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Motivations, experiences and consequences of returns and readmissions policy: revealing and developing effective alternatives

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Development of the Return and Readmission policy across Europe: multilevel analysis –

Key findings

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Project Number: 101094107

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How to cite this publication: Slavnic, Z., Jubany, O. (eds.) (2024) *Development of the Return and Readmission policy across Europe: multilevel analysis*. MORE Policy Briefs.

Publication date

October 2024

Disclaimer

This document provides a concise summary of the key findings from the policy brief on Return and Readmissions policy across Europe that was conducted in the framework of MORE project. For detailed analysis, evidence, and comprehensive insights, please refer to the full report. The information in this summary should not be considered complete or fully representative of the entire study.

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Introduction

The Amsterdam Treaty and Tampere Agenda of 1999 played pivotal roles in establishing the Common European Migration policy and the Common European Asylum System (CEAS). Before these agreements, migration and asylum matters were handled solely at the national level, with intergovernmental cooperation. The Amsterdam Treaty elevated migration and asylum cooperation to a supranational level, granting the European Commission a significant role.

However the foundations of the European Migration Regime were laid out in the Schengen Agreement of 1985, which facilitated the free movement of people within the Schengen zone while strengthening border controls for third-country citizens. This led to the emergence of internal and external dimensions of European Migration and Asylum Policy, including border control harmonization and asylum system coordination.

The EU's external migration regime focuses on preventing unauthorized entry and managing returns of third-country nationals lacking legal residency. The EU Return Directive (2008/115/EC), in force since 2010, sets standards to ensure "effective and humane return policy as a necessary element of a well-managed migration policy" (EU DIRECTIVE 2008/115/EC). Voluntary return was seen as more effective than forced return because it ensured the protection of the fundamental rights of returnees and reduced the risk of remigration. Finally, as the third important principle of a well-managed, i.e., effective migration policy, return was expected to be implemented "in accordance with fundamental rights as general principles of Community law as well as international law" (Ibid.:101).

Initial evaluations of the Return Directive indicated effective return procedures and sustainability. However, during the 2015 refugee crisis, policy focus shifted towards return rates, often neglecting sustainability and migrant rights. This shift is evident in subsequent policy documents, reflecting member states' pressure.

This policy brief is, part of a larger EU-funded project examining motivations, experiences, and consequences of EU returns and readmission policies, based on in-depth analysis of policy documents and expert interviews with stakeholders etc. It aims to summarize key policy trends and their implications, focusing on five critical areas at both EU and national levels.

Historically, all the member states included in the project had some kind of policy towards "unwanted" citizens of third countries, some of them as early as the 1980s, and most of them since the beginning of the 1990s. These policies differed depending on the political and economic priorities, traditions, and path dependencies related to the previous policy paths. Some of them (Greece, Italy, Spain) have traditionally been countries of emigration, and they started to deal with immigration issues only in the 1980s. The countries included in our study became EU members on different dates. In addition to the founding countries (Belgium, Italy and Germany), Greece joined in 1981, Spain in 1986, Sweden in 1995, and Slovenia in 2004. The UK joined in 1973 and left in 2020. All this certainly influenced the creation, development and orientation of their migration policies in the period before the Amsterdam Treaty, and on the strategies of harmonizing their policies after that.

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Evidence and analysis

Relationship between Protective and Enforcement Policy Intentions

Pre-2010 period: Our national reports indicate that at the time of the adoption of the Directive in 2008 and its entry into force in 2010, R&R policies in many EU member states were stricter than the Directive itself, with a dominance of enforcement measures and quite limited protective safeguards.

