

**CM2409**

# **MEIJERS COMMITTEE COMMENT ON THE RECAST OF THE EU RETURN DIRECTIVE**

**DECEMBER 2024**

The European Commission's intention to streamline and simplify the procedure is understandable and to be welcomed from a perspective of effectiveness, but simplification cannot lead to a reduction of existing procedural and substantive rights. In this comment, the Meijers Committee makes several recommendations for an effective return system that simultaneously safeguards and strengthens the fundamental rights of third-country nationals.

For instance, we recommend to maintain certain rules in the current Return Directive, such as safeguards pending return, and the requirement of a connection between the returnee and the receiving third country. We also advise to align with and supplement the new Pact, for example as to the appeal time limits, notification procedure in the AMMR, and the seamless link between asylum rejection and return. Finally, we provide recommendations for the obligations of the returnee, the voluntary return period, and the criteria for risk of absconding, and strongly suggest to harmonize procedural safeguards to overcome the current fragmentation across Member States.

 **Meijers  
Committee**

Standing committee of experts on international  
immigration, refugee and criminal law

## CM2409 Meijers Committee comment on recast Return Directive

### Introduction

While the 2024 Pact has brought about many changes to the Common European Asylum System, the Pact does not entail a revision of the Return Directive 2008/115/EC. After the political stalemate over the European Commission's 2018 proposal to revise the EU return system, the EU is discussing a recast of the Returns Directive.<sup>1</sup> With this comment, the Meijers Committee aspires to give input for this discussion.

The European Commission's intention to streamline and simplify the procedure is understandable and to be welcomed. The streamlined procedure could contribute to a more effective return system, which could ultimately benefit the entire asylum and migration framework.<sup>2</sup> However, simplification of the rules should not result in a reduction of existing procedural and substantive rights, for example regarding the suspensive effect of appeals or the non-refoulement assessment.

The Meijers Committee makes several recommendations for an effective return system that simultaneously safeguards and strengthens the fundamental rights of third-country nationals.

These recommendations are based on the following principles:

- The return system does not only apply to rejected asylum seekers but to all third-country nationals without legal residence in Member States. The fundamental rights of both groups should be guaranteed.
- The legal and administrative return frameworks of Member States are fragmented, as the current Return Directive leaves much room to organize the national system, and Member States do not systematically share information on issued returns decisions and entry bans.<sup>3</sup> Hence, the recast of the Return Directive should contain stronger harmonization, particularly regarding procedural safeguards (see elaboration below under point 5).
- Safeguards should not be weakened, for instance regarding non-refoulement, detention, and automatic suspensive effect. The recast of the Return Directive should not undermine the essential guarantees as protected in the EU Charter on Fundamental Rights (see recital 25 of the current Return Directive), the European Convention on Human Rights (ECHR) and the case law of the Court of Justice of the European Union (CJEU) and the European Court on Human Rights (ECtHR) on return.
- A recast should maintain the minimum level of protection provided for in Articles 1, 2, 4, 19 and 47 of the Charter, the case law of the ECtHR on Article 3 ECHR, and the principle of non-refoulement in international refugee law.
- The current preference of voluntary departure (see recital 10 of the current Return Directive) is important for the effectiveness of the return system and must be maintained. Voluntary

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<sup>1</sup> See e.g., Council of the European Union, Presidency notes: 13129/24 (9 Sept 2024), 13713/24 (30 Sept 2024), 15071/24 (7 Nov 2024).

<sup>2</sup> See e.g., [COM\(2023\) 45 final](#).

<sup>3</sup> [COM\(2021\) 56 final](#); EP Report [A9-0238/2020](#).

The European Commission has identified “[s]ignificant gaps between asylum and return procedures, lengthy procedures including at the stage of appeal, difficulties in preventing absconding, insufficient resources, infrastructures and limited administrative capacity to follow up on return decisions, including by requesting readmission to third countries, [as] key obstacles towards an effective return policy.” [COM\(2021\) 56 final](#).

departure is a more humane,<sup>4</sup> efficient<sup>5</sup> and effective<sup>6</sup> alternative to forced removal, and is a particularly viable option for third-country nationals that have been living for years in the Member States without legal residence (see elaboration on voluntary departure below under point 5).

