CM2505

MEIJERS COMMITTEE COMMENT ON THE PROPOSAL FOR A RETURN REGULATION

APRIL 2025

In this comment, the Meijers Committee provides a critical analysis of the recently proposed Return Regulation. The Meijers Committee welcomes the European Commission's intention to reform the EU return framework but remains deeply concerned that the Proposal for a Return Regulation, in its current form, risks undermining fundamental rights, legal certainty, and effective implementation across Member States.

While the proposal includes positive elements—such as provisions for full and ex nunc judicial review of return decisions and fundamental rights monitoring during removals—it simultaneously weakens key protections of the individual at stake. It expands grounds for detention, broadens the use of entry bans, reduces the prioritization of voluntary return, and creates a legal basis for return hubs without sufficient safeguards. It also fails to ensure consistent procedural safeguards across the EU, particularly regarding appeal deadlines in judicial procedures.

To ensure a fair, effective, and rights-compliant return system, we strongly suggest the co-legislators to amend the proposed Return Regulation in line with our recommendations, which can be found at the end of this Meijers Committee comment.

Meijers Committee

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

Meijers Committee

CM2505 Meijers Committee comment on the Proposal for a Return Regulation

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1. Introduction

In our recent Comment on the recast of the EU Return Directive (2008/115), we made several recommendations for an effective return system that protects and strengthens procedural and material safeguards and remedies.[1] With those recommendations in mind and looking at the proposal, the revision of the return system is an opportunity in four ways: i. to address aspects that don't work in the Return Directive; ii. to maintain aspects that work in the Return Directive; iii. to create consistency with Pact; iv. to harmonize safeguards and remedies. Using this structure, we react in this comment to the recently released proposal by the European Commission (EC) for a new Return Regulation.[2] We assess how we see our earlier recommendations reflected in the proposed text and delve into new elements that we did not touch on before.

2. Impact assessments?

To understand how to improve a generally considered dysfunctional return system, an impact assessment on the effectiveness, necessity, proportionality, and compatibility with existing procedural safeguards of the intended new rules should be part of the legislative process. We regret the absence of an impact assessment by the EC, contrary to its own commitments, and hope that we can expect a detailed account of the consultation process in the upcoming Commission Staff Working Document.[3] The Meijers Committee also suggest the co-legislators to consider including another impact assessment that is currently missing in the proposal, which is the *ex ante* fundamental rights assessment before negotiating a deal on a return hub. We contend this is essential for getting a clear picture of whether a return hub can be established in the first place.

3. Addressing pressing issues?

Various reports and studies in recent years have scrutinized the functioning of the current Return Directive and identified multiple issues, such as the inconsistent interpretation and application of key concepts in the return system and the lack of cooperation and coordination between Member States (MS).[4] The proposal seeks to address these challenges.[5] A comprehensive assessment of the

[1] CM2409 Meijers Committee comment on the recast of the EU Return Directive, 12 Dec 2024.
[2] COM/2025/101 final.
[3] COM/2025/101 final., pp 7-8.
[4] See e.g., the 2023 EC policy document; 2022 Council non-paper; 2021 European Court of Auditors (ECA) report; 2020 EPRS implementation assessment study; 2019 European Council on Refugees and Exiles (ECRE) policy note; 2018 European Migration Network (EMN) report; 2015 EC action plan on return.
[5] For instance by introducing common rules on the collection and communication of statistical data (to counter deficient data collection), on the provision of sufficient personnel/resources and support by the EU (to counter logistical and capacity difficulties), on relatively short timeframes for administrative and judicial procedures as

effectiveness of all the introduced measures is beyond the scope of this contribution. Instead, the Meijers Committee focuses on a selection of the most important issues, in particular relating to challenges in the implementation of return procedures in MS (internal dimension) and to the lack of cooperation with third countries (external dimension).[6]

- *Fragmentation*

The fragmentation in the implementation of the Return Directive is deemed one of the more structural challenges to the effectiveness of the current system. Throughout the proposal, the EC has tried to overcome divergent return practices in the MS. The proposal contains several measures that could bring harmonization to the system, for instance through a common format for return decisions and a unified readmission procedure.[7] The proposed rules may also unify some safeguards and remedies, as it for example requires MS to establish a full and *ex nunc* judicial review and an independent monitoring mechanism (see more below, under 6). However, while the proposal includes provisions with clear obligations, in other provisions MS have been given much discretion to organize their national return systems.[8] The level of flexibility is especially evident in the proposed provisions with time limits, where it is up to the MS to choose its preferred minimum deadlines.[9]

