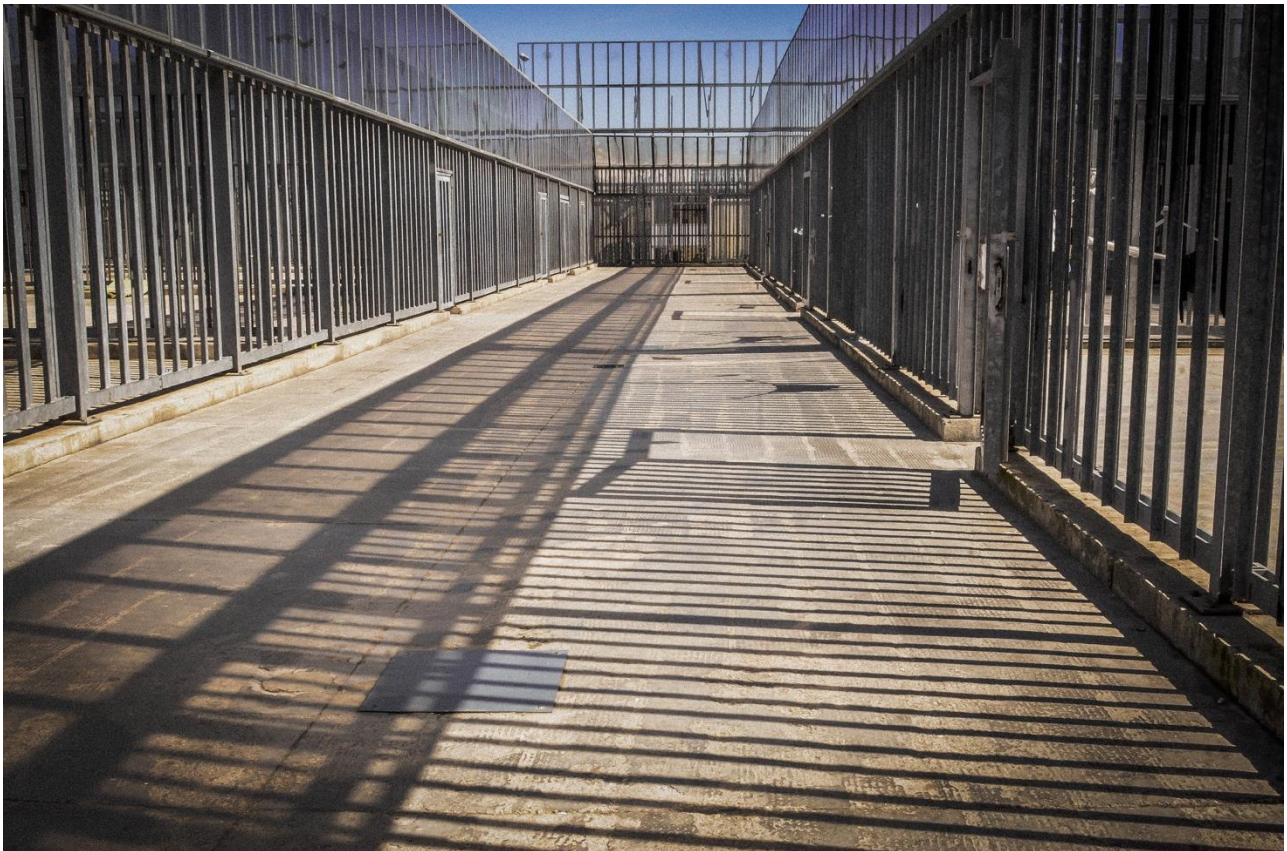




EuroMed Rights  
EuroMed Droits  
الأورو-متوسطية للحقوق

# *Return Mania. Mapping policies and practices in the EuroMed Region*



## Chapter 1

### The EU framework of return policies in the Euro-Mediterranean Region

*April 2021*

Rue des Comédiens 22, 1000 Bruxelles, Belgium, T +32 2 513 37 97

Email [information@euromedrights.net](mailto:information@euromedrights.net) – Website: [www.euromedrights.org](http://www.euromedrights.org)

## Acknowledgment

This chapter is part of a wider research work, coordinated by EuroMed Rights, which aims at providing an overview of the current return policies and practices in the Euro-Mediterranean region by sharing testimonies and examples of these policies. It highlights the similar trends adopted across the region and sheds light on the violations of human rights entailed by this “return obsession” and which is shared across Member States, EU institutions and third countries alike.

EuroMed Rights wish to thank all the people - experts, stakeholders, interviewees - who contributed to the finalisation of this report. A special thanks goes to the researchers for their extensive and detailed analyses and their unwavering commitment in seeking evidence and justice for human rights violations.

\* \* \*

# Index

ACKNOWLEDGMENT .....	2
LIST OF ABBREVIATIONS .....	5
EXECUTIVE SUMMARY .....	7
I- INTRODUCTION .....	7
II- LEGISLATIVE AND POLICY PROPOSALS .....	9
<b>2.1. THE RECAST OF THE RETURN DIRECTIVE .....</b>	<b>9</b>
A) RETURN DECISION .....	9
B) “VOLUNTARY” DEPARTURE .....	10
C) DETENTION .....	11
D) ENTRY BAN .....	12
E) QUESTIONABLE EFFECTIVENESS .....	13
F) POSITION OF CO-LEGISLATORS .....	14
<b>2.2. THE RETURN POLICIES IN THE NEW PACT ON MIGRATION AND ASYLUM .....</b>	<b>14</b>
A) BORDER RETURN PROCEDURE .....	15
B) RETURN SPONSORSHIP .....	17
III- READMISSION COOPERATION .....	18
<b>3.1. READMISSION AGREEMENTS AND INFORMAL ARRANGEMENTS .....</b>	<b>18</b>
<b>3.2. “SAFE” COUNTRIES.....</b>	<b>20</b>
IV- FRONTEX’S RETURN MANDATE.....	22
A) RETURN OPERATIONS.....	22
B) INFLUENCE ON DOMESTIC DECISION-MAKING .....	23
C) COOPERATION WITH THIRD COUNTRIES .....	23
D) DATA SHARING .....	24
V- COERCIVE RETURNS DISGUISED IN PRACTICES .....	25
<b>5.1. “VOLUNTARY DEPARTURE” OR STANDING BETWEEN A ROCK AND A HARD PLACE .....</b>	<b>25</b>
<b>5.2. PUSHBACK OR RETURN BEFORE ARRIVAL .....</b>	<b>27</b>