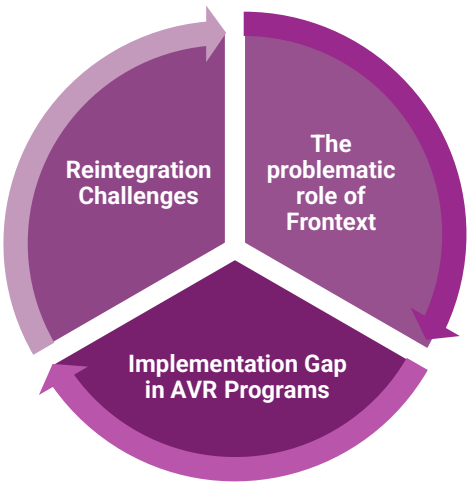
Shift Post-2015: A crisis-driven phase post-2015 saw a shift towards prioritizing effectiveness in deportations, reducing protective measures and increasing deportation rates.

Post-2019 Consolidation: Since 2019, there has been a systematic erosion of human rights for returnees, with strategies to formally meet protection criteria while violating them in practice, supported by legitimizing discursive strategies.

Deterrence Policy: Since the 1980s, many countries have implemented policies reducing immigrants' rights to encourage voluntary departure and deter potential immigrants ("Unfriendly Environment" policies). The European Commission's European Agenda on Migration from 2015 also adopted this policy within its strategy to reduce incentives for irregular migration.

Employment-Based Stay Initiatives: Alongside increased restrictiveness, several countries allow individuals facing deportation to remain if they secure employment, though this often leads to economic exploitation and disenfranchisement, creating a vulnerable state of deportability for migrants.

(Assisted) Voluntary return (AVR)



Implementation Gap in AVR Programs: National AVR programs emphasize sustainability, legal certainty, and human rights, but in practice, they focus more on return rates, often undermining the voluntariness of returns through limited legal access, prolonged detention, coercion, and linking social assistance to return cooperation.

1. **The problematic role of Frontex**: The European Border and Coast Guard Agency (Frontex) has gained an increasingly significant role within the AVR policy. However, empirical research suggests that Frontex has contributed to further criminalization of migration and migrants, besides facing accusations of engaging in illegal and inhumane treatment of migrants.
2. **Reintegration Challenges**: The reintegration phase is notoriously characterized by a lack of program monitoring and evaluation. Insufficient reintegration support results

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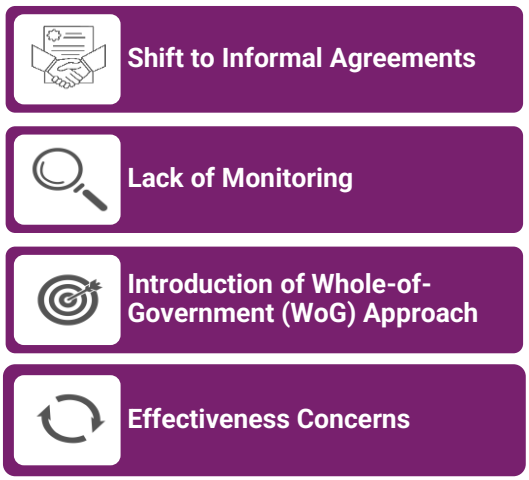
in re-migration and the tendency for migrants to choose new and higher risk migration routes.

Formal and Informal Readmission Agreements/Arrangements

Since 2015, EU member states have increasingly relied on over 300 **mostly informal bilateral readmission arrangements** with third countries, which are non-reciprocal and lack binding legal obligations or commitments to uphold international law.



These informal agreements have faced criticism for violating fundamental rights, eroding EU values, and **lacking transparency and monitoring,** suggesting a deliberate strategy rather than administrative oversight.

Whole-of-Government (WoG) Approach has become increasingly important in many national R&R policies. It emphasizes the inclusion, coordination, and cooperation among various institutional actors and policy areas to enhance the effectiveness of R&R policy. In 2023 has WoG been promoted as a strategy for border externalization and cooperation with third countries, focusing on improved information exchange between EU institutions and member states to present a unified stance towards third countries.

Despite readmission agreements, characterized by the informalization, secrecy, and lack of transparency, affords greater flexibility in implementing of return policy, evidence indicates that informal **agreements have not improved return rates** compared to formal agreements.