An important area where the proposed regulation still leaves much flexibility is in relation to its scope of application.[10] According to the 2020 European Parliamentary Research Service (EPRS) implementation assessment study, the current directive allows MS to interpret key concepts differently or resort to national rules when implementing the return procedure.[11] This could result in parallel procedures in which some third country nationals (TCN) cannot enjoy protection of the safeguards as provided in the EU return system. The Meijers Committee contends that the proposed rules have not sufficiently addressed this issue: MS can still opt not to apply or derogate from the regulation (at their external borders) based on national law or the Schengen Borders Code (2016/399)(SBC). Some safeguards have been included in cases of derogation: MS then rely on national law to return the TCN, in compliance with the principle of non-refoulement, and apply

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well as making some safeguards subject to application (to counter slow legal processes), on the "seamless link" between decisions ending legal stay and return decisions (to counter misalignment of asylum and return procedures), on mandatory cooperation and assistance between Member States (MS) authorities, including information sharing (to counter lack of cooperation and coordination between MS), on attention to special needs of vulnerable individuals throughout the return process (to counter protection gaps for vulnerable TCN), and on a readmission procedure including mandatory readmission requests (to counter readmission challenges).

[6] The internal and external dimension is a typology used in EPRS briefing of Oct 2024.

[7] See fn. 5. See further eg common format for return hubs; common detention grounds to be laid down in national law; provision of unified alternatives to detention in national law; identification of common priorities and ensuring loyal cooperation and close coordination between EU and MS; unified support system for return and reintegration through counseling and support programs.

[8] See eg optional derogations to scope of application; voluntary character of mutual recognition probably until July 2027, which derogations possible; MS are not obliged to order detention and may opt for alternatives or no measures; optional processing and transferring of data with third country; optional support from Frontex; optional derogation in emergency situations.

[9] See eg time limits of voluntary departure period, frequency review decision postponing removal and (alternatives to) detention, length of detention, and time limit lodging appeal.

[10] Arts 2 and 3.

[11] For instance, there are different interpretations of what is considered 'in connection with the irregular border crossing', which can create parallel procedures, based on either the directive or the Schengen Borders Code (SBC). The directive also leaves room for different interpretations of 'staying illegally' (which determines whether a return decision is to be issued) based on the SBC, or the other conditions for entry, stay, or residence in that MS – which may vary between MS. See 2020 EPRS implementation assessment study.

safeguards on removal, postponement and detention conditions.[12] However, while these safeguards should be welcomed, it does not prevent a continued divergence of MS return practices.

- *Duplication of return decisions*

Presented as key elements of harmonization in the proposal are the EU Return Order (ERO)[13] and the obligation for MS to mutually recognize and enforce previously issued return decisions by other MS. The ERO aims to bring clarity across MS and underpins and facilitates the system of mutual recognition. The mechanism for recognition and enforcement seeks to eliminate a step in the process and avoid duplication of return decisions.[14] These measures might have a positive impact on the speediness of the return procedures. Yet, the Meijers Committee wishes to point out the following in relation to the possible impact of a system of mutual recognition and its need.

First, reflections to earlier forms of mutual recognition in EU asylum and migration law[15] have indicated that MS faced several obstacles in the implementation of the systems of mutual recognition, which eventually resulted in their dysfunction.[16] The Meijers Committee foresees significant legal and practical challenges to the proposed mutual recognition mechanism in the Return Regulation. Similar to what other commentators have pointed out,[17] we posit that the mutual recognition mechanism could raise proportionality concerns by spreading restrictive return policies across the EU without harmonizing protection statuses. While the EC promotes efficiency in returns, it does not apply the same principle to asylum or protection statuses, which highlights an inconsistency in EU migration policy that might backfire.[18] Furthermore, EU MS have differing grounds for legal stay, which results in a situation where a person might be irregular in one state but eligible for residence in another. While the proposal seeks harmonization, states retain discretion to issue residence permits on humanitarian or other grounds, which could lead to potential conflicts.

Second, the proposed system of mutual recognition is based on the premise that people abscond to other MS and that those MS issue new return orders. However, no relevant data is available which gives clarity as to how many people abscond, and at what moment in the procedure. Although we understand this data is by nature difficult to attain, it would be essential for better understanding the need for a mechanism of mutual recognition. Hence, we ask the EC to give more insight into this in their upcoming Commission Staff Working Document.

- *Lack of cooperation of TCN*

The proposal includes several measures to deal with the lack of cooperation of TCN. This is reflected by the centrality and expansion of detention, obligations to cooperate for TCN and criteria to assess the risk of absconding.

