



## State of the Union 2018: Stronger EU rules on return – Questions and Answers

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An effective and humane return policy is an essential part of the European Union's comprehensive approach to addressing migration challenges and reducing the incentives for irregular migration as set out in the [European Agenda on Migration](#). Whilst granting protection to those in need remains a priority, returning those who do not have the right to stay in the EU in accordance with the rules and procedures set out in EU legislation is equally important for a well-functioning asylum and migration system.

The [EU Return Directive](#), which entered into force in 2010, sets common standards and clear, transparent and fair common rules for the return of irregularly staying migrants, in full respect of fundamental and human rights. However, its inconsistent transposition in national legislation has had a negative impact on the effectiveness of EU return policy and Member States are still encountering difficulties and obstacles in successfully carrying out return decisions.

The new rules proposed today will help speed up return procedures, prevent absconding and secondary movements, and increase the overall EU return rate, in full respect of fundamental rights.

### Why is the Commission proposing legislative changes to the EU rules on return?

Despite increased efforts by Member States and at the EU level to implement existing policy on returns, including the [2015](#) and the [2017](#) Action Plans and a [Recommendation](#) from March 2017 presented by the Commission, progress in improving the effectiveness of returns has remained unsatisfactory. The rate of effective returns throughout the EU decreased from 45.8% in 2016 to merely 36.6% in 2017 and national practices continue to vary and do not sufficiently use the flexibility provided by the rules. The sustained pressure faced by Member States' asylum and return systems over the past years has further underlined the need for a more efficient return policy.

Therefore the Commission has decided to propose legislative changes in order to clarify and further harmonise the existing rules on return to maximise their effectiveness and ensure more consistent application across Member States, whilst safeguarding fundamental rights and the principle of *non-refoulement*. The changes aim to address key challenges in return procedures and reduce obstacles that Member States encounter when carrying out returns.

### What is the Commission proposing today?

The Commission is proposing targeted changes to the EU's common rules on return. The proposed changes will improve the effectiveness of the existing rules, and ensure that they are applied consistently across the EU, in full respect of fundamental rights. The proposed changes to the EU Return Directive include:

- **Accelerated border procedures:** Simplified return procedures will apply for persons whose asylum applications have been refused during border procedures to ensure return decisions can be quickly adopted and fully enforced at the EU's external borders, including in controlled centres.
- **Clearer and faster procedures for issuing return decisions**, in particular for rejected asylum seekers. A return decision will have to be issued immediately after a decision by a Member State terminating a legal stay.
- **Streamlined appeal procedures:** In cases where a return decision is the consequence of a rejected asylum application, appeals against the return decision will have to be lodged within five days and will be limited to only one level of judicial remedy. In addition, Member States will be able to restrict the suspensive effect of appeals against return decisions where there is no risk of breaching the principle of *non-refoulement*.

- A specific **obligation to cooperate** for persons subject to a return procedure throughout proceedings will be introduced. This will help Member States obtain information for verifying the identity of irregular migrants and acquiring travel documents necessary for the return.
- To make **voluntary returns** more efficient, Member States will have to set up dedicated programmes to assist persons willing to return, including with financial and practical support. At the same time, Member States will be able to shorten the period granted for voluntary departure, for example when there is a security risk or a risk of absconding.
- **Clear rules on detention:** This includes common criteria for determining the risk of absconding, the possibility to detain individuals posing a threat to public order or national security and a new minimum detention period of at least three months to give Member States sufficient time to successfully prepare, organise and carry out return operations.
- Member States will be able to impose an **entry ban** on a non-EU national exiting the EU when they find that the person had been staying irregularly in the EU. This will prevent future irregular migration and dissuade prolonged irregular stay.

## Which persons are subject to return?

Non-EU nationals who do not have the legal right to stay on the territory of a Member State ("irregular migrants") are subject to return, in full compliance with fundamental rights and international law. This includes persons whose claim for asylum has been rejected, persons who have stayed longer than the period allowed by their visa, and those who are subject to return as a criminal law sanction.