Detention

Expansion and Privatization of Detention: There has been an increase in detention facilities and legislative changes for more frequent use of detention in studied countries, poor living conditions in detention centers, and the detention of vulnerable populations, including children and pregnant women, raising significant concerns.

1. **Quality and Rights Issues**: The privatization of detention centers has led to allegations of inhumane treatment and limited access to legal and healthcare services, aligning with broader “unfriendly environment” policies.
2. **Marginalization of alternatives to detention**: Concurrently, alternatives to detention, despite they exist within national R&R policies, remain marginalized.

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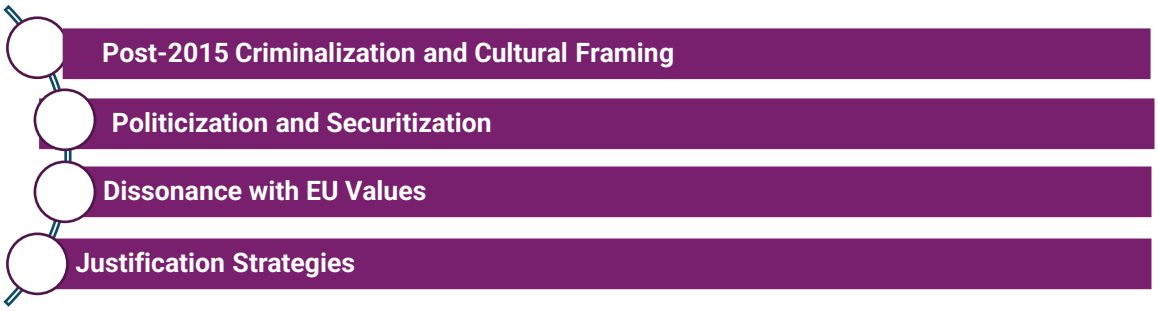
3. **Ineffectiveness**: The expansion of detention in EU member states contradicts research showing that detention does not prevent or reduce migrant arrivals and can lead to migrants taking greater risks. Additionally, detention does not increase return rates or result in a more efficient return policy, with no correlation between the number of detainees and the number of returns.

Conceptualization of 'Effectiveness' within the EU System

1. **Shift in "Effectiveness" Post-2015**: After 2015, "effectiveness" in the Return Directive shifted from a balanced approach, emphasizing human rights and sustainability, to focusing narrowly on return rates, often using forced measures and sidelining procedural safeguards. This period saw a policy realignment toward a "soft law" approach, where interpretations and applications of existing laws evolved, creating a gap between official objectives and practical execution.
2. **Stricter Hard Law Approaches by 2017**: By 2017, a stricter "hard law" approach emerged with initiatives like the Renewed Action Plan on Returns and recommendations for making returns more effective, proposing reduced safeguards, extended detention periods, and redefined voluntary return criteria.
3. **Focus on Return Rates Over Sustainability**: Overall, trends indicate a prioritizing enforcement over protection, favoring forced returns, using informal readmission agreements, expanding detention, and neglecting human rights and alternative detention methods—focus on maximizing return rates at any cost, rather than achieving sustainable returns.

Discursive Aspects in R&R Policy Formulation, Promotion, and Application



Since the 1980s, migration policy has become highly ***politicized and securitized***, influenced by populist rhetoric framing migrants as threats to security and welfare. This led to increased militarization, securitization, and externalization of borders, often supported by manipulated migration statistics.

After the 2015 migration crisis, discourses shifted to **criminalizing migrants** and emphasizing **cultural and security** threats. Euphemistic language is used to justify harsh detention practices, obscuring their true nature and complicating statistical analyses.

There is a growing gap between the **EU's foundational values** (human dignity, freedom, democracy, equality, rule of law, and human rights) and the trajectory of R&R policies. These policies, justified with rhetoric claiming adherence to legal frameworks, increasingly diverge from these values, as seen in the controversial 2018 recast of the EU Return Directive.