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[12] Art 3(2).
[13] A new common form, which includes key elements of the return decision and is available through the Schengen Information System (SIS).
[14] Explanatory memorandum, p 12
[15] Note e.g., the recognition of asylum decisions within the Dublin transfer system and the 2001 Directive on the Mutual Recognition of Decisions on the Expulsion of Third Country Nationals.
[16] E.g., complexity in assessing FR violations in other MS; costs of carrying out expulsion decisions from other Member States; administrative and judicial challenges to a decision taken in another Member State. See reflections on Dublin; see reflections on Directive 2001/40.
[17] See blogpost by Izabella Majcher.
[18] Ibid.

i. Detention

The proposal significantly broadens the legal framework for pre-removal detention. The proposal expands detention with additional grounds, namely for TCN posing security risks, for determination/verification of identification, or for non-compliance with alternatives to detention.[19] This expansion is very problematic for various reasons. The detention of persons posing security risks is based on broad and vague criteria,[20] leading to a lack of legal certainty at odds with Article 5 (1) ECHR and potentially violates the principle that pre-removal detention can only be a measure of last resort.[21] It permits detention in prisons, potentially indefinitely, which undermines the distinction between immigration and criminal detention.[22] Research shows that detention is often used punitively rather than for effective migration governance, which makes it an unsuitable tool to stimulate returns.[23] Moreover, the detention ground to determine/verify identification could result in arbitrary and prolonged detention, especially for stateless or undocumented individuals. Apart from the additional grounds for detention, the maximum standard detention period increases from 18 to 24 months, and the period may restart upon transfer between Member States.[24] This also increases chances of prolonged detention, which is neither proven to improve return rates nor cost-effective.[25]

Several safeguards to pre-removal detention have been included as well, such as that detention is to be based on individual assessment, proportionality and necessity,[26] and on an exhaustive list of grounds.[27] Another novelty in the proposal is the provision of alternatives to detention (i.e., reporting duty, surrender identity/travel doc, designated residence, deposit, electronic monitoring).[28] The Meijers Committee principally welcomes the inclusion of alternatives to detention in the proposal, since migration detention should always be used as a measure of last resort and research highlights that ending detention is both feasible and beneficial, with successful alternatives already in use.[29] These alternatives are less harmful, more dignified for individuals in expulsion processes, and potentially more cost-effective for governments.[30] However, it is questionable whether MS will resort to the alternatives as a first and main option. The alternative measures can be applied after (maximum) detention[31] and when conditions for detention are (no longer) met.[32] This is regrettable, since we believe that, given the fact that detention is a measure of last resort, alternatives should always be considered first.[33] Further, the Meijers Committee welcomes the attention to special needs for vulnerable people, minors and families in the context of detention,[34] but is very critical about the fact children, including unaccompanied children, are not categorically exempted from detention. As

[19] Art 29(3).
[20] Art 16.
[21] CJEU El Dridi, C-61/11 PPU, 2011, pts 29-62; CJEU Mahdi, C-146/14 PPU, 2014, pt 61.
[22] As pointed out in the blogpost by Izabella Majcher, pre-removal detention is meant to be a last resort, used only in cases of imminent removal, as it offers fewer legal protections than criminal detention. It is not designed to handle security risks, which should be addressed through criminal law, where stronger due process and time limits apply. This has been reiterated in CJEU case-law (Kadzoev), which clearly states that detention for public order or safety reasons cannot be justified under the Return Directive.
[23] See MORE project on necessity of pre-removal detention.
[24] Art. 32(3).
[25] See 2020 EPRS implementation assessment study.
[26] Art 29(1),(2).
[27] Art 29(3).
[28] Art 31.
[29] See MORE project.
[30] Ibid.
[31] Art 32(4).
[32] Art 32(2).
[33] See also recommendation in GAPs policy brief.
[34] Arts 34(4) and 35.

the Committee on the Rights of the Child has stressed, detention can never be in the best interest of the child.[35]

ii. Obligation to cooperate

To stimulate cooperation between the MS and the returnee, the proposal introduces obligations for TCN. It states that TCN must cooperate with MS at all stages and provide information on any relevant changes in their situation.[36] Obligations include remaining in the territory, providing documentation, not destroying documentation, providing info on transit countries, contact details, biometric data,[37] and remaining available for authorities.[38] Importantly, the proposal also states the consequences for non-cooperation. If a TCN fails to provide or provides false information, penalizing measures can be imposed, namely the refusal/reduction of benefits, refusal/reduction of voluntary returns incentives, seizure of documents, extension of entry ban, financial penalties, and/or refusal of a work permit.[39] The level of cooperation can furthermore influence the extension of detention[40] and issuance of entry bans.[41] The Meijers Committee posits that incentives to TCN cooperation could enhance the effectiveness of the system, yet non-cooperation is quite broadly defined, and the consequences are far-reaching. The determination of (non-)cooperation largely depends on how the necessity and proportionality assessment is performed in each individual case.[42] The Meijers Committee appreciates that the proposal accompanies the obligations for the TCN with reciprocal obligations for the MS to provide timely, thorough and understandable information to the returnees on for example the purpose, duration and steps in the return procedure, on their (procedural) rights and obligations, and return and integration counseling and programs as required by the principle of effective legal protection.[43]

iii. Risk of absconding

The proposal includes exhaustive criteria to assess the risk of absconding, which is a ground for detention and entry bans. This can be seen as an improvement to the criteria proposed by the EC in 2018, which were less targeted and not exhaustive.[44] However, the Meijers Committee believes the scope of the risk of absconding is too broad, especially due to the inclusion of a residual list of criteria to assess the risk of absconding.[45] The extended scope could result in many people posing a risk of absconding, which reduces legal certainty, and is likely to increase detention and entry bans (since the risk of absconding is a ground for detention and entry bans). The Meijers Committee is also concerned about the shift of the burden of proof to TCN and the presumption of bad faith,[46] which increases the

[35] Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child (2017) Joint General Comment No. 4 and No. 23 on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return, UN Doc CMW/C/GC/4-CRC/C/GC/23., §5

[36] Art 21.

