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HORIZON EUROPE PROJECT
Decentring the Study of Migrant Returns and Readmission Policies in Europe and Beyond (GAPs)

GAPS
Decentring the Study of Migrant Returns and Return Policies

Five Shades of Grey: Policy and Practice in Return Migration

Assessment of EU return policy with a focus on Germany, Greece, the Netherlands, Poland, and Sweden

Terry Martin
Science-Policy Interface Agency

This policy brief is the result of a meticulous analysis of the key findings in country dossiers (Germany, Greece, Poland, Sweden, and the Netherlands) and the Horizon Europe GAPs project - WP2 Comparative Report [1] on Legal and Policy Infrastructures of Returns in the EU. The country dossiers systematically examine regulations, policies, and statistics on the return and readmission in each country, relying on legislative documents, reports, and other relevant secondary literature. The comprehensive comparative report compares the return policies of these five countries, along with the examination of fundamental statistics, key political developments and legislations at the EU level, and the analysis of the institutional frameworks. The policy brief, a culmination of this thorough analysis, presents critical policy-related insights from the project and provides recommendations.

Introduction

Facing substantial migration pressures, the European Union and its Member States have struggled to find a balanced policy response that respects migrants' rights while managing migratory movements. This challenge is illustrated in efforts to return migrants who enter or remain in a country without legal permission or clear grounds for asylum. How to address this issue is a subject of intense political debate in the EU and often features as a campaign topic in regional, national, and European elections.

The return and readmission policy in the EU is multi-layered, involving various actors, including the European Commission, the Council of the EU, Frontex, and the European Asylum Support Office, among others. This complex framework is mirrored at the national level, where a blend of governmental and nongovernmental entities, alongside specialised agencies, play pivotal roles in the

[1] Gökalp Aras, N.E., Öztürk, N.Ö., Strik, T., Thorburn Stern, R., Trylińska, A. & Yüksel, U. (2024). "WP2 Comparative Report: Legal and Policy Infrastructures of Returns in the EU".

implementation of return policies. The involvement of multiple the EU and national actors underscores the collaborative yet intricate nature of managing migrant returns.

While the EU Member States are bound by common legal standards, such as the principle of non-refoulement and the EU Return Directive (2008), the implementation and impact of these standards vary significantly across the countries. There is a tendency to adapt the interpretation of the Directive's requirements to fit national laws rather than closely align national laws with the Directive. This reflects not only the heterogeneity of the EU Member States but also the complexity of the overarching challenge of balancing perceived security concerns with humanitarian obligations.

Based on rigorous research by the EU-funded GAPs consortium, this policy brief highlights the need for clearer legal frameworks, more accurate and comprehensive statistics, and a stronger commitment to humane and efficient return processes.

Evidence and Analysis

In terms of both policy focus and implementation strategy, the EU Member States take different approaches to migrant returns. Each country's approach is shaped by its unique political, social, and geographical context. While some countries prioritise strict control and deportations, others emphasise humanitarian approaches and voluntary returns. Despite decades of efforts by the EU and its Member States to forge a consensus on return policy, harmonisation within the EU's complex political landscape remains problematic.

EU return policies and practices

The EU has established multiple instruments over the years that continue to shape its approach to return migration. Here is a summary of the main developments to date:

- **Since 2004, the EU has actively worked with countries of return through the EU Readmission Agreements** (EURAs). These arrangements with non-EU countries aim to ensure cooperation on return and readmission.
- **The Return Directive** (2008) established common standards and procedures for returning third-country nationals. This constitutes the EU's most important legal development on returns to date. Aiming to ensure effective return procedures while respecting migrants' rights, the Directive lays down clear rules on voluntary return, removal, detention, and re-entry bans.
- Regulation (EU) 2019/189 increased the competences of **Frontex** regarding return and reintegration. Designed to support the EU Members and the Schengen associated countries in the management of the EU's external borders, Frontex provides operational and technical support within the different phases of return process when requested.
- **The Return Handbook** was issued to clarify procedures and best practices for returning migrants. Created in 2015 and updated in 2017, this document aims to enhance the effectiveness and uniformity of return practices across the EU.
- **The New Pact on Migration and Asylum** is the most recent development in the EU policy on return migration, which was adopted in May 2024**.** The long anticipated Pact introduces a mandatory solidarity system among Member States and a new expedited border procedure for individuals deemed unlikely to win asylum. It aims to ensure that their claims are processed quickly and, if rejected, that they are returned to their home countries within a specified timeframe.