R&R policies are often **justified** as necessary for maintaining social stability, public safety, and the rule of law, with humanitarian concerns being downplayed. This approach uses discursive **strategies** to align restrictive measures with legal and ethical norms.

Key policy trends

This policy brief intended to provide a comprehensive overview of the evolution of Return and Readmission (R&R) policy, covering its inception to the present and potential future trajectories, across three distinct historical periods.

The analysis spans three historical periods: 1990-2010, characterized by the formulation of fundamental principles emphasizing human rights and constructive engagement; 2015-2019, marked by a paradigm shift towards enforcement measures prioritizing effectiveness over sustainability and migrant rights; and 2019-present, where restrictive trends solidify with increased legislative support and heightened severity and scope.

Key Trends:

Trends in R&R policy include the prioritization of enforcement over protective measures, the shift towards forced returns, informalization of readmission agreements, expansion of detention measures, and the growing threat to human rights. Despite these trends, research suggests they do not lead to a more effective R&R policy.

Contradictory Policy Trends:

The study identifies contradictory trends in R&R policy, including tightening return policies while simultaneously offering opportunities for individuals to remain if they secure employment. These trends reflect politicians' attempts to navigate conflicting political pressures from right-wing populist movements and corporate interests.

Complexities in Policy Justifications:

Political discourse often justifies R&R policies as necessary for maintaining social stability and public safety, despite the dissonance with EU values and humanitarian concerns. Additionally, media narratives on migration often overlook the labor market needs of Global North countries as a primary driver of South-North migration.

Political Hypocrisy and Dual Objectives:

The study suggests that politicians adopt a duplicitous stance on R&R policies, ostensibly tightening anti-immigration measures while also facilitating increased immigration to meet labor market objectives, reflecting the challenges of balancing conflicting political demands.

Policy implications

The EU Return and Readmission (R&R) policy is characterized by several deep structural contradictions that cannot be resolved with simple policy recommendations.

These contradictions include:

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- The disparity between the fundamental values, moral, and legal norms on which the EU is based, and the practice of implementing R&R policies, which increasingly diverges from these norms and principles. In addition, new policy practices promise the re-establishment of social stability and strengthening of public security, without offering any evidence that this will necessarily be the case.
- The growing gap between the actual practice of implementing R&R policies and the discursive strategies aimed at mitigating the negative effects of those policies.
- An ever-deepening contradiction between increasingly restrictive policies that fail to deliver practical results and the undiminished enthusiasm with which these policies continue to be implemented.
- The contradictions arising from politicians' efforts to reconcile the anti-immigration demands of increasingly strong right-wing populist forces in all EU societies with the equally strong political demands of corporate capital seeking to secure cheap labor.

Simultaneously, the notorious lack of monitoring and evaluation of current policies, the secrecy of contracts and arrangements with third parties, and the lack of relevant statistics or the use of different methods in collecting and presenting data on current policy results indicate that these are not random mistakes or administrative oversights, but deliberate shift in policy strategies.

Policy recommendation

In the political climate which engenders criminalization of migrants, restrictive migration and integration policies across EU member states and undermines fundamental rights, simple policy recommendations are not applicable. The current policy direction does not need minor adjustments to achieve its goals; it is increasingly at odds with the fundamental principles and values of the EU. What is needed is a broad and inclusive political debate on whether European citizens wish to maintain this course or uphold the EU's Charter of Fundamental Rights which guarantees human rights and dignity to all regardless of legal status, contains the rights to asylum and forbids forced expulsion and removal of persons against the harm and threat to their life.

The main recommendation is to develop an alternative policy that strengthens the role and tools of the EU Fundamental Rights Agency (FRA) to effectively monitor intergovernmental and national human rights systems. When the FRA was established in 2007, its primary goal was to support the implementation of fundamental rights in areas such as migration, personal data protection, equality, and justice. However, from the outset, the FRA was given a limited advisory mandate without formal power to enforce its recommendations. As a result, member states have frequently disregarded FRA's guidance, particularly in the areas of general migration management and, more specifically, return and readmission (R&R) policy.