[37] A potentially problematic aspect that requires further analysis is the new and extensive provisions regarding the sharing of data, including sensitive health or criminal conviction information, with third countries and its processing by Frontex.

[38] On availability, see specifically art 23.

[39] Art 22.

[40] Art 32.

[41] Art 10.

[42] See art 22.

[43] Art 24.

[44] COM/2018/634 final, art 6.

[45] Art 30(2).

[46] See art 30(1).

likelihood that someone is considered to constitute a risk of absconding. The inclusion of criteria "lack of residence, fixed abode, or reliable address"[47] and "using false or forged identity"[48] is also problematic, as a lack of reliable address or the use of forged documents don't necessarily indicate unwillingness or lack of good faith on the part of TCN.

iv. Entry bans broadened

The EC has broadened the scope of situations for issuing entry bans. An entry ban must be subject to removal,[49] does not comply with the voluntary departure period,[50] or poses a security risk.[51] In other cases, an entry ban can be issued considering the relevant circumstances (i.e., level of cooperation). The Meijers Committee believes this broadened scope – in which the issuance of an entry ban is an automatic consequence of return except when TCN leave voluntarily – risks to affect both the effectiveness of the return system as the rights and legal protection of TCN. It might be true that the certainty of entry bans as a consequence of removal might make voluntary returns a more appealing option for TCN, in order to avoid this ban. However, that would not be a proportionate measure in our view, because the scope of entry bans remains broad and the consequences far-reaching as they criminalize irregularity and last for a long period (i.e., 10 or more years).[52] Additionally, it is possible that when entry bans are widely used, the risk of absconding for TCN increases as fear of being banned makes fleeing to another MS an appealing option. That would indeed undermine the effectiveness of the system.

- *Lack of cooperation third country*

The proposal introduces provisions aimed to streamline cooperation with third countries, as it provides for a common readmission procedure (incl. readmission application, use of European travel document and SIS upload) with recognized third country entities.[53] The EC aims to formalize readmission as central to returns, by making it mandatory for MS authorities to submit a readmission application as a standard part of the return procedure.[54] This application seeks confirmation of the returnee's nationality and necessary travel documents from third countries. A problematic feature of the proposal, however, is the possibility to cooperate with non-recognized third country entities as well,[55] because it allows for collaboration with entities with deplorable human rights track records, such as the Taliban in Afghanistan. This may increase the chance of TCN being subject to human rights violations and may contribute to legitimizing these entities – even though this is explicitly not allowed.[56]

Another widely discussed measure to increase collaboration with third countries is the new legal basis for return hubs.[57] The hubs can be seen as the primary political initiative to overcome difficulties in external non-cooperation. However, the Meijers Committee is very concerned about the risks these agreements pose to fundamental rights, as many reports have shown how (entities of) third countries

[47] Art 30(2)(a).
[48] Art 30(2)(f).
[49] Art 12.
[50] Art 13.
[51] Art 16.
[52] Compare ECtHR case law on permanent entry bans and required proportionality assessment, e.g., EHRM, 12 November 2024, 5199/23, 'Sharafane v. Denmark'.
[53] Art 36.
[54] Art 36(2).
[55] Art 37.
[56] Art 37(2).
[57] Art 17.

with whom the EU and MS collaborated in migration control have committed human rights violations in migration management operations.

The Meijers Committee contends that return hubs could only be compatible with EU and international law when there are clear and robust safeguards in place. The EU and/or its Member States will have applicable human rights obligations whenever they have effective control over the individuals, even if they operate extraterritorially, as the EU Fundamental Rights Agency (FRA) has already stipulated.[58] While it should be appreciated that the common format for return hubs includes a requirement of international law compliance (particularly non-refoulement), independent monitoring mechanism, and exclusion of minors and families in the proposed provision on return hubs – more safeguards should be established (see recommendations below, under 7).