VI- HUMAN RIGHTS MONITORING .....	29
<b>6.1. REMOVAL AND POST-REMOVAL MONITORING .....</b>	<b>29</b>
<b>6.2. BORDER MONITORING.....</b>	<b>31</b>
VII- CONCLUSIONS.....	33
RECOMMENDATIONS .....	35
<b>MEMBER STATES .....</b>	<b>35</b>
<b>EUROPEAN UNION .....</b>	<b>35</b>
EUROPEAN COMMISSION DG HOME .....	35
EUROPEAN COMMISSION DG DEVCO .....	36
EUROPEAN PARLIAMENT LIBE COMMITTEE .....	36
EUROPEAN COURT OF AUDITORS .....	36
EUROPEAN OMBUDSMAN .....	36
EU FUNDAMENTAL RIGHTS AGENCY (FRA) .....	37
FRONTEX: EXECUTIVE DIRECTOR .....	37
FRONTEX FUNDAMENTAL RIGHTS OFFICER.....	37
<b>UNITED NATIONS .....</b>	<b>37</b>
SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS .....	37
WORKING GROUP ON ARBITRARY DETENTION .....	38
<b>COUNCIL OF EUROPE .....</b>	<b>38</b>
COMMITTEE OF MINISTERS.....	38
COMMITTEE ON MIGRATION, REFUGEES AND DISPLACED PERSONS OF THE PARLIAMENTARY ASSEMBLY AND ITS RECENTLY APPOINTED RAPPORTEUR ON PUSHBACKS .....	39
SPECIAL REPRESENTATIVE OF THE SECRETARY GENERAL ON MIGRATION AND REFUGEES .....	39
COMMISSIONER FOR HUMAN RIGHTS .....	39
COMMITTEE FOR THE PREVENTION OF TORTURE.....	40
LIST OF INTERVIEWS.....	40
REFERENCES .....	41
ENDNOTES.....	49

## List of abbreviations

APD	Asylum Procedures Directive
APR	Asylum Procedures Regulation
ASGI	Association for Legal Studies on Immigration
AVR	Assisted Voluntary Return
BVMN	Border Violence Monitoring Network
CAT	Convention against Torture
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CPT	Committee for the Prevention of Torture
CRC	Convention on the Rights of the Child
CSO	Civil society organisation
DRC	Danish Refugee Council
EC	European Commission
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights

EP	European Parliament
EPRS	European Parliamentary Research Service
EUTF	EU Trust Fund for Africa
FRA	European Union Agency for Fundamental Rights
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
IOM	International Organization for Migration
NHRI	National Human Rights Institution
NPM	National Preventive Mechanism
PACE	Parliamentary Assembly of the Council of Europe
RAMM	Asylum and Migration Management Regulation
SBC	Schengen Borders Code
SRHRM	UN Special Rapporteur on the Human Rights of Migrants
UNHCR	Office of the UN High Commissioner for Refugees
WGAD	UN Working Group on Arbitrary Detention

## Executive Summary

This chapter maps out recent EU legislative and policy measures and some selected Member States' practices in the field of return/expulsion adopted or encouraged under the EU's current disproportionate focus on return. The chapter discusses the 2018 proposal to recast the Return Directive and legislative proposals accompanying the 2020 Pact on Migration and Asylum, notably the border return procedure and return sponsorship mechanism. It points to provisions which, if adopted, may lead to human rights violations while they will not necessarily increase the effectiveness of the return system. The discussion then looks at readmission cooperation with third countries and "safe country" concepts used by the EU and its Member States to swiftly remove people to these countries. Further, Frontex's increasingly broad return mandate is assessed, alongside risks of human rights violations in that regard. The discussion also points to measures not called removals but which are no less coercive, notably "voluntary" departure when no reasonable alternative exists and push-backs. Next, the chapter outlines current removal monitoring provisions and practices and recently-proposed border monitoring mechanism. The discussion of the return policies and measures is put in the context of human rights norms and standards in the area of return/expulsion. The chapter can be conceived as a reminder for Member States that EU law and policies do not dispense them from their human rights obligations under international and regional law. The chapter ends with several recommendations to the EU, its Member States, the UN, and the CoE bodies.

## I- Introduction

The expulsion of people in an irregular situation came to the spotlight in the wake of the 2015 so-called refugee crisis. The European Commission (hereafter Commission or EC) developed an argument that the key to tackling the "crisis" was to increase the number of returns. The term "return" is used in the EU parlance as a euphemism to expulsion to "soften" the practice in the eye of the general public and will be used here for the sake of coherence with EU instruments.<sup>i</sup> <sup>1</sup> The Commission started disproportionately focusing on return, compared to other policy areas in need of reforms, such as asylum systems, Dublin system, and legal pathways to the EU. Furthermore, return-numbers-obsession has also come to dominate the return policy, which is primarily regulated by the Return Directive.<sup>2</sup> The Directive's double objective is to establish a return system that is both effective and compliant with fundamental rights.<sup>ii</sup> Yet, the Commission has begun focusing solely on effectiveness. Moreover, rather than seeing the principle of effectiveness as sustainability and an overall observance of adequate standards, the Commission reduced it to the return rate, which compares the annual number of return orders to the actual returns. In that spirit, the Commission issued a line-up of policy documents. In the 2015 EU *Action Plan on Return*, the Commission presented five sets of measures aimed at fostering the effectiveness of the return policy, such as enhancing "voluntary" return, enforcement of the provisions of the legislation, information sharing, the mandate of Frontex, and development of an integrated system of return management.<sup>iii</sup>

---

<sup>1</sup> For the use of euphemisms in the area of asylum and migration, see Grange 2013.

<sup>2</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115>



In the 2017 *Renewed Action Plan*, the Commission further developed measures proposed in 2015<sup>iv</sup> to answer the increased challenges faced by the EU return policy. The *Renewed Action Plan* was followed by the Commission's *Recommendation on making returns more effective*, in which the Commission instructed states on how to increase the return rate.<sup>v</sup> The return rate is a misleading indicator<sup>3</sup>. To improve the return system's effectiveness, the Commission could have focused on well-known gaps, notably the lack of regularisation channels for people who cannot return.

Expulsion of migrants in an irregular situation does not occur in legal limbo. Rather, this measure is subjected to a vast array of human rights norms and standards, stemming in particular from the UN *International Covenant on Civil and Political Rights* (ICCPR), *Convention against Torture* (CAT), *Convention on the Rights of the Child* (CRC) and Council of Europe (CoE) *European Convention on Human Rights* (ECHR).<sup>4</sup> In addition, states should act in line with EU primary law, particularly the *Charter of Fundamental Rights of the European Union* (hereafter EU Charter) and principles of EU law, such as proportionality and defence rights. Under Article 3 of the ECHR, Article 7 of the ICCPR, Article 3 of the CAT, and Article 19(2) of the EU Charter, Member States are prohibited from removing anyone who risks death penalty, torture, or ill-treatment upon return (referred to as the principle of *non-refoulement*). Under Article 4 of the Protocol 4 to the ECHR and Article 19(1) of the EU Charter, states are prohibited from carrying out collective expulsions. In some cases, the right to family and private life under Article 8 of the ECHR, Article 17 of the ICCPR, and Article 7 of the EU Charter may outweigh a state's power to remove the person. Under Article 13 of the ECHR, Article 2(3) of the ICCPR, and Article 47 of the EU Charter, everyone has the right to an effective remedy, which implies sufficient time to appeal and protection from removal during the period when the court assesses the appeal. If the person is detained, he/she should be afforded several guarantees, particularly the review of detention, stemming from the right to liberty under Article 5 of the ECHR, Article 9 of the ICCPR, and Article 6 of the EU Charter. Removal (deportation) should not amount to torture or ill-treatment, prohibited in absolute terms under Article 2 of the CAT, Article 3 of the ECHR, Article 7 of the ICCPR, and Article 4 of the EU Charter. Under Article 3(1) of the CRC, similar to national children, migrant children should have their best interests prioritised in all actions concerning them.