Since 2018, the EU has been seeking to recast the Return Directive. The stated aim is to "reduce the length of return procedures, secure a better link between asylum and return procedures, and ensure a more effective use of measures to prevent absconding". Though

there have been significant procedural developments, efforts to date (June 2024) have not culminated in a finalised piece of legislation because of key challenges regarding the accelerated return procedures, appeals, voluntary return programmes, cooperation obligation, detention periods and risk of absconding.

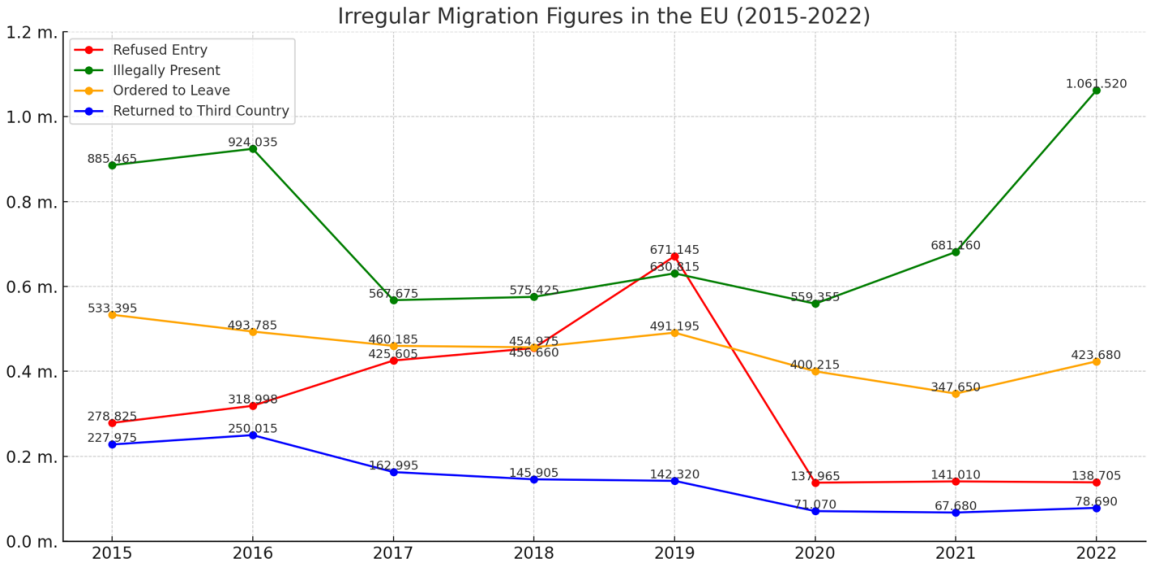
Data collection and harmonisation

Systematic data collection plays a pivotal role in shaping effective migration management policies that are both humane and aligned with human rights principles. Harmonized statistics provide a basis for transparency and accountability, allowing assessment of comparative compliance with international and EU legal frameworks. Critically, universal data collection serves as a foundation for evidence-based policymaking, enabling the development of targeted interventions that safeguard the rights and well-being of all migrants, regardless of their circumstances.

During the past 20 years, the EU and its Member States have been developing a comprehensive and coherent framework for a common analysis and the improved exchange of statistics on asylum and migration. These efforts have brought about several important changes designed to improve the completeness and harmonisation of these statistics. Since 2021, reporting quarterly statistics on returns has been mandatory for all Member States.

Building upon the results of the EU's statistical framework on migration and asylum (using Eurostat open access data), we created data visualisations for the period 2015 to 2022. Figure 1 below illustrates trends and shifts in irregular migration in the EU.