To address these challenges, it is essential to expand the FRA's mandate and strengthen its authority, allowing the EU and its member states to benefit from more effective support in handling the complexities of R&R policy outlined in this report.

In response to the growing national policy trend toward a restrictive 'whole of government' (WoG) approach—which emphasizes detention and forced returns—it is critical to mobilize civil society through a 'whole of society' (WoS) approach. This would

prioritize migrants' rights, addressing the vulnerabilities and lack of legal protections that rejected migrants face in detention centers and during return and readmission processes. In short, the WoS approach is more legally sound, as it aligns with the EU Charter of Fundamental Rights; more just, reflecting the core moral values upon which the EU is founded; and ultimately more sustainable—both politically and economically—than the WoG approach.

Further reading

Bathily, A. (2014). *Immigration detention and its impact on integration–A European approach*. KING Desk Research Paper n. 2/July 2014, 237.

Black, R. et al. (2004) *Understanding voluntary return*. Home Office Online Report 50/04. London: Home Office;

Carrera, S. and J. Allsopp (2017). *The Irregular Immigration Policy Conundrum: Problematizing 'Effectiveness' as a Frame for EU Criminalization and Expulsion Policies*. The Routledge Handbook of Justice and Home Affairs Research. A. Ripoll Servent and F. Trauner. London, Routledge.

Cornelius, W. A. (2005). Controlling 'unwanted' immigration: Lessons from the United States, 1993-2004. *Journal of Ethnic and Migration Studies*, 31(4), 775-794; DOI: 10.1080/13691830500110017

Czaika, M., and H. De Haas (2013). The effectiveness of immigration policies. *Population and Development Review*, 39(3) p. 503. DOI: 10.1111/j.1728-4457.2013.00613.x

De Genova, N. (2013). Deportation as a way of life, *Migration Studies* 1(2): 241-245. DOI: 10.1093/migration/mnt005

De Genova, N. (2018). "The deportation power." *Radical philosophy* (203): 23-27.

De Genova, N. P. (2002). "Migrant "illegality" and deportability in everyday life." *Annual Review of Anthropology* 31: 419-447. DOI: 10.1146/annurev.anthro.31.040402.085432

EU Commission (2013). *Evaluation on the application of the Return* Directive (2008/115/EC) - Final Report - 22 October 2013. European Commission – DG Home Affairs.

EU Commission, (2017). *Communication from the Commission – On the more Effective Return Policy in the European Union – Renewed Action Plan,* Brussels, 2.3.2017.

Commission, E. (2017). *Commission Recommendation (EU)* 2017/2338 of 16 November 2017, establishing a common 'Return Handbook' to be used by Member States' competent authorities when carrying out return-related tasks.

Commission, E. (2018). *Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (recast)* - A contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018. Brussels, 12.9.2018.

EU Commission (2020), *Communication from the Commission - On a New Pact on Migration and Asylum*. Brussels, 23.9.2020.

Haas, H. d., et al. (2019). International Migration: Trends, Determinants, and Policy Effects. *Population and Development Review* 45(4): 885–922. DOI: 10.1111/padr.12291

Majcher, I. and T. Strik (2021), Legislating without Evidence: The Recast of the EU Return Directive, *European Journal of Migration and Law* 23(2): 103–26. DOI: 10.1163/15718166-12340096

Sampson, R. (2015). *Does Detention Deter?* International Detention Coalition.

Slominski, P. and F. Trauner (2021). Reforming me softly–how soft law has changed EU return policy since the migration crisis. *West European Politics* 44(1): 93-113. DOI: 10.1080/01402382.2020.1745500

Stutz, P. and F. Trauner (2021). The EU's 'return rate' with third countries: Why EU readmission agreements do not make much difference. *International Migration*: 1–19. DOI: 10.1111/imig.12901

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