It is against this tight set of return-related human rights norms and standards, that the chapter maps out recent measures and practices which overly focus on returns. The discussion starts in Section 2 with a look at legislative and policy proposals in the field of return. Section 3 outlines readmission cooperation with third countries, and Section 4 focuses on the role of Frontex in the area of return. Section 5 zooms into the practice at the state level and points to measures not called removals but which are no less coercive. Against the backdrop of risks of various human rights violations flagged out throughout the discussion, Section 6 highlights current and forthcoming measures in the area of monitoring. The chapter ends with a few concluding thoughts in Section 7 and recommendations to the EU, its institutions and bodies, its Member States, the Council of Europe (CoE), and the UN.

---

<sup>3</sup> The reason is because the return decision is not always enforced in the same year as it is issued and some countries tend to issue more than one decision to the same person. Above all, however, if return is suspended, the return decision is typically not withdrawn, which further decreases the return rate, see EPRS 2020b: 64-65

<sup>4</sup> For a wider discussion on international human rights law standards relevant to return/expulsion, see Majcher 2019: 38-47



## II- Legislative and policy proposals

The disproportionate focus on the return rate, discussed above, underlies the Commission's recent legislative and policy proposals, notably the 2018 proposal to recast the Return Directive (2.1) and the 2020 Pact on Migration and Asylum (hereafter Pact) (2.2).

### 2.1. The recast of the Return Directive

Adopted in 2008, the Return Directive has been criticised by scholars, civil society organisations, and UN experts for several coercive measures that it laid down, such as the lack of prohibition on ordering return on account of the principle of *non-refoulement*, wide exceptions to offering the so-called “voluntary” departure, detention for up to 18 months and obligatory re-entry ban in broad cases.<sup>vi</sup> On the other hand, it still introduced minimum safeguards previously absent in domestic legislation of some Member States. In its 2014 report on the implementation of the Directive, the Commission generally praised a human rights compliant implementation. It also highlighted that the Directive did not prevent returns, contrary to some initial concerns<sup>vii</sup>. Yet, in line with its recent disproportionate focus on return, in September 2018, the Commission proposed to amend the Directive, with an overall aim to increase the number of returns<sup>viii</sup>. At that time, the numbers of arrivals had dropped to the pre- “crisis” level, yet the Commission pointed to unprecedented challenges the EU was experiencing. The recast proposal aims to amend four key measures laid down in the Directive: a) return decision, b) implementation of the return decision through a “voluntary” departure, c) detention, and d) entry ban.

#### a) *Return decision*

The return procedure begins with a Member State issuing a return decision. As Article 6(6) of the Directive stresses, the Directive does not prevent states from adopting a decision on ending a legal stay together with a return decision and removal order in a single administrative or judicial decision or act. The recast aims at merging various procedures. Under proposed Article 8(6), states *shall* issue a return decision immediately after adopting a decision ending a legal stay, including a decision refusing refugee or subsidiary protection status. Commission's stance that a return decision should directly follow the decision refusing asylum is premised upon assuming that the person has already had his/her protection needs assessed within the asylum procedure. Yet, first of all, the scope of the principle of *non-refoulement* under the Return Directive is broader than the protection scheme under the EU Qualification Directive.<sup>5</sup> People refused international protection may still have protection needs under the very prohibition of *refoulement*, since the refugee and subsidiary protection status are subject to exclusions and exceptions, reflecting refugee law.

---

<sup>5</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>

Secondly, there are human rights bars to return going beyond the very *non-refoulement* and include the right to family and private life and the rights of the child. According to the Court of Justice of the European Union (CJEU)'s ruling in *Boudjlida*, before adopting a return decision, authorities should take due account of the family life, state of health, and best interests of the child and hear the person on that subject<sup>ix</sup>. This was further detailed in ruling in *TQ*, where the CJEU stressed that if a state intends to issue a return decision against an unaccompanied child, it must necessarily take into account the best interests of the child at all stages of the procedures, which entails a general and in-depth assessment of the situation of the child, including the availability of adequate reception facilities in the destination country<sup>x</sup>.<sup>6</sup>

Under the Commission's recast proposal, there are two implications for refused asylum seekers: shorter time-period to lodge an appeal and a narrower possibility to be protected from removal during the appeal procedure.<sup>xi</sup> Currently, the Directive does not regulate the time-limit for appealing return decisions. Draft Article 16(4) provides that states should grant a period up to maximum five days to lodge an appeal against a return decision when such a decision is the consequence of a final decision rejecting an application for international protection. A five-day period is usually too short for preparing an appeal, so it would render the remedy inaccessible in practice, in breach of Article 13 of the ECHR. According to the European Court of Human Rights (ECtHR), the right to an effective remedy requires the provision of an accessible and effective domestic remedy which entails that automatic application of short time-limits for lodging appeals may be at variance with the very protection from *refoulement*.<sup>xii</sup> Regarding the suspensive effect of appeal, current Article 13(2) of the Directive leaves an option to states to either provide for suspensive effect in their legislation or endow the authority or body in charge of review with the power to suspend the execution of deportation. The Luxembourg jurisprudence strengthens the requirements to provide for a suspensive effect. According to the CJEU, for the appeal to be effective, it must necessarily have suspensive effect when it is brought against a return decision, enforcement of which may expose the person to a serious risk of being subjected to the death penalty, torture, or other inhuman or degrading treatment or punishment<sup>xiii</sup>. Draft Article 16(3) of the recast proposal introduces several complex rules regarding the suspensive effect of the appeal, which ultimately would considerably restrict the protection from removal pending the examination of their appeal as regards failed asylum seekers. These amendments look like a law-making initiative to sideline CJEU jurisprudence on the suspensive effect of appeal and are inconsistent with well-established Strasbourg case-law. According to the ECtHR, if the appeal against return is based on the principle of *non-refoulement*, it should have an automatic suspensive effect<sup>xiv</sup>.

### *b) "Voluntary" departure*

Under Article 3(8) of the Directive, a "voluntary" departure means a departure in compliance with the obligation to return within the time-limit fixed in the return decision. Thus, this measure is not genuinely voluntary because the alternative that the person faces is a forced return, often combined with detention or destitution.<sup>xv</sup> The expression of "voluntary departure" is a euphemism, the more adequate term being "mandatory return"<sup>xvi</sup>, and it is used here for ease of reference.<sup>7</sup>

---

<sup>6</sup> It needs to be added, however, that the CJEU's jurisprudence provides for a narrow understanding of the right to be heard prior to the adoption of a return decision (Basilien-Gainche 2014), and, overall, rarely refers to international human rights standards (Molnar 2018)

<sup>7</sup> The so-called "voluntary" departure is further explored in Section 5.1

That said, a “voluntary” departure is still a preferable option to a forced return, not only for the person concerned but also for the host country itself. In fact, it is cheaper and easier to organise than a forced return.<sup>xvii</sup> The return scheme under the Return Directive is premised upon the priority of a “voluntary” departure compared to the enforced return. Under Article 7(1), the return decision *shall* provide a period for “voluntary” departure and refusal to grant it, as spelled out in Article 7(4), is understood as an exception. The requirement to prioritise “voluntary” departure also stems from the principle of proportionality as a general principle of EU law, as reiterated by the CJEU. In *Zh. and O.*, the CJEU held that the principle of proportionality must be observed throughout all the stages of the return process, including the stage when granting a period for “voluntary” departure is decided.<sup>xviii</sup> The principle of proportionality implies that return should be carried out through “voluntary” departure, unless it is justified in individual circumstances of the case to refuse it.