Figure 1:[2]

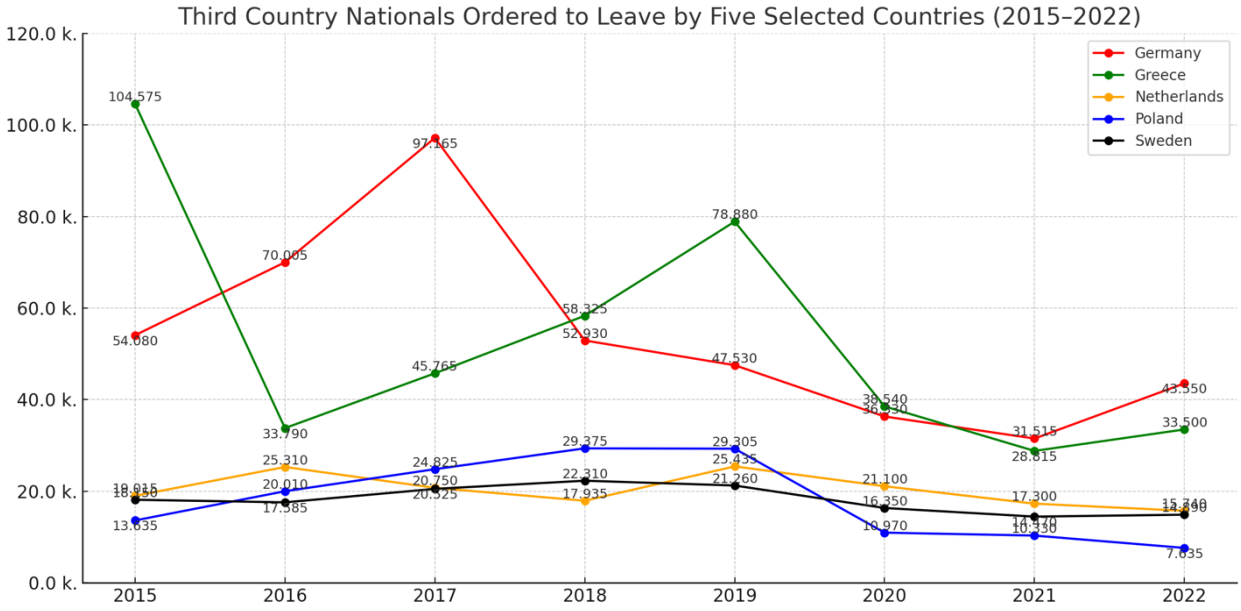


Source: GAPs WP2 Comparative Report, 2024, p. 18.

Figure 2 shows the number of third-country nationals ordered to leave by five countries from 2015 to 2022, while Figure 3 displays the number of returns following the order to leave. The disparity between orders to leave and affected returns is often cited in political discussions as an indicator of the ineffectiveness of the EU's return policy.

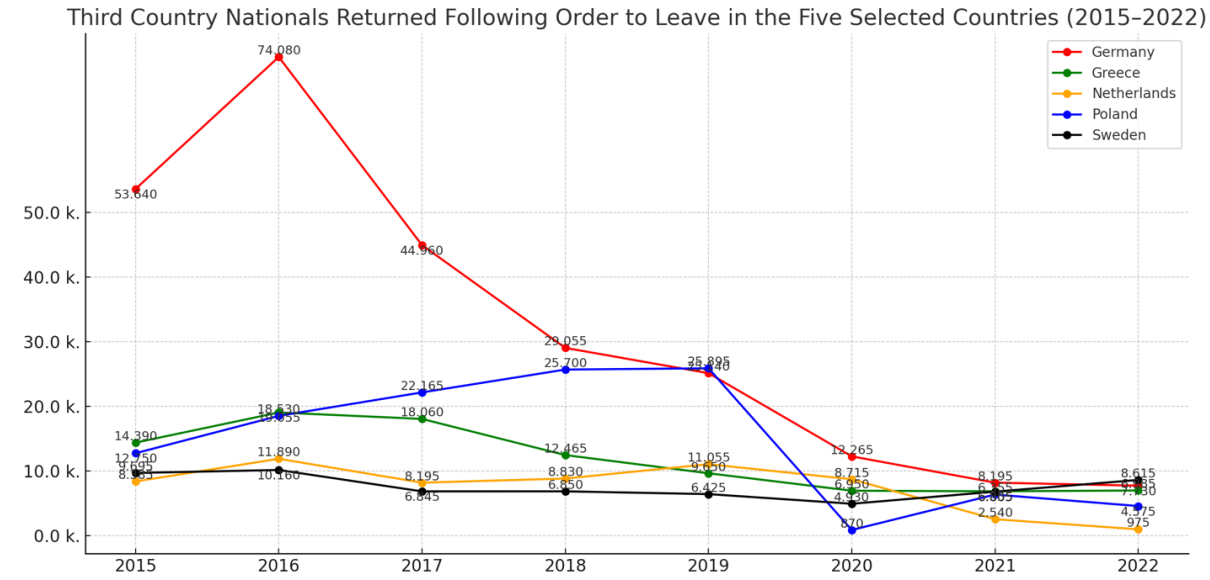
[2] For more user friendly, interactive and comparative statistical data, check GAPs's https://analytics.zoho.com/open-view/2252882000000306780.