- When obligations of the returnee are included in the new EU proposal, it is essential that these obligations are justified and proportionate and do not negatively impact the safety and subsistence of the returnee. In addition, these obligations must go hand in hand with reciprocal obligations of the Member State to provide timely and thorough information to the returnees, for example on their rights and obligations, the different steps in the return procedure, and possibilities for support upon return.<sup>7</sup>

## 1. Impact assessment

The Meijers Committee believes that the European Commission should conduct an impact assessment prior to the EU legislative proposal, in conformity with its own commitments.<sup>8</sup> This would enable a verification of the proposal's effectiveness, necessity, proportionality, and compatibility with existing procedural safeguards.

## 2. Ensuring effectiveness and EU law compliance: maintain current rules in the Return Directive

The definition of return in Article 3(3) of the current Return Directive should be retained to prevent mandatory return of individuals to third countries they have not passed through and/or with which there is no connection. In other words, return should only be possible to one's own country or to another country where admission is assured<sup>9</sup> or to which the third-country national voluntarily consents (i.e. based on his or her free choice to return).<sup>10</sup> This safeguard will increase the effectiveness of the return procedure, preventing resistance from the returnee or the third country at stake.

Furthermore, the safeguards pending return, provided in the current Article 14 of the Return Directive should be retained, while considering the recent ruling of the CJEU.<sup>11</sup> Article 14, paragraph 2 obliges Member States during the period of voluntary return and during periods for which removal has been postponed, to provide third-country nationals with written confirmation on the eventual extension of the return period or the fact that return will (temporarily) not be enforced.<sup>12</sup> This obligation is necessary to avoid ambiguities about whether a person is staying legally or illegally in the territory of

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<sup>4</sup> Because it takes into account the preferences of the returnee and will be less restrictive.

<sup>5</sup> Much cheaper than forced deportation. See Van Ballegooij, W., with Navarra, C., Cost of non-Europe in Asylum Policy. EPRS, European Parliament, 2018.

<sup>6</sup> Voluntary departure is now approximately 50% of departure after return decision. It therefore forms an important part of the realized return. See EC, Returns of irregular migrants - quarterly statistics.

<sup>7</sup> Note that the Schengen Borders Code 2016/399 already included that the Return Directive 2008/115/EC does not apply when bilateral agreements have been adopted. The revised Schengen Borders Code 2024/1717 includes a procedure for persons stopped at internal borders during joint operations. This also provided for an appeal and a decision in plain language, ex Articles 23a and 25 Schengen Borders Code 2024/1717.

<sup>8</sup> See annex to the 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, COM(2017) 200 final; see also Better Regulation Guidelines, SWD(2021) 305 final, 3 November 2021; Better Regulation Toolbox, 20 July 2023.

<sup>9</sup> This includes a formal agreement with the third country, which is transparent and can be made subject to judicial and parliamentary scrutiny.

<sup>10</sup> For a definition of "voluntariness" in return situations, reference can be made to ECtHR, 14 November 2019, 25244/18 'NA v Finland', paras 56-57; ECtHR, 27 October 2020, 19656/18 'MA v Belgium' paras 60-61.

<sup>11</sup> CJEU, 12 Sept 2024, C-352/23.

<sup>12</sup> *Ibid.*, points 55-61.

a Member State, safeguarding his or her rights.<sup>13</sup> It also follows from the aforementioned CJEU judgment that the person concerned, who is awaiting return after their asylum application is rejected, can also claim rights under EU Directive 2013/33 (and from June 2026, under EU Directive 2024/1346).<sup>14</sup>

For further recommendations on safeguards regarding the risk of absconding and the voluntary return period, and other procedural safeguards, see point 5 below.