In disregard to the requirement of proportionality, the recast proposal renders “voluntary” departure exceptional. First, under Article 7(1) of the Directive, the period for “voluntary” departure should be between seven and thirty days. In draft Article 9(1), the Commission proposes removing the current minimum time-limit of seven days so that states would be allowed to offer a period shorter than a week. Such a short period for leaving the host country may deprive this measure of any voluntariness. Second, under Article 7(4) of the Directive, states *may* refrain from granting a period for voluntary departure or grant a shorter one than seven days in one of three circumstances: a risk of absconding, if the person’s application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or the person poses a risk to public policy or public/national security. According to the CJEU, the three circumstances allow derogation from a principle that voluntary departure should generally be afforded, so they should be narrowly construed.<sup>xix</sup> Draft Article 9(4) significantly amends current Article 7(1) of the Directive. Accordingly, in any of these three circumstances, states *shall* not grant a voluntary return. Hence, the proposed amendment, first, requires states to refuse voluntary departure, rather than merely providing an option for states to do so. Secondly, it removes the choice between waiving the period for voluntary departure and shortening it. The mandatory refusal of a voluntary departure, in combination with expanding the remit of the concept of the risk of absconding, as discussed below, would result in voluntary departure being systematically refused.<sup>xx</sup> Consequently, draft Article 9(4) reverses the order between the rule and exceptions thereto and is inconsistent with the requirement of proportionality and individual assessment, stemming from EU primary law.

### *c) Detention*

Article 15(1) of the Directive lays down two grounds justifying detention, namely if the person represents a risk of absconding or avoids/hampers the return process. Under the current provisions, it appears that these two grounds are not listed exhaustively, as the provision includes the expression “in particular.”<sup>8</sup> Instead of seeking to remedy these shortcomings and align the Directive with EU and ECtHR law, the Commission’s recast proposal aggravates these concerns. Draft Article 18(1) erases the word “only,” which reinforces the reading of this provision that the two grounds are non-exhaustive.

---

<sup>8</sup> Indeed, some Member States have grounds for pre-removal detention which go beyond the two grounds under the Return Directive, see Majcher, Flynn and Grange 2020

The exhaustive list of grounds for detention is necessary for the legal basis to fulfil the requirement of legal certainty and foreseeability, as stemming from the right to liberty under Article 5(1) of the ECHR and Article 6 of the EU Charter.<sup>9</sup> Further, draft Article 6(1) of the recast proposal lays down a non-exhaustive list of sixteen criteria for establishing the risk of absconding.<sup>10</sup> Four of these criteria would lead to a rebuttable presumption that the person represents a risk of absconding,<sup>11</sup> they would thus function akin to grounds for detention, extending considerably legal basis to detain. In addition, some of the criteria under proposed Article 6(1) would apply to the majority of people in an irregular situation, such as lack of identity documents, reliable address or financial resources. This would allow quasi-automatic detention of people in an irregular situation, disrespecting the principle of necessity and proportionality, which requires that detention is an exceptional measure of last resort.<sup>xxi</sup> Finally, draft Article 18(1)(c) adds a risk to public policy and public/national security as a ground for detention. It does not refer at all to the CJEU's ruling in *Kadzoev*, where the Court found that detention due to risk to public policy cannot be a self-standing ground for a pre-removal detention under the Directive.<sup>xxii</sup> The amendment thus looks like a law-making intervention to sideline Luxembourg jurisprudence. To justify this amendment, the Commission stresses that new risks have emerged in recent years, making it necessary to detain migrants who pose a threat to public order or national security. While such circumstances may justify the deprivation of liberty, yet they do not justify the administrative immigration detention. Allowing states to place people in pre-removal detention on this account blurs the lines between supposedly administrative and penal detention – a phenomenon labelled as *crimmigration* in academia.<sup>xxiii</sup>

#### d) Entry ban

Entry ban is one of the most widely criticised measures laid down in the Directive. It prohibits returnee from (legally) re-entering the whole Schengen area for up to five years (or ten years in case of a serious threat to public policy or public/national security). Such a measure raises the question of legitimacy and proportionality, as the returnee may be prohibited re-entry by a country which would not have ordered the person's return in the first place. Under Article 11(1) of the Directive, entry ban *should* be imposed if the person has not been granted a voluntary departure period or has not complied with it, and this measure *may* be imposed in "other cases." The mandatory character of an entry ban in the two circumstances is problematic in itself, as it risks depriving the decision of any individual assessment. In addition, these two circumstances may cover most people liable to return, since, as discussed above, there is a broad possibility for states to refuse a "voluntary" departure period to the person.

<sup>9</sup> According to the ECtHR (2008: §23) and CJEU (2017: §37-40), legal basis should comply with the "quality of the law" which implies that domestic law authorising detention must be sufficiently clear, accessible, and predictable in order to avoid all risk of arbitrariness

<sup>10</sup> The list of criteria proposed by the Commission in Article 6(1) comprises such circumstances as lack of documentation proving the identity, lack of residence or reliable address, lack of financial resources, irregular entry, unauthorised movement between the member states, explicit expression of intent of non-compliance with return-related measures, being subject to a return decision issued by another member state, non-compliance with a return decision, non-compliance with the requirement to go immediately to the member state which granted authorisation to stay, non-compliance with the obligation to cooperate, existence of conviction for a criminal offence and ongoing criminal investigations and proceedings

<sup>11</sup> These criteria include using false or forged identity documents, destroying existing documents, or refusing to provide fingerprints; opposing violently or fraudulently the return process; not complying with measures aimed at preventing the risk of absconding during the voluntary departure period; and not complying with an existing entry ban

Furthermore, the “other cases” in which states may impose an entry ban refer to cases when the person has left in accordance with the “voluntary” departure period. It risks allowing the systematic and indiscriminate application of the entry ban, which is also counterproductive for states, as it defeats its purpose to “encourage” voluntary departure. To reflect the principle of proportionality, the entry ban should not be a mandatory measure. Instead, it could be imposed on a case-by-case basis if the person constitutes a narrowly understood risk to public order. To prevent violation of the principle of *non-refoulement* and the right to family and private life, the non-imposition, suspension or withdrawal of entry ban under Article 11(3) should be widely used, rather than being conceived as an exception. Instead of aligning the current provisions of the Directive with the principle of proportionality, the recast proposal aggravates the concerns by expanding the scope of the use of the entry ban. Under proposed Article 13(2), states may impose an entry ban, which does not accompany a return decision, to a person whose irregular stay is detected in connection with border checks carried out at exit. Imposing an entry ban in such circumstances would be at odds with human rights obligations because it is doubtful that adequate procedure can be carried out at border crossing points.

#### *e) Questionable effectiveness*

As demonstrated above, amendments proposed by the Commission considerably restrict protective safeguards around four key measures established under the Directive, namely return decision, “voluntary” departure, detention, and entry ban, and risk leading to human rights violations. In addition, these amendments will not necessarily improve the effectiveness of return, which was the very objective behind proposing the recast in the first place.