The EU's common rules on asylum provide that every person applying for asylum in an EU Member State will have their applications treated on a case-by-case basis, in line with EU and international law requirements and in full respect of the principle of *non-refoulement*. EU law provides for individual interviews, individual assessments and rights of appeal. A person seeking asylum in the EU has the right to remain on EU territory for the duration of the asylum procedure. Only if a third-country national has no legal right to remain on the territory of a Member State, including if his/her application for asylum has been rejected, can he/she be subject to a return decision, in full compliance with fundamental rights and international law.

## How are migrants' rights protected when it comes to return and detention?

The EU's policy on return and readmission is fully in compliance with international human rights standards, in particular the EU Charter of Fundamental Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1951 UN Refugee Convention and its 1967 Protocol, and the principle of *non-refoulement*.

The EU Return Directive sets out specific safeguards to guarantee the protection of returnees' rights during the whole return process. It notably contains a robust set of norms, including the possibility of effective remedy to challenge a return decision, respect for family unity and the best interests of the child and the special needs of vulnerable persons. The standards and procedures set out in the Return Directive respect fundamental rights and international law, in particular refugee protection and human rights obligations. The Return Directive sets minimum rules and common procedures for ensuring the respect of these rights.

Under the Return Directive, Member States can, under strict conditions and where considered necessary in individual circumstances, in particular when there is a risk of absconding, make use of pre-removal detention. Detention should only be used as a last resort and if no other sufficient but less coercive measures can be applied effectively. The detention period should always be as short as possible and with a view to completing the return procedure successfully.

Today's proposal does not change these safeguards, which have to be upheld for every single return carried out.

## Why is the Commission proposing a minimum period of detention of 3 months?

Detention should only be used as a last resort and if no other sufficient but less coercive measures can be applied effectively. The detention period should always be as short as possible and with a view to completing the return procedure successfully.

Under the current rules, Member States' practices vary widely as they can set the maximum period of detention freely, provided it does not exceed a period of 6 months, which can be prolonged to a maximum of 18 months when necessary. As a result, in some Member States, maximum detention periods have been too short to complete return procedures and thus hindered effective returns.

The Commission is therefore proposing a new minimum detention period of at least 3 months in

situations where the conditions for ordering detention are fulfilled (for example, when there is a risk of absconding, obstruction of return procedures or a risk to national security). This will give Member States sufficient time to prepare, organise and carry out returns to non-EU countries.

### **Do the new rules affect the rights of children?**

No. The strong safeguards provided for by the existing EU return framework continue to apply in full and are not changed. All procedures involving children, including on return, must always ensure the best interests of the child, irrespective of whether the minors are accompanied by their family or not.

Member States have to provide appropriate assistance and guardianship to unaccompanied minors. Where an assessment of their best interests provides that return is the best solution for the child, Member States must ensure that he or she will be returned to a family member, a guardian or an adequate reception facility in the country of return. Member States also have to ensure family unity and grant access to basic education.

Detention of families with minors and detention of unaccompanied minors must remain a measure of last resort. It must always be for as short as possible and special rules apply such as guaranteed access to education, presence of qualified staff and separate facilities.

### **How will the proposed changes increase the effectiveness of returns?**

To ensure effective returns, Member States' authorities need to be able to apprehend and identify irregular migrants without delay and swiftly process their cases. The proposed changes seek to assist the Member States in their efforts to step up returns, notably by limiting the scope for inconsistent interpretation of the EU rules, securing a better link between asylum and return procedures, reducing the length of procedures and ensuring more effective use of measures to prevent absconding. In helping to increase the rate of effective returns, the new rules will improve the credibility of the EU's migration policy and send a clear signal that there are effective procedures in place to make sure that migrants found to be staying irregularly in the EU, will be returned. Effective return procedures will also provide a disincentive for migrants to undertake perilous journeys in the first place.