### **3. Alignment with and supplementation of the Migration and Asylum Pact legislation**

The Meijers Committee recommends that the content of the recast Directive *aligns* with legislation in the Migration and Asylum Pact of 2024 to prevent fragmentation and inconsequent legislation.<sup>15</sup> Important safeguards in this regard are for example, a 5-10 days<sup>16</sup> or two weeks-one month<sup>17</sup> period to launch an appeal (cf. the new Asylum Procedure Regulation 2024/1348), and the principle prohibition of detention of (families with) children, as included in the revised Reception Directive 2024/1346. Such alignment with the Pact legislation ensures that the (procedural) rights of returnees are guaranteed, in line with the EU Charter and the Convention on the Rights of the Child.

In addition to the adopted Migration Pact legislation, the new EU legislative proposal on return should *supplement* the Pact. First, the Meijers Committee recommends including procedural safeguards regarding the notification procedure in the Asylum and Migration Management Regulation 2024/1351 (AMMR) to prevent that people end up in a limbo situation because the return to the responsible Member State is not further regulated in the AMMR. It is necessary to develop a clear and standardized procedure that regulates return to the responsible Member State. Such rules could include rules on written confirmation about the status of third-country nationals awaiting their return to another Member State, time limits, procedural guarantees and legal remedies.

Our second recommendation for *supplementary* safeguards concerns the new Asylum Procedure Regulation 2024/1348. This regulation stipulates that in some cases return decisions and asylum rejections must be combined to streamline these procedures.<sup>18</sup> As set out by the European Parliament in 2020, the automatic combination of a return decision following the rejection of an asylum claim increases the chance that the risk of refoulement is not structurally assessed by the authorities on their own initiative when issuing a return decision.<sup>19</sup> However, the CJEU has recently clarified that national authorities must carry out, before implementing the return decision, an updated assessment of the risk of refoulement.<sup>20</sup> And in those situations, national courts are obliged to ensure on their own motion, that the principle of non-refoulement is observed.<sup>21</sup> Other rulings of the CJEU provide further guidance on how protection against refoulement can be guaranteed during national

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<sup>13</sup> Ibid., point 59.

<sup>14</sup> Ibid., point 79.

<sup>15</sup> EC, 2024 Pact on Asylum and Migration.

<sup>16</sup> When rejected as inadmissible, implicitly withdrawn, unfounded or manifestly unfounded in the accelerated procedure. Article 67(7)(a) APR.

<sup>17</sup> In all other cases than mentioned in previous footnote. Article 67(7)(b) APR.

<sup>18</sup> Note that a return decision must be paired with an asylum rejection when the claim is inadmissible, unfounded, or withdrawn (Art 37 Asylum Procedure Regulation (APR)). Furthermore, return decisions are to be appealed jointly (and in the same proceedings) with asylum rejections (Art 67(1) APR). Next, return appeals have automatic suspensive effect when combined with asylum appeals (Art 68 APR).

<sup>19</sup> EP Report A9-0238/2020.

<sup>20</sup> CJEU, 17 October 2024, C-156/23 'Ararat'.

<sup>21</sup> Ibid.

procedures.<sup>22</sup> The person in question 'must be able to express his/her point of view on the legality of his or her stay; [express] facts that could justify the authorities to refrain from adopting a particular return related decision; [express] facts that justify exception(s) to the expulsion; [express] social circumstances of the irregular migrant, including the best interests of the child, family life and the state of health of the third-country national concerned and risks of non-refoulement.'<sup>23</sup> The Meijers Committee advises to include these guarantees in the recast Directive.

For further recommendations on safeguards regarding the risk of absconding and the voluntary return period, and other procedural safeguards, see point 5 below.

#### **4. Additional safeguards at the internal borders: supplement other Schengen legislation**

The Meijers Committee also recommends additional safeguards and procedural guarantees regarding the treatment of third-country nationals at the internal borders of the Schengen area to prevent 'internal pushbacks' of asylum seekers. Article 23(a) of the revised Schengen Borders Code 2024/1717 provides that derogations from Article 6(3) of the Return Directive are possible, as Member States may transfer third-country nationals at the Schengen internal borders, provided there is a bilateral cooperation framework allowing for such readmissions.<sup>24</sup> Due to Member States' broad discretion as to the form and content of these readmission agreements, there is a risk that future deals will be at odds with EU law. To counter this risk, the Meijers Committee recommends that the new Return Directive should prescribe minimum safeguards for bilateral readmission agreements. The agreements should be transparent and subject to parliamentary and judicial review. Furthermore, applicants for international protection should be explicitly excluded from the scope of such bilateral readmission agreements.