Reducing procedural safeguards to challenge a return decision would foster the perception that procedures are not fair and, consequently, reduce the willingness among the concerned persons to cooperate with the process. The need to apply for the suspensive effect of appeal would increase the burden on the courts.

Restrictions on “voluntary” departure period are counterproductive as this form of return is considered more sustainable and less costly and cumbersome to organise for states. In fact, the Commission shows a lack of coherence regarding the “voluntary” departure. On the one hand, its proposed amendments will effectively curtail the use of this measure, and the Commission continues supporting the recast. On the other hand, as of January 2021, the Commission was working on a Strategy on Voluntary Return and Reintegration, as a part of the Pact package discussed below, whose first objective is to increase the uptake of “voluntary” departure programmes.<sup>xxiv</sup>

Likewise, higher numbers of detainees or longer duration of detention do not necessarily translate into more deportations, while at the same time detention is more costly than non-custodial alternatives to detention.<sup>xxv</sup>

Finally, imposing an entry ban on a person leaving the EU would delay the person’s departure and so would be counterproductive.<sup>xxvi</sup> In contrast to the Commission’s better regulation guidelines<sup>xxvii</sup>, the Commission’s recast proposal was not accompanied by an impact assessment, which may explain why it fosters none of the two objectives of the Directive, namely effectiveness and fundamental rights compliance.

## *f) Position of co-legislators*

Based on a detailed analysis of the recast proposal, the European Parliamentary Research Service (EPRS)'s substitute impact assessment concluded that the recast risks violating fundamental rights and that there is no evidence that it would lead to more effective return policy.<sup>xxviii</sup> The EPRS assessment will likely inform the European Parliament's (hereafter Parliament or EP) position for the upcoming triologue negotiations with the Council. It can be assumed that the Parliament's position will also be in line with its Resolution on the Implementation of the Return Directive, adopted in December 2020.<sup>xxix</sup> The Resolution was based on the EPRS implementation assessment<sup>xxx</sup> and a response to the failure of the Commission to evaluate the implementation of the Directive, as it is required to do under Article 19 of the Directive and, overall, better regulation guidelines. According to the Resolution, voluntary departure is a general rule and the circumstances when it can be refused should be interpreted narrowly; detention should be a last resort measure, and longer detention does not automatically increase the possibility of return; children should not be detained, and entry ban should be based on an individual assessment and never applied alongside voluntary departure.

At the time of writing, the Parliament was working within its Committee on Civil Liberties, Justice and Home Affairs Committee on its position. The draft report was released in February 2020, and it removed several worrying amendments of the Commission and overall increased human rights protection standards.<sup>xxxi</sup> However, the Council of the European Union adopted its final partial position in June 2019, and it generally welcomed the recast proposal.<sup>xxxii</sup>

## 2.2. The return policies in the new Pact on Migration and Asylum

In its long-awaited Pact, released in September 2020, the Commission stresses that the recast of the Directive is crucial for implementing the measures proposed in the Pact and calls upon the co-legislators to conclude their negotiations in the first half of 2021.<sup>xxxiii</sup> Increasing the return rate is the overriding objective of the Pact and the word "return" is mentioned over 100 times in the document. The Pact is premised upon a false assumption that most people arriving in the EU are not eligible for protection.<sup>xxxiv</sup> It also fails to contemplate regularisation as a component in any return system. To increase the effectiveness of return, the Pact proposes the appointment of a Return Coordinator within the Commission DG HOME, who will chair the to-be-established High-Level Network for Returns, made up of states' representatives. The Return Coordinator's overall role will be to coordinate between the Member States to ensure effective returns, particularly concerning the return sponsorship (see below).<sup>xxxv</sup> At the time of writing, the Coordinator's seniority level within the EU administrative structure and of the states' representatives in the Network was not yet established, so the added value and effectiveness of these mechanisms remain to be seen. It is striking that an Asylum Coordinator has not been equally proposed. Another return-related measure is the above-mentioned Strategy on Voluntary Return and Reintegration.

The Pact also calls on Frontex to operationalise its reinforced mandate on return and appoint a Deputy Executive Director for Return and promises stronger cooperation with third countries.<sup>12</sup> Two return-related measures are further provided in legislative proposals accompanying the Pact, namely the border return procedure and return sponsorship.

#### *a) Border return procedure*

The amended proposal for the Asylum Procedures Regulation (APR)<sup>xxxvi</sup> <sup>13</sup> lays down “border procedure for carrying out the return,” which was initially provided in the proposal for a recast of the Return Directive. Under new Article 41a, the border return procedure applies to people who have been refused international protection in the border asylum procedure, whose scope is broadened, and character is mandatory in certain cases. Like the applicants for international protection under the border procedure, people subject to border return procedures are formally prohibited from entering the territory. The procedure is to take place in locations at or in proximity to the external border or transit zone. The Regulation fosters the fiction of non-entry, yet under international human rights law, borders and so-called transit zones are not excluded from states’ jurisdiction, and domestic labels do not exonerate states from their human rights obligations. The proposal brings about a parallel system to the return procedure regulated by the Return Directive, which reduces legal certainty and introduces unjustified differences in treatment. In fact, like any procedure to be carried out in the border context, this procedure provides for an overall lower level of protection and hinders access for civil society actors. There are three key concerns regarding the proposed border return procedure.<sup>xxxvii</sup>

Firstly, like the draft recast of the Return Directive, the proposal for APR links border asylum procedure and border return procedure, with the same risks as discussed above concerning in-country procedure.<sup>xxxviii</sup> Under draft Article 35a, the return decision should be issued as part of or in a separate act issued together with the decision rejecting international protection application. Unless the procedure for international protection assesses protection needs beyond refugee or subsidiary status, this procedure does not afford the protection from the very *refoulement*. The risk of violations of the principle of *non-refoulement* is compounded by limited access to an effective remedy. According to draft Article 53, the person would be able to appeal against the return decision within the same procedure as to appeal against the decision rejecting the asylum application. Under Article 53(7)(a), the timeline for submitting the appeal is at least one week. A week period may not be sufficient to collect evidence and prepare the appeal, especially when being held at the border. Under Article 54(3)(a), the appeal does not have a suspensive effect but, according to Article 54(4), the tribunal would have the power to grant it upon the applicant’s request, or ex officio if the domestic law would provide so. In line with the Luxembourg and Strasbourg case-law discussed above, Articles 19(2) and 47 of the EU Charter and Article 13 of the ECHR require that an appeal based on the principle of *non-refoulement* has a suspensive effect.