Absent in the proposed Return Regulation is a clear indication of what avenues should be pursued when third countries don't cooperate A general reference has been made to Art 25a of the Visa Code (810/2009),[59] which provides the possibility of applying positive or restrictive visa measures depending on the (non-)cooperation of the third country with the readmission process. However, research established that it is unlikely that the threat of restrictive measures significantly impacts sustainable cooperation or alters the practices of third countries.[60] On the contrary, such measures would obstruct legal pathways, which increases the risk of irregular immigration.[61] Very limited attention has been given in the proposal to alternative measures to address the situation of people who cannot return. The proposed regulation gives the possibility to postpone removal for an appropriate period due to specific circumstances[62] or authorization to stay for compassionate, humanitarian or other reasons.[63] The Meijers Committee posits that the EU should encourage national practices which provide support and guarantees to unreturnable people, so these people better understand the available avenues and are supported in this process.[64]

4. Maintaining good elements?

- *Safeguards pending return*

The Meijers Committee noted that the safeguards pending return have been partly maintained in the proposal. The safeguards during periods of postponed removals are the same as in the directive and even extended with the provision of basic needs.[65] The duty to provide for a written confirmation of the extension and postponement is also similar in the proposed regulation.[66] Yet, no explicit reference has been made in the proposal to the safeguards of family unity, emergency health care, basic education to minors, and special vulnerability needs during the voluntary departure period. Only when deciding on whether the voluntary departure period should be extended, consideration must be had to similar safeguards.[67] To ensure an effective and humane voluntary departure period, these considerations should in our view be maintained during this period.

[58] FRA position paper on return hubs.
[59] See art 42(2).
[60] See GAPs research referred to in Joint Statement from FAiR, GAPS, MIrreM and MORE, 21 March 2025.
[61] Ibid.
[62] Art 14(2).
[63] Art 7(9). See for instance the residence permit for humanitarian reasons in Germany (ex art 20(5) German Residence Act), when the TCN is unable to return for an extended period, for instance, due to the TCN's incapacity to travel or due to the third country's refusal to issue a travel document.
[64] See MORE project on the individual case management.
[65] Art 14(6).
[66] Art 13(3) and 14(4)
[67] Art 13(3).

- *Voluntariness*

The Meijers Committee is very concerned about the fact that this proposal brings a shift of priority from voluntary departure to forced return in the proposal. In that way, the EC has departed from the stance it has taken in previous years and the position that was established in the Return Directive. Indications for this shift can be found in the extended grounds for forced return[68] and the absence of a minimum period for voluntary departure.[69] These changes are likely to result in more returnees subject to restrictive and penalizing measures,[70] which, amongst others, increases the administrative burden of national authorities, while at the same time decreases the possibility of voluntary and effective return. A related issue where we see the removal of voluntariness in the proposal, is the broadened definition of 'country of return',[71] which allows for returns to countries people don't have a connection with. The Meijers Committee emphasizes again that voluntary departure is a more humane,[72] efficient,[73] and effective[74] alternative to forced removal and should therefore be prioritized.

- *Vulnerability*

Overall, the special needs of vulnerable people[75] and best interests of the child[76] are more explicitly mentioned in the proposal than in the current Directive, which should be welcomed. However, several safeguards are still missing. The definition of vulnerability has been removed and is now up to the national authorities and judiciaries to determine. Further, there is no specific framework on vulnerability assessment and training in place, for instance with regards to detention conditions.[77] It raises questions like: which national authority or organization is responsible for this assessment, and which safeguards or trainings will have to be available to ensure that these authorities or organizations can recognize different forms of vulnerability signs, such as illness, minority, early pregnancy or physical or mental disabilities?

5. Aligning with Pact?

[68] I.e. refusal to cooperate; unauthorized move to other MS; security risk; non-compliance with voluntary departure. Art 12.
[69] Period can be established between 0 and 30 days, instead of the current range of 7-30 days. Art 13.
[70] Such as detention, entry bans, and reduction of benefits and allowances.
[71] Art 4(3).
[72] Because it takes into account the preferences of the returnee and will be less restrictive.
[73] Much cheaper than forced deportation. See Van Ballegooij, W., with Navarra, C., Cost of non-Europe in Asylum Policy. EPRS, European Parliament, 2018.
[74] 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. Voluntary departure is also more likely to prevent resistance from the returnee and the third country in question.
[75] Special needs of vulnerable people must be taken into account in the context of detection and initial checks (Art 6(1)), conditions postponing removal (Art 14(6)), availability on return (Art 23(2)), grounds for detention (Art 29(6)), alternatives to detention (Art 31(1)), detention conditions (Art 34(4)), and support for return and reintegration (Art 46(5)(e)).
[76] The best interests of the child are a primary consideration in the application of the Regulation (Art 18. See also explanatory memorandum, p 9). This is reflected in several provisions, such as those on the extension of voluntary return (Art 13(3)), age assessments of minors (Art 19), return of unaccompanied minors more generally (Art 20), availability for the return process (Art 23(2)), right to information (Art 24(2)), and special conditions for detention of minors and families (Art 35).
[77] Art 29.