#### **5. Further substantive points**

##### *Criteria for risk of absconding*

The recast of the Return Directive should include criteria for risk of absconding that relate directly and effectively to the return procedure.<sup>25</sup> Such targeted approach will ensure that the criteria are not so general that every rejected asylum seeker or third-country national can be included under the criteria.

##### *Voluntary return period*

The Meijers Committee believes that there should be a mandatory application of a voluntary return period.<sup>26</sup> Such mandatory application should also be activated when the returnee has not explicitly requested voluntary return. The EU legislators can make specific (permitted or mandatory) exceptions for certain categories of persons, such as persons who pose a 'risk to public policy'. In accordance with standing CJEU case law, national authorities must perform an individual assessment of whether the personal conduct of the third-country national concerned poses 'a genuine and present risk to public policy'.<sup>27</sup> Yet, this exception ground should be interpreted strictly 'to ensure that the fundamental rights of third-country nationals are respected when they are removed from the European Union'.<sup>28</sup>

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<sup>22</sup> See CJEU, 5 November 2014, [C-166/13](#); CJEU, 11 December 2014, [C-249/13](#). This argument is made by Moraru and López Esquitino in their recent [blog post](#).

<sup>23</sup> Ibid.

<sup>24</sup> Note the CJEU ruling, 21 September 2023, [C-143/22](#) 'ADDE', that applies to pre-existing bilateral agreements.

<sup>25</sup> NB: The 2018 Commission proposal for the revision of the Return Directive introduced such a list of criteria, but this list was non-exhaustive and included very broad criteria not directly related to the return procedure.

<sup>26</sup> Cf. commitment of EU Return Coordinator [COM\(2023\) 45 final](#).

<sup>27</sup> CJEU, 11 June 2015, [C-554/13](#) 'Zh. and O.'

<sup>28</sup> Ibid., paras 50, 59–60.

The Meijers Committee bases these recommendations on the premise that voluntary departure is a more humane,<sup>29</sup> efficient<sup>30</sup> and effective<sup>31</sup> alternative to forced removal, and should therefore be taken as a starting point.

### *Harmonization of procedural safeguards*

If mutual recognition of return decisions will be part of the new EU legislative proposal,<sup>32</sup> the EU should accompany this by stronger harmonization, particularly regarding procedural safeguards. The return system is currently fragmented across Member States.<sup>33</sup> Harmonization requires, for example:

- clear and common rules on the automatic suspensive effect of appeals, at least at first instance;
- full and *ex nunc* judicial review in line with Article 47 of the Charter, at least at first instance;
- realistic deadlines for lodging objections or appeals that correspond to those in the new Asylum Procedure Regulation (APR);
- regular judicial review of the (continuing) necessity of detention;
- and more detailed standards for the conditions of detention.<sup>34</sup>

Such procedural safeguards are important because they minimize the risks of violations of fundamental rights as a result of an acceleration and simplification of return procedures.

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<sup>29</sup> Because it takes into account the preferences of the returnee and will be less restrictive.

<sup>30</sup> Much cheaper than forced deportation. See Van Ballegooij, W., with Navarra, C., Cost of non-Europe in Asylum Policy. EPRS, European Parliament, 2018.

<sup>31</sup> Voluntary departure is now approximately 50% of departure after return decision. It therefore forms an important part of the realized return. See EC, Returns of irregular migrants - quarterly statistics.

<sup>32</sup> As announced in Von der Leyen's political guidelines 2024-2029 and the mission letter to Commissioner Brunner. See also C(2023) 1763 final.

<sup>33</sup> COM(2021) 56 final; EP Report A9-0238/2020.

<sup>34</sup> NB: A periodic review of detention is also important to safeguard the fundamental rights of the persons in question (detention must be appropriate and proportionate; no de facto detention), but also to ensure that return is worked on expeditiously.