---

<sup>12</sup> These questions are discussed in Sections 4 and 3, respectively

<sup>13</sup> This proposal amends the 2016 proposal for Asylum Procedures Regulation, to replace the current Asylum Procedures Directive (Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013L0032>)



Secondly, under Article 41a(2), the applicants are to be “kept” in locations at or in proximity to the external border or transit zones. Hence, the border return procedure would typically involve detention.<sup>14</sup> Two scenarios are envisaged:

- Under Article 41a(5), people who have been detained during border asylum procedure may continue to be detained to prevent entry to the Member State's territory, preparing the return or carrying out the removal process. This provision does not lay down specific grounds for detention as preparation of return or removal is a general context of pre-removal detention. To be lawful under Article 5(1) of the ECHR and Article 6 of the EU Charter, the legal basis for detention should be precise and foreseeable in its application. Without clear ground for detention, Article 41a(5) enables automatic detention, in violation of the principles of proportionality and necessity.
- Under Article 41a(6), those persons who have not been detained during border asylum procedure may be detained on grounds for detention provided for in the recast Return Directive.<sup>15</sup> As discussed above, the new ground proposed by the Commission, allowing detention in case of risk to public policy or public/national security blurs administrative and penal detention, and hence does not guarantee legal certainty. It is noteworthy that Article 18(1) is not included among the provisions of the recast Return Directive applicable to the border return procedure. That provision provides that detention may be imposed when other sufficient but less coercive measures cannot be applied effectively. According to Article 41a(7), detention cannot exceed twelve weeks, which is the time-period of the border return procedure, and the period of detention should be included in the maximum periods of detention under the Return Directive.<sup>16</sup> All in all, in practice, “keeping” a person at the border during the return procedure will likely result in detention, as border procedure typically involves formal or de facto detention.<sup>xxxix</sup> The proposal for the APR risks leading to systematic detention at the EU external borders.

Thirdly, the Regulation allows the border return procedure to be subject to two different frameworks, depending on whether a Member State issues a return decision or refusal of entry upon rejecting the application for international protection in a border procedure. In the first scenario, except for appeal and detention, discussed above, under Article 41a(3), most of the provisions of the Return Directive would apply and thus regulate the border return procedure. The second scenario is allowed under Article 41a(8), which maintains the possibility under Article 2(2)(a) of the Return Directive not to apply the Directive towards people refused entry according to the Schengen Borders Code (SBC)<sup>17</sup> or who have been apprehended in connection with the irregular border crossing and have not subsequently obtained an authorisation to stay. Arguably, people who have undergone up to a three-month border asylum procedure should not be covered by the SBC anymore, but rather be subjected to the return procedure regulated by the Return Directive.

---

<sup>14</sup> For an overview of the Member States' practices of detention in the border context, see Majcher, Flynn and Grange 2020.

<sup>15</sup> See Section 2.1

<sup>16</sup> The maximum period of detention is 6 months, extendable to 18 months, if the person or the destination country does not cooperate and it delays return.

<sup>17</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016R0399-20190611>

Although under Article 41a(8) of the APR proposal and Article 4(4) of the Return Directive, people excluded from the scope of the Directive under Article 2(2)(a) should be afforded several basic safeguards, the refusal of entry procedure under the SBC offers overall weaker protection than the return procedure under the Directive. Crucially, allowing states to apply SBC's provisions to the border return procedure decreases legal certainty as it will bring about two parallel border detention procedures, different across countries.

### *b) Return sponsorship*

The concept of return sponsorship is introduced in Article 45(1)(b) of the proposal for the Regulation on asylum and migration management (RAMM)<sup>xl</sup>, as a form of solidarity, required from the Member States towards states under “migratory pressure” or following disembarkation from the search and rescue operations. Instead of merely relocating asylum seekers, under Article 55(1) of the proposal for RAMM, Member States may provide “return sponsorship,” by supporting the host Member State in returning the persons in an irregular situation. According to Article 55(4), the measures which the sponsoring state can take include: providing return and reintegration counselling, organizing voluntary departure, leading or supporting policy dialogue or exchanges with third countries to facilitate readmission, contacting the competent authorities of third countries to verify the identity of the person concerned and obtain valid travel documents, or organizing practical arrangements for removals, such as charter or charter flights. As Article 55(4) of the proposal stresses, these activities do not affect the benefitting state's obligations and responsibilities under the Return Directive. Article 55(2) provides that if the person is not returned within eight months (or four months in case of “crisis”), the sponsoring state should transfer the person onto its territory. By proposing an alternative to relocation accompanied by obligatory transfer after eight months, the Commission attempted to fulfil the priorities of both southern and eastern Member States.<sup>xli</sup> The system is complicated and unpredictable already on paper, whereby its actual implementation raises several questions, regarding both effectiveness<sup>18</sup> and human rights compliance.<sup>xlii</sup>

The proposal for RAMM implies that the sponsoring state implements a return decision issued by the benefitting Member State. In case of violation of the principle of *non-refoulement* or other human rights obligations, which of these two countries would be responsible?

---

<sup>18</sup> As regards the effectiveness and the very solidarity with Member States at external borders, this mechanism allows the Member States to avoid to simply relocate people from states with external borders. The sponsor can discharge its obligations quite easily by, for instance, providing return counselling, rather than engaging in negotiations with the third country, which can jeopardise its own relations with that country (Cassarino 2020b). The Return Coordinator will be in charge of coordinating between the Member States and matching nationalities of people to be returned from the benefitting state with the preferences of the sponsoring state. However, under Article 52(3), states are free to selectively choose the nationalities of returnees who they wish to include in the sponsorship mechanism. Hence, people from countries to which returns are easier compared to other ones will be more often subject to the sponsorship mechanism. This will decrease the predictability of the mechanism and ultimately leave people from countries to which returns are difficult with a state under “migratory pressure” or allowing disembarkation. Another question remains whether the sponsor state will indeed accept in practice the transfer of the person concerned to its territory, as the implementation of the Dublin system showed frequent attempts to avoid taking back people under the responsibility criteria. Under Article 57(6), the sponsoring state can refuse the transfer if it considers the person to be a danger to its national security or public order. Overall, the intra-European transfer does not support the objective of an effective return system, as it may unduly prolong the return procedure. Arguably, if the return has not taken place within eight months, it is doubtful it will be implemented in the ninth month. This should be honestly acknowledged by the EU and regularisation channels for non-returnable persons should be established.

Against which state would the person be able to appeal? Further, if a transfer after eight months takes place, which body will monitor the treatment of the persons concerned in the sponsoring state which did not accept the relocation in the first place<sup>xliii</sup>? Above all, what status will those people have in the sponsoring state? Since the risk is that the sponsoring state would not afford a particular permit to the person concerned, he/she would end up in extended irregular stay and under the threat of detention. Will a new return procedure be conducted? If the sponsoring state recognises the initial return decision issued by the benefitting state, it may be required to enforce a decision which it would not have given in the first place. The mutual recognition of return decisions raises human rights concerns as the conditions for legal stay have not been harmonised across the EU.<sup>xliiv</sup> So, a person may be in an irregular situation in one Member State (hence subject to return) but not in another..

On the other hand, if the sponsoring state starts a new return procedure according to its domestic law, it would undermine the overall effectiveness of the EU return system and risk subjecting the person to periods of detention counted from scratch. Arguably, the detention period in the benefitting state and sponsoring state should be counted together towards a maximum period allowed in the sponsoring state. However, in practice, this mechanism may encourage detention before and after the transfer. A further concern is that the return sponsorship mechanism may be applied not only to newly arrived people.<sup>xliv</sup> Rather, unreturnable people who have spent in the benefitting state a considerable period of time may be subject to this mechanism. They thus risk being transferred to a country whose system and language they do not know and losing the support networks. Instead of proposing impracticable return sponsorship mechanism and intra-European transfers, the Pact should tackle long-term non-returnability and grey zones in states' practice and the failure of the Return Directive to regulate the status of people who cannot be returned.