- *Time limits for appeal*

As mentioned before, MS enjoy quite some leeway to determine their time limits in the proposed regulation, given the absence of minimum deadlines. This is also the case for the time limits to lodge an appeal against return decisions, the issuance of entry bans, and removal decisions (when separated from return decisions). The Meijers Committee observes an inconsistency between on the one hand the time limit for appeal in the proposal, which does not contain a minimum, and on the other hand the time limits in the Pact. In the proposed regulation, an appeal "shall not exceed 14 days"[78] while ordinary appeals in the Asylum Procedure Regulation (2024/1348) (APR) range from 14 days to one month.[79] Even when one would argue that appeals in the return system should be subject to more restricted time limits, this standard cannot be lower than the bare minimum provided for in the APR, which is five days, in relation to applications that are rejected as inadmissible, implicitly withdrawn, unfounded or manifestly unfounded in the accelerated procedure.[80] Additionally, the absence of a minimum time limit also deviates from the Asylum and Migration Management Regulation (2024/1351)(AMMR). In the AMMR, a person can lodge an appeal against a transfer decision "at least one week but no more than three weeks[81] The Meijers Committee strongly recommends co-legislators to bring back the consistency with the Pact, in conformity with the recitals[82] and explanatory memorandum[83] of the proposed regulation.

- *Seamless link*

According to an EC policy document on return from 2023, there are misalignments between asylum and return procedures.[84] For instance, the decisions ending legal stay do not always result in return decisions in the current return framework. For this reason, the EU and MS have gradually introduced the "seamless link" concept[85] to bring asylum and return procedures closer together. In the Pact, this is reflected in the APR and the Return Border Procedure Regulation (2024/1349)(RBPR). To complement the Pact, the proposed Return Regulation introduces this seamless link in two provisions. Firstly, a return decision shall be in the same act as a decision ending legal stay.[86] Secondly, when included in the same act, similar time limits to appeal a return decision shall apply as those time limits provided for in national law to appeal the decision to end or refuse legal stay.[87] The Meijers Committee submits that, while a closer link might increase the effectiveness of the system by reducing misalignments between procedures, this should not prevent a structural assessment of the risk of refoulement by the authorities on their own initiative when issuing a return decision.[88] Albeit the seamless link should not affect procedural safeguards and "other relevant provisions of Union and international law",[89] the Meijers Committee recommends an explicit reference to non-refoulement in

[78] Art 27.
[79] Art 67(7)(b) APR. 'Ordinary' means in this context, all other cases than mentioned in art 67(7)(a) APR (when rejected as inadmissible, implicitly withdrawn, unfounded or manifestly unfounded in the accelerated procedure).
[80] Art 67(7)(a) APR.
[81] Art 43(1),(2) AMMR.
[82] Recital 9 states: "The application of the rules pursuant to this Regulation should not affect the rules on access to international protection in accordance with Regulation (EU) 2024/1348 of the European Parliament and the Council"; see also Recitcal 3: "To contribute to the implementation of the comprehensive approach set out in the Regulation (EU) 2024/1351 of the European Parliament and of the Council".
[83] See pp. 3-4.
[84] COM(2023) 45 final.
[85] A term coined by academic Moraru. See blogpost by Madalina Moraru.
[86] Art 7(6).
[87] Art 27(3).
[88] This concern was raised by the European Parliament in 2020: EP Report A9-0238/2020.
[89] Art 7(6).

the relevant provisions. This is in line with recent case law of the Court of Justice.[90] In this case-law, the Court underlined the obligation for administrative authorities to carry out an updated non-refoulement assessment before the enforcement of the return decision, as well as the duty of national courts to ensure, on their own motion, that the principle of non-refoulement is observed.[91] This is particularly relevant in cases where an application for a regular residence permit (under national law) has been rejected in which no non-refoulement assessment is carried out.

6. Harmonizing safeguards and remedies?

The proposed regulation seeks to unify several safeguards and remedies.[92] This is especially important given the introduction of the system of mutual recognition, which is based on the premise that MS can trust the quality of return procedures in other MS, in full respect with the rights of the concerned individuals. However, while some provisions enhance and clarify procedural safeguards and remedies, the proposal also reduces the legal protection of the individual.

