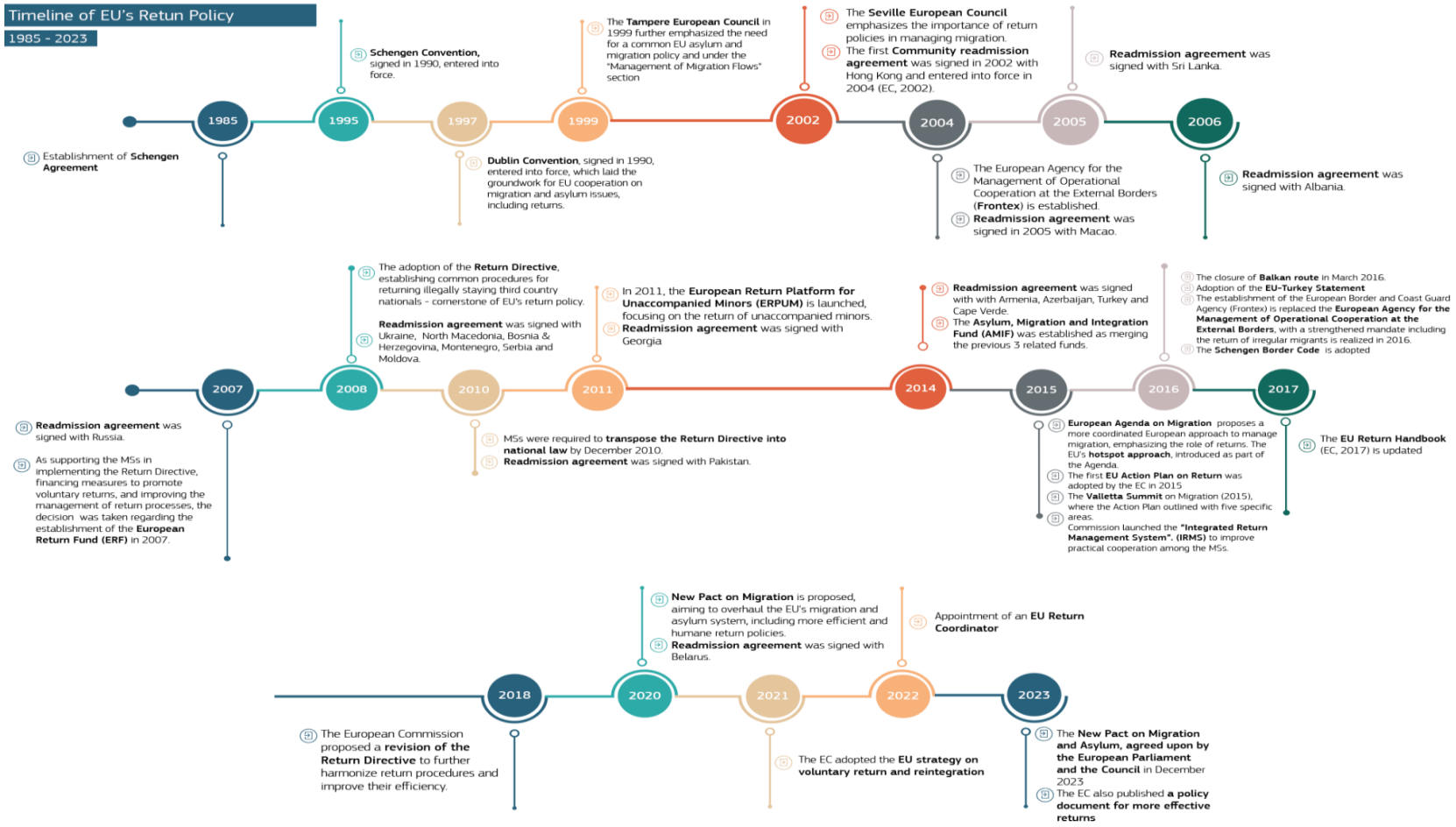
Moreover, the New Pact emphasises the need for solidarity and responsibility sharing among the MSs, which extends to the return process. Such joint action entails improving cooperation on readmission with third countries and enhancing the operational support provided by Frontex in coordinating return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

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

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

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

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



Source: Prepared by the authors.

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

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

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

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

3.2. The Selected Country Cases from a Comparative Perspective

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The major differences can be summarised as follows:

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

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

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

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

4.1. The Institutional Framework of the EU

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

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

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

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

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

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

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

4.2. The Institutional Framework in the Selected Countries

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.1. European Standards on Return

5.1.1. The EU Level: EU Return Directive

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

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

[54] See Article 1 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Available at: https://eur-lex.europa.eu/eli/dir/2008/115/oj (Accessed 8 March 2024).

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

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

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

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

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

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

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

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

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

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

5.1.2. Council of Europe

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.2.1. Procedural Aspects of the Return Process

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

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

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

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

5.2.2. Scope of the Return Decisions

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

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

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

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

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

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

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

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

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

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

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

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

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

5.2.3. Voluntary Departure Terms and Entry Bans

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

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

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

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

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

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

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

5.3. Procedural Safeguards

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

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

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

5.3.1. Access to Information and Legal Aid

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

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

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

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

5.3.2. Protection from Non-Refoulement

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

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

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

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

5.3.3. Effectiveness of Administrative and Judicial Reviews and Remedies

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

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

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

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

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

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

5.3.4. Situation of Non-Returnable Persons

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

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

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

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

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

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

5.4. Detention

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

5.4.1 Detention and Alternative Measures

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

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

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

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

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

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

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

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

5.4.2. Decisions, Appeals and Duration of Detention

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

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

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

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

5.4.3. Conditions in Detention/Detention Regime

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

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

5.4.4. Children in Detention (Accompanied/Unaccompanied)

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

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

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

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

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

5.4.5. Concluding Reflections

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

[169] CoE Guidelines on Return 2005.

6. Policy Recommendations from the GAPs EU Member Countries

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

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

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

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

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

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

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

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

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

The main similarities:

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

The main differences:

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

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

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

7. Conclusion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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About the Authors

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

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