### III- Readmission cooperation

In the EU parlance, while the term “return” refers to the internal legislative framework discussed in the previous section, the notion of “readmission” typically refers to external aspects of the return policy, namely the involvement of third countries. As part of a broader cooperation with third countries, readmission agreements or arrangements aim to operationalise the return decision issued by domestic authorities of the Member States (3.1). To formally comply with human rights requirements, the EU and its Member States label the destination countries as “safe” (3.2).

#### 3.1. Readmission agreements and informal arrangements

The readmission agreements are the key instrument of the EU readmission policy. Signed between the EU and a third country, the readmission agreements establish rapid identification procedures for people in an irregular situation and facilitate the transfer of these persons to the country of origin or transit.<sup>xlvi</sup> Indeed, under “third country clause” in the agreements, the parties agree to readmit their nationals and migrants who transited through their territories.

The EU has so far concluded 18 readmission agreements, namely with Hong Kong (2004), Macao (2004), Sri Lanka (2005), Albania (2006), Russia (2007), Ukraine (2008), North Macedonia (2008), Bosnia and Herzegovina (2008), Montenegro (2008), Serbia (2008), Moldova (2008), Pakistan (2010), Georgia (2011), Armenia (2015), Azerbaijan (2014), Turkey (2014), Cape Verde (2014) and Belorussia (2019).<sup>xlvii</sup> The Commission has received the mandate from the Council to negotiate agreements with Morocco, Algeria, Tunisia, China, Jordan and Nigeria. Yet, it has not been successful in advancing the negotiations with these countries<sup>xlviii</sup>. In fact, readmission agreements are burdensome for the third countries, and the return of their citizens often implies fewer remittances received. Negotiations are thus ultimately contingent upon the third country's power to resist the EU's pressure. To compel the third countries, the EU has used a range of incentives and threats which link readmission to other policy areas, such as visa facilitation schemes, preferential trade and financial assistance. The EU recently turned to development assistance as additional leverage for return cooperation and attempts to insert migration-related conditionality in the currently negotiated Neighbourhood, Development and International Cooperation Instrument in the next Multiannual Financial Framework (MFF).<sup>xlix</sup>

Another implication of the third countries' resistance has been an increasing reliance on informal agreements which favour flexibility for both parties and allow easier negotiations. These agreements by-pass the European Parliament and are characterised by a lack of transparency.<sup>i</sup> Bilateral agreements that the Member States concluded with third countries served as a model for the Commission.<sup>li</sup><sup>19</sup> Initial focus on agreements different from the formal readmission agreements surfaced already in 2005. Under the Global Approach to Migration (GAM), the EU signed mobility partnerships with several countries, notably Moldova (2008), Georgia (2009), Armenia (2011), Morocco (2013), Azerbaijan (2013), Tunisia (2014), Jordan (2014), and Belarus (2016). The mobility partnerships are political agreements encompassing a wide range of issues, including readmission cooperation.<sup>lii</sup> However, the true drive towards flexibility and informalisation started with the 2015 Partnership Framework<sup>liii</sup>. Since then, three Common Agendas on Migration and Mobility were signed, notably with Nigeria (2015), Ethiopia (2015), and India (2016). Crucially, a plethora of other forms of agreements were elaborated, such as a Joint Communiqué (Côte d'Ivoire (2016), Mali (2016)), Joint Migration Declaration (Ghana (2016), Niger (2016)), Standard Operating Procedures (Mali (2016), Bangladesh (2017)), and Good Practices (Ghana (2017), Guinea (2017), the Gambia (2018)), Admission Procedures for the Return (Ethiopia (2018)), EU Turkey Statement (2016) and Joint Way Forward (Afghanistan (2016)).<sup>liv</sup> Among these, probably the most notorious is the EU-Turkey deal, under which all people who arrived at the Aegean Islands after 16 March 2016 are to be returned to Turkey. In exchange, Brussels offered to Turkey to resettle one Syrian for every Syrian returned to Turkey, paying initially 3 billion euros, and accelerating visa liberalisation.<sup>lv</sup>

<sup>19</sup> For a mapping of bilateral readmission agreements, see Cassarino 2021.

### 3.2. “Safe” countries

To rely on simplified return procedures under the readmission agreements or arrangements, the EU and its Member States argue that the destination country is considered “safe.” In case of return to the person’s country of origin, the concept of the “safe country of origin” comes into play. Under Annex I to the Asylum Procedures Directive (APD), a country is considered a safe country of origin where, based on the legal situation, the application of the law within a democratic system, and the prevailing political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of the Qualification Directive, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of armed conflict. Under the APD, the person from a country considered safe should be channelled to accelerated asylum procedure (Article 23(4)). If he/she does not rebut the presumption of safety in his/her circumstances (Article 36), states may refuse his/her asylum application as an unfounded application (Articles 31(8) and 32). The underlying idea is to process faster applications from nationals from countries considered “safe” and ensure their swifter removal. The concept of a safe country of origin raises several protection concerns as there can be virtually no country safe for all its nationals, including ethnic and sexual minorities. Labelling some countries as “safe” discriminates between asylum applicants. An accelerated procedure offers weaker procedural safeguards and narrower possibility to access an effective remedy. Consequently, such procedures can hardly be considered fair and ensure individual assessment.<sup>lvi</sup>

These concerns are compounded by the fact that some Member States established lists of countries of origin considered “safe” according to the APD. Procedures for drawing up these lists differed between the countries and were generally opaque and selection of the countries to be included appeared to be driven by political motivations.<sup>lvii</sup> In September 2015, the Commission published a proposal for a Regulation amending the APD and establishing a common list of safe countries of origin<sup>lviii</sup>. According to the Commission, 12 Member States had national lists (Austria, Belgium, Bulgaria, Czech Republic, Germany, France, Ireland, Luxembourg, Latvia, Malta, Slovakia, and the UK)<sup>lix</sup> and the Regulation was meant to reduce the divergences between domestic lists. To this end, the proposal for the Regulation laid down a list of seven countries to be considered safe (Albania, Bosnia and Herzegovina, FYROM, Kosovo, Montenegro, Serbia, and Turkey). However, none of them was unanimously acknowledged as “safe” by all the 12 Member States, let alone remaining Member States.<sup>lx</sup> In July 2016, the Commission published its proposal for the APR, which included the proposal for an EU list of safe countries of origin. Annex I of the proposal incorporates the list of the aforementioned seven safe countries of origin and Article 47 lays down the concept of safe country of origin, currently addressed in Annex I of the APD<sup>lxi</sup>. At the time of writing, the negotiations on the proposal for the APR were ongoing. Meanwhile, as of 2019, some Member States relied on lists of safe countries of origin, which were of diverse length, ranging from 8 countries in Germany, to 12 countries in Greece, 13 countries in Italy, 15 countries in Malta, 16 countries in France, and 23 countries in the Netherlands. On the other hand, this concept was not prevalent in administrative practice in Sweden, Spain, Poland, Portugal, and Romania.<sup>lxii</sup>

As seen above, the “third country clause” in the EU readmission agreements and arrangements allows the Member States to send the person to a transit country (also called third country). For instance, under the EU-Turkey deal, Greece may return to Turkey *any* person who had transited Turkey before reaching the Aegean Islands. The return to a transit country raises specific concerns under the prohibition of *refoulement*.