There are several positive novelties included in the proposal, in comparison to the current Return Directive. Firstly, the Meijers Committee welcomes that effective remedies to challenge return decisions, the issuance of entry bans, and removal decisions (when separated from return decisions) must "provide for a full and *ex nunc* examination of both points of facts and points of law".[93] This is in line with the right to an effective remedy in the Charter[94] and relevant case law by the Court of Justice.[95] Secondly, we appreciate the mandatory and independent mechanism to monitor fundamental rights compliance during removal operations,[96] which mimics the mechanism introduced in the new Screening Regulation (2024/1356).[97] Under this provision, MS have an obligation to inform monitors about upcoming removal practices, to ensure access to relevant locations, and to effectively follow up substantiated allegations of fundamental rights violations.[98] While several important questions are open to interpretation,[99] the FRA has given useful guidance on how such mechanisms could function properly.[100]

Simultaneously, the proposal also includes provisions in which safeguards have regressed. Firstly, the proposed regulation does not grant automatic suspensive effect until judicial decision in first instance is rendered. Instead, the enforcement of return is merely suspended within a time limit to lodge an appeal in first instance. Hence, people risk being removed from the EU territory before a decision on their appeal is given, which is in violation with the right to an effective remedy and the principle of

[90] CJEU, 17 October 2024, C-156/23 'Ararat'.
[91] Ibid.
[92] See e.g., generally in Chapter IV (safeguards and remedies), and more specifically, detention safeguards (proportionality, necessity, exhaustive list of grounds, detention conditions, treatment of families and minors), the mentioning of international law compliance and in particular the non-refoulement principle in several provisions (eg re scope of application; return hubs; as well as more generally); the possibility to extend the voluntary departure period based on individual circumstances; humanitarian/cooperation exception to entry bans; attention to special needs of vulnerable individuals throughout the return process; and the exclusion of minors and families in return hub schemes.
[93] Art 26(2).
[94] Art 47 Charter of Fundamental Rights.
[95] See e.g. CJEU, 29 July 2019, C–556/17 'Torubarov'.
[96] Art 15.
[97] Art 10 Screening Regulation.
[98] Art 15(2),(3).
[99] For instance, how should the selection of cases to monitor be made? What kind of risk assessment helps to decide which case to monitor? What are the consequences for MS not effectively dealing with FR allegations brought to them by the monitoring mechanism?
[100] FRA guidance on independent monitoring.

non-refoulement.[101] Secondly, as discussed above, the Meijers Committee is concerned about arbitrary, prolonged, and punitive use of pre-removal detention. While the proposal includes detention safeguards and alternatives, there is a risk these will be underused. Furthermore, the Meijers Committee is concerned that the absence of a clear prohibition of detaining minors may lead to the violation of the rights and best interests of children. Thirdly, the proposed provision on legal assistance and representation should be seen as a setback, particularly due to the vague grounds for exclusion of free legal assistance and representation, for instance when the appeal has "no tangible prospect of success or is abusive".[102] This can significantly limit peoples' access to an effective remedy in violation of the right in Article 47 of the Charter. Fourthly, and as touched upon before, the Meijers Committee posits that return hubs could only be compatible with EU and international law when there are clear and robust safeguards in place. The current safeguards don't suffice and could lead to structural violations in third countries.

7. Concluding remarks and recommendations

Whereas the Meijers Committee welcomes the EC's initiative to reform the EU return framework, it also has serious concerns that the current Proposal for a Return Regulation if adopted, will result in the violation of fundamental rights, legal uncertainty, and as such the inconsistent and ineffective implementation of return procedures in the EU. To secure a fair and effective return system, we urge the co-legislators to amend the proposal in accordance with the following recommendations.

Impact assessments

- The EC should publish a detailed account of the stakeholder consultation process in the upcoming Commission Staff Working Document, including the views of Member States, civil society, and relevant international bodies.
- Co-legislators should amend the proposal to require a fundamental rights impact assessment before entering negotiations on return hubs with third countries. This assessment should evaluate the human rights context and legal accountability mechanisms in the third country.

Fragmentation

- Co-legislators should establish mandatory minimum deadlines for return-related procedures, including appeals and voluntary departure periods, to ensure fairness and legal certainty for TCN.
- Co-legislators should explicitly define the scope of application to prevent Member States from circumventing EU return rules via national provisions or the Schengen Borders Code. This should include stronger conditions and oversight when invoking derogations.

Mutual recognition

- Before implementing a binding mutual recognition mechanism, the EU should harmonize protection and residence permit standards—particularly for humanitarian and discretionary grounds—to prevent legal contradictions and uphold the principle of proportionality.

Detention

- Co-legislators should remove or clearly define vague detention grounds (e.g., "security risks" and "verification of identity") to avoid arbitrary or prolonged detention.
- Co-legislators should reconsider the proposed extension to 24 months and the possibility of restarting detention periods after intra-EU movement, which increases the risk of indefinite detention.

[101] CJEU, 19 June 2018, C-181/16 'Gnandi', pnt. 58.
[102] Art 25(5).

- Co-legislators should include the requirement of mandatory consideration and documentation of alternatives to detention *before* detention is imposed, which aligns with the principle of detention as a last resort.
- Co-legislators should introduce a categorical prohibition on the detention of minors, including unaccompanied children, to ensure the protection of international child rights standards.

Voluntary departure

- Co-legislators should prioritize voluntary departure over forced removal.