### **How will the border procedure work?**

The new rules will ensure coherence between the asylum border procedure (which allows for asylum decisions to be taken at the borders) and the ensuing return process for cases where the asylum application is rejected. Persons whose asylum applications were rejected under the asylum border procedure will be processed via a simplified return procedure with no period for voluntary departure and shorter time limits for appeals. Where a person was already detained during the asylum border procedure, he or she may be held in detention under the border procedure for return, for a maximum period of four months. As a result, return decisions can be quickly adopted and fully enforced at the border.

Specific accelerated border procedures may also be carried out in "controlled centres" once they are established and if established at the external borders. As outlined in the Commission's [non-paper on "controlled centres"](#) of 24 July 2018, such centres would register and process the claims of individuals disembarked in the EU in order to differentiate rapidly between those who have no right to stay in the EU and those in need of international protection. In some cases, asylum claims could be processed directly in controlled centres under a rapid procedure. In case of a negative asylum decision, the specific border procedure could be used to allow for a swift return.

### **How does the European Border and Coast Guard Agency support returns?**

Supporting Member States in the return of irregularly staying migrants is one of the priority tasks of the European Border and Coast Guard. While Member States maintain the responsibility for issuing and enforcing return decisions, the European Border and Coast Guard Agency can propose the organisation of returns on its own initiative and provide support to voluntary departures of migrants.

Since January 2017, 3 return pools composed of escorts, monitors and return specialists have been set up, and are available for deployment in the Member States, notably those facing particular pressure. In 2017, 14,884 persons were returned with the support of the European Border and Coast Guard, with another 8,966 returned from January to August 2018.

The Commission has also today proposed to further strengthen the supporting role of the European Border and Coast Guard which will now be able to assist Member States in carrying out return procedures, including in the preparation of return decisions, the identification of individuals to be returned and the acquisition of travel documents. The Agency will also be able to assist non-EU countries with their return activities to other countries. It will benefit from a reinforced mandate to process personal data and to exchange information with non-EU countries in the context of return activities. This will contribute to more efficient returns and will play a key role towards sustainable

migration management.

## **What financial support does the EU offer to Member States for carrying out returns?**

The Commission is providing substantial financial assistance to support Member States in carrying out effective returns, mainly through the Asylum, Migration and Integration Fund. Under the current financial framework (2014-2020), more than €1 billion in EU funding has already been channelled to Member States' return and readmission activities. For the next period, 2021-2027, the Commission has proposed to increase funding for migration management by 51% to reach €10.4 billion with return being one of the main funding priorities. In addition, the European Border and Coast Guard Agency fully finances the support it provides to Member States on return.

## **What progress has been made in cooperation with countries of origin when it comes to the readmission of their own nationals?**

To increase the enforcement rate of return decisions, the EU has been stepping up cooperation with countries of origin so that they fulfil their international obligation to take back their own nationals residing irregularly in Europe. The EU is mobilising **all incentives and leverage** available at national and EU level, including coordinated visa measures, to enhance cooperation on return and readmission. Under the **Migration Partnership Framework** launched in 2016, the European Union and its Member States are employing their collective leverage in a coordinated manner to agree tailor-made approaches with non-EU countries to jointly manage migration and further improve cooperation on return and readmission.

The EU has concluded **readmission agreements** with 17 countries (see full list [here](#)), and negotiations are ongoing with an additional 6 countries (Belarus, Nigeria, Tunisia, China, Jordan, Algeria). The EU has also stepped up work to improve **practical cooperation on readmission** with countries of origin of irregular migrants. Work is ongoing with several key countries, with 6 new arrangements agreed in the last two years alone (Afghanistan, Guinea, Bangladesh, Ethiopia, The Gambia, Ivory Coast).

## **For More Information**

[Webpage on the State of the Union 2018](#)

Press release: [Commission proposes last elements needed for compromise on migration and border reform](#)

Factsheets, legal documents and other useful documents – all available [here](#)

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