Figure 2:



Source: GAPs WP2 Comparative Report, 2024, p. 24.

Figure 3:



Source: GAPs WP2 Comparative Report, 2024, p. 25.

Our research has uncovered significant discrepancies between the number of "third country nationals ordered to leave" and those "actually returned". These gaps highlight the difficulties in executing return procedures. Although progress has been made in data harmonisation on returns, there is still considerable variation between Member States with regard to data collection. 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.

Five shades of grey

To get a clearer picture of how EU return policy is interpreted and practised in the Member States, we examined the applicable frameworks (laws, institutions, and procedures) in a quasi-representative group of countries: Germany, Greece, Poland, Sweden and the Netherlands. Each has had impactful experience with migration and returns, experience we can draw upon to inform the evidence base.

Detailed examination of our five focus countries found that all have transposed the EU Return Directive into their national laws, but the method of transposition and clarity of application vary. In each country the decision to return is primarily an administrative action, with more than one administrative agency responsible for the return process.

The most significant discrepancy between EU and national law in these countries concerns the monitoring of returns, such as the lack of legal monitoring procedures and institutional mechanisms (e.g. ombudsman).

Our analysis of the legal, institutional and policy frameworks of the five selected Member States reveals that:

- **Germany** takes a decentralised approach, leading to variable enforcement across states.
- **Greece** demonstrates legal ambiguities and faces criticism for its detention conditions.
- **Poland** struggles with providing accessible legal remedies and has restrictive practices that hinder migrants' rights to appeal against return decisions.
- **Sweden**, which incorporates its return policy into a broader migration management framework, faces legal uncertainties and displays shortcomings in providing adequate support mechanisms for returnees.
- **The Netherlands** faces criticism for limited judicial review of return decisions and non-compliance with EU directives.

Shared challenges

Despite their diversity, the Member States investigated for this policy brief all face a common set of challenges in returns policy and practice. These include:

- formulating more precise legal definitions
- aligning national practices with EU standards
- better protecting vulnerable individuals
- ensuring humane detention conditions

The most problematic issues are legal uncertainty and inconsistencies in the application of the Return Directive and international law. Concerns also exist about the effectiveness of procedural safeguards and protection from refoulement, particularly in border procedures and for vulnerable groups such as children.

Further serious concerns surround 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. Moreover, there are discrepancies in the effectiveness of administrative and judicial reviews and remedies, particularly regarding access to legal aid and the implementation of court decisions.

Policy Recommendations

EU-level recommendations

The recommendations offered below are based on our analysis of EU return policy and its implementation in a quasi-representative sampling of five Member States. Our EU-level suggestions pertain to gaps and needs identified in all countries examined.

Legal frameworks

- Formulate clearer legal definitions
- Align return policies with human rights standards and the legal frameworks safeguarding these rights.
- Create greater transparency for applicable laws and judicial process.
- Assure that procedures comply with fundamental and human rights.
- Strengthen mechanisms for monitoring and enforcing compliance with the EU Return Directive.
- To ensure compliance with EU law, Member States should avoid using detention as a sanction for those who do not comply with a return decision.

Data management and transparency

- Improve data collection on returns to address inconsistencies and missing data for countries. Timely publication of data is essential to inform policymaking.
- Ensure greater transparency by making data about the various aspects of return policies available to the public. This should include information on the application of alternative measures, the financial costs of removal operations, cooperation agreements to inform discussions on effectiveness and efficiency of return policies.

Institutional frameworks and international cooperation

- Enhance institutional frameworks and international cooperation to manage return processes more effectively, including cooperation with countries of origin.
- Enhance support for voluntary return programmes and reintegration.

Detention as a last resort

- Use detention as a last resort, with alternatives to detention being considered first. This applies especially in fulfilling obligations to serve a child's best interests and treat detainees humanely.

Regularisation of migration pathways as a long-term, sustainable solution

- Conduct an evidence-based cost-benefit analysis of return versus regularisation or other measures. This could help shift the focus in practice and in public debate. In particular, finding solutions for those who cannot return and for undocumented migrants is a humanitarian issue that could be addressed in EC guidelines and future initiatives

Country-level recommendations[3]

Each Member State examined in our investigation faces unique challenges linked to its specific context. Hence, a differentiated, targeted approach is required in evaluating policies and formulating recommendations at the country level. Therefore, while the primary aim of this brief is to inform policymaking at the EU level, we also provide country-level recommendations that could have relevance for EU Member States beyond those mentioned.

Germany
Improve the legal framework and institutional practices to ensure effective returns while complying with fundamental/human rights.

- Establish a robust control and monitoring system.
- Create an independent institution for monitoring pre-removal and detention.
- Provide access to legal counselling and long-term funding for state and independent return counselling centres.

Greece
Clarify legal procedures and improve detention conditions.

- Define legal frameworks clearly to ensure the Return Directive's proper implementation.
- Enhance living conditions and rights for detainees.
- Consider alternatives to detention, especially for vulnerable groups like children and asylum seekers.

Poland
Reform legal and institutional cooperation to make the return process more humane and less restrictive.

- Restore the suspension effect of the claim to the court against return decisions.
- Introduce state-funded legal assistance.
- Use alternatives to detention, especially children and other vulnerable groups.

Sweden
Address legal gaps and policy inconsistencies that affect the return process.

- Incorporate definitions from the Return Directive into national law.
- Clarify what constitutes a practical impediment to enforcing return decisions.
- Ensure that detention practices align with EU law.
- Improve the credibility of Swedish migration policy by ensuring certainty about rules, procedures and implementation.

The Netherlands
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.

- Practise less coercive enforcement measures.
- Emphasise detention as a last resort.
- Ensure the protection of children's rights.
- Consider more sustainable structures for successful integration or return.

[3] For more detailed analysis of these countries, please consult the GAPs project's country-specific dossiers and policy briefs. https://www.returnmigration.eu/publications-gaps

Project identity

Project name	GAPs: De-centring the Study of Migrant Returns and Readmission Policies in Europe and Beyond
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Duration	2023-2026
Coordinators	Zeynep Sahin-Mencütek | Bonn International Centre for Conflict Studies | zeynep.mencutek@bicc.de Soner Barthoma | Uppsala University | soner.barthoma@crs.uu.se
Consortium	Uppsala University (Sweden) Bonn International Centre for Conflict Studies (Germany) Stichting Radboud Universiteit (Netherlands) Ozyegin Universitesi (Turkey) Hammurabi Human Rights Organization (Iraq) Svenska Forskningsinstitutet i Istanbul (Sweden/Turkey) Hashemite University (Jordan) Ethniko Kentro Koinonikon Erevnon (Greece) Association Migration Internationale (Morocco) Toronto Metropolitan University (Canada) University of Nigeria (Nigeria) Bilim Organization for Research and Social Studies (Afghanistan) Uniwersytet Warszawski (Poland) Migration Matters EV (Germany) University of Sousse (Tunisia) SPIA UG (Germany) University of Glasgow (UK)
Further reading	For more detailed analysis of country dossiers and WP2/Comparative Report, please consult the GAPs project's website: https://www.returnmigration.eu/publications-gaps

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Project summary

GAPs is a Horizon Europe research project that aims to conduct a comprehensive multidisciplinary study of the drivers of return policies and the barriers to and enablers of international cooperation on return migration. The overall aim of the project is to examine the disconnects and discrepancies between expectations of return policies and their actual outcomes by decentering the dominant, onesided understanding of "return policymaking." To this end, GAPs:

- examines the shortcomings of the EU's return governance;
- analyses enablers of 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 approach with three innovative concepts:

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

GAPs is a three-year interdisciplinary research project (2023–2026) coordinated by Uppsala University and the Bonn International Centre for Conflict Studies (BICC) with 17 partners in 14 countries on four continents. GAPs' fieldwork and desk research are conducted in several countries, including Afghanistan, Canada, Germany, Greece, Iraq, Jordan, the Netherlands, Nigeria, Morocco, Poland, Sweden, Tunisia, Türkiye, and the UK.