Obligation to cooperate

- Co-legislators should narrow the definition of non-cooperation to prevent overly punitive consequences for minor or unintentional non-compliance and ensure any measures taken are subject to a strict proportionality and necessity test.
- Co-legislators should ensure that any adverse consequences for non-cooperation are paired with procedural protections, including the right to be heard and access to legal remedies.

Risk of Absconding

- Co-legislators should eliminate residual and overly general criteria such as "lack of fixed abode" or "use of forged documents," which do not reliably indicate a risk of absconding.
- Co-legislators should reinforce the presumption of good faith by ensuring that the burden of proof remains with the state, not the individual, to establish risk of absconding.
- Co-legislators should require that assessments of absconding risk be conducted on a case-by-case basis, supported by evidence and subject to judicial review.

Entry Bans

- Co-legislators should remove provisions that make entry bans an automatic consequence of return, and instead require an individualized assessment of necessity and proportionality.
- Co-legislators should limit the duration of entry bans to proportionate timeframes (e.g., 1–5 years), with longer bans only to be allowed in exceptional, justified cases.

Third-Country Cooperation and Return Hubs

- Co-legislators should explicitly ban return cooperation with non-recognized third country entities with documented human rights violations, to uphold international law and EU values.
- Co-legislators should include robust safeguards on return hubs:
    - Procedure establishing agreements, including parliamentary oversight and *ex ante* fundamental rights impact assessment, which ensures transparency and accountability; no deals should be established with a third country that cannot guarantee fundamental rights compliance.
    - Legally binding agreements as a clear and adequate legal basis, which ensures respect for fundamental rights (i.e. non-refoulement, prohibition collective expulsion and arbitrary detention, and dignified conditions of stay and treatment) and entails preventive, monitoring and accountability structures.
    - Procedures establishing return of individuals, based on a return order after an individual assessment, which allows for transfer to a hub; if not, due to risks or vulnerabilities, transfer should not take place. Transfer to third countries where TCN don't have a connection with, should be avoided.
    - Mechanisms independently monitoring the implementation of the agreement and clear follow up; establishment of a complaints mechanism and effective remedies for those affected by deals.

Unreturnable Persons and Alternatives

- Co-legislators should strengthen references to humanitarian and compassionate stay permits already available in national laws, and encourage their use through coordinated case management and legal counseling.
- Co-legislators should refrain from relying solely on visa sanctions under Article 25a of the Visa Code, which have limited effect and risk obstructing legal migration channels.

Strengthen Safeguards Pending Return

- Co-legislators should retain the duty to issue written confirmations of postponement or extensions and ensure that these documents include a clear statement of rights and available services for individuals awaiting return.

Reinforce the Principle of Voluntary Departure

- Co-legislators should establish a minimum timeframe (e.g., 7–30 days) for voluntary departure, with provisions for extension based on individual circumstances, to prevent an overly swift shift to forced return procedures.
- Co-legislators should reaffirm in the Regulation that voluntary return is the preferred option, supported by procedural incentives and integration support, and avoid measures that de facto undermine voluntariness (e.g., entry bans tied to non-compliance with voluntary departure).
- Co-legislators should narrow the definition to countries with which the individual has meaningful connections (e.g., nationality, former habitual residence) to uphold the dignity and legality of return procedures.

Safeguard the Rights of Vulnerable Persons

- Co-legislators should require that vulnerability assessments be conducted by trained personnel at all stages of the return procedure, including detection, detention, and reintegration planning. This should include guidelines for identifying non-visible vulnerabilities (e.g., minor age, trauma, physical and mental disabilities, early pregnancy).

Establish Minimum Time Limits for Appeals

- Co-legislators should amend the Regulation to guarantee that individuals have at least five working days to lodge an appeal against return decisions, entry bans, and removal decisions—consistent with the minimum appeal period under the Asylum Procedure Regulation (APR, 2024/1348).

Explicitly Uphold Non-Refoulement

- Co-legislators should mandate that Member State authorities conduct an ex officio assessment of non-refoulement risks before enforcing a return. And ensure that national judicial procedures include an assessment of non-refoulement compliance.

Harmonize safeguards and remedies (other than those already mentioned in recommendations)

- Co-legislators should ensure that return enforcement is automatically suspended until a first-instance court decision is made, to uphold the right to an effective remedy.
- Co-legislators should clarify and narrow grounds for excluding legal aid; vague terms like “no tangible prospect of success or is abusive” should be defined or removed. They should guarantee free legal aid at first instance, especially for vulnerable individuals.
- Co-legislators should ensure that independent monitors have access, resources, and follow-up mechanisms, aligned with FRA guidance.

Storage and exchange of personal data

- Co-legislators should reconsider the powers to collect and share personal information in this proposal, especially with regards to very sensitive data on biometrics, health data and criminal records.
- Co-legislators should prohibit the exchange of personal data, for instance with third countries, without explicit and written consent of the returnees.