The principle of *non-refoulement* prohibits return not only to a risk of serious violations of the person's rights (direct *refoulement*) but also to a country from which the person risks being subsequently returned to such risk (indirect *refoulement*). Removal to a transit country may amount to indirect *refoulement* if two conditions are present, notably, the person faces a real risk of ill-treatment in his/her country of origin and the subsequent return to his/her country of origin from the transit country is foreseeable. To refute allegations of indirect *refoulement*, sending states tend to challenge the second condition, which gave rise to the concept of a "safe third country." This notion generally presupposes that before reaching the country where the person seeks protection, he/she could have already applied for asylum in a transit country, considered safe for the person. It is based on a flawed reading of the Refugee Convention as obliging the person to apply for asylum in the first country reached after fleeing their country of origin.<sup>lxiii</sup>

Under EU law, the concept of a safe third country is provided in the APD. The conditions for classifying a country as safe include absence of threat to life and liberty on account of race, religion, nationality, membership of a particular social group or political opinion; absence of risk of serious harm as defined in the Qualification Directive; the respect of the principle of *non-refoulement* under the Refugee Convention; compliance with the prohibition of removal to a risk of ill-treatment; and the possibility for the applicant of requesting a refugee status and receiving protection following the Refugee Convention (Article 38(1)). The latter condition merely requires a possibility of requesting asylum, rather than that the third country agrees to admit the applicant to a fair and efficient asylum procedure. Another concern relates to an absence of an explicit requirement in the APD of a meaningful link with the third country (Article 38(2)), as demanded by the UNHCR.<sup>lxiv</sup> Also, the APD does not explicitly provide for an individualised assessment of safety of a country for the particular applicant, as required by the UNHCR. Instead, it provides for vague provisions, ultimately referring to domestic law.<sup>lxv</sup> While already current rules raise human rights concerns, the 2016 proposal for the APR expands the concept of a safe third country and, as for the safe countries of origin, introduces a common EU safe third country designation. The proposal renders the concept mandatory for the Member States and lowers the level of protection in the third country, as protection in accordance with "substantive standards" of the Refugee Convention would be sufficient. It also weakens the connection required between the person and the country as it would be satisfied if the person have transited through the country which is geographically close to his/her country of origin.<sup>lxvi</sup>

Irrespective of the EU law provisions, Member States are bound by the prohibition of indirect *refoulement* under international law. According to the ECtHR, the removal of a person to an intermediary country does not affect the responsibility of the sending state to ensure that the person is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the ECHR.<sup>lxvii</sup> The ECtHR conducts a two-step assessment, analysing the risks in the person's country of origin and the risk of being sent there by the intermediary country. In *Hirsi v. Italy*, concerning the push-back of Somali and Eritrean asylum seekers to Libya, the Court first inquired into the situation in the applicants' countries of origin and found that upon their potential return, they would face treatment contrary to Article 3 of the ECHR. Then, the Court assessed whether Italy could reasonably expect Libya to afford adequate safeguards against arbitrary removal. Finding a violation of Article 3 of the ECHR, the Court ruled that when transferring the applicants to Libya, the Italian authorities knew or should have known that there were insufficient guarantees protecting them from the risk of being arbitrarily returned to their countries of origin.<sup>lxviii</sup> More recently, in *M.A.*, the Court found that Lithuania violated Article 3 of the ECHR by rejecting Chechen asylum seekers at its border with Belarus because it did not carry out adequate assessment of the risk of whether Belarus would send the applicants back to Russia.<sup>lxix</sup>



## IV- Frontex's return mandate

The Pact foresees a key role for the European Border and Coast Guard Agency (Frontex) in the common EU return system. According to the Commission, Frontex should become the “operational arm of EU return policy,” through a series of measures including: the nomination of a Deputy Executive Director for return in early 2021, further integrating return expertise into its Management Board, deploying the new standing corps, and assisting with the implementation of the new Voluntary Return and Reintegration Strategy. Frontex will also support the introduction of a return case management system at EU and national level, covering all steps of the procedure from the detection of an irregular stay to readmission and reintegration in third countries to linking up operational cooperation with Member States and readmission cooperation with third countries.<sup>lxx</sup> Most of these measures were introduced in the 2019/1896 Regulation (hereafter Frontex Regulation),<sup>20</sup> which the Agency was urged to “fully” implement by the end of 2020. The 2019 Regulation largely expands Frontex's capacity and mandate in the area of return. The changes build upon already reinforced return powers under the 2016 Regulation and cement the gradual expansion of Frontex's role in terms of return operations.<sup>lxxi</sup> In 2017, Frontex spent around 53 million euro on return activities, compared to 8.5 million in 2014.<sup>lxxii</sup> As this section demonstrates, Frontex's return mandate raises several human rights and accountability concerns, in particular as regards return operations, influence on the Member States, cooperation with third countries and data protection.

### a) Return operations

Since its establishment in 2004, Frontex's key return-related activity has been return operations. Under the Frontex Regulation, a return operation is an operation that is organised or coordinated by Frontex and involves technical and operational reinforcement provided to one or more Member States under which returnees from one or more Member States are returned, either on a forced or voluntary basis (Article 2(27)). While in 2006, only 4 operations were organised to deport 74 people, in 2019 over 15,850 people were deported in Frontex-supported return operations.<sup>lxxiii</sup> Frontex provides states with a multi-facet support in the context of return operations, notably technical and operational assistance, coordination or organisation of operation, including through the chartering of aircraft or organising removal on scheduled flights or by other means of transport (Article 50(1)) as well as the deployment of return teams (forced return monitors, escorts, and specialists) and technical equipment. In addition, return operations should be financed or co-financed by the Agency from its budget (Article 50(8)). A return operation may lead to three sets of human rights violations.

First, Frontex offers this wide-ranging assistance in the area of return without entering into the merits of the return decision (Article 50(1)). It thus cannot be excluded that the Agency assists a state in enforcing a flawed return decision, which would violate the prohibition of *refoulement*. This is not a hypothetical risk, as confirmed by a 2016 case in which eight Syrians were removed to Turkey through a Frontex-coordinated flight without having the possibility to apply for asylum.<sup>lxxiv</sup>

---

<sup>20</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, <https://eur-lex.europa.eu/eli/reg/2019/1896/oj>



Secondly, although escorts are subject to the Code of Conduct for Return Operations and the operations are to be monitored, ill-treatment of returnees, like during national return operations, cannot be ruled out. The CoE Committee for the Prevention of Torture (CPT), for instance, reported a case of ill-treatment of an Afghan returnee during a Frontex-coordinated flight in 2018.<sup>lxxv</sup> Finally, with the vast incentives that they offer to states, return operations may encourage collective expulsions. Arguably, states may be tempted to unduly accelerate domestic administrative procedures concerning people from a country to which a Frontex-coordinated operation is being prepared to participate in it.<sup>lxxvi</sup>

#### *b) Influence on domestic decision-making*

According to the Frontex Regulation, technical and operational assistance to states includes the collection of information necessary for issuing a return decision and identification of people subject to return procedures (Article 48(1)(a)(i)). The information and identification phases may have a considerable impact on the decision to return the person, despite the claim that the Agency does not enter into the merits of the return decision (Article 48(1) and 50(1)). As the deployment of the European Asylum Support Office in Greece showed, the Justice and Home Affairs agencies have in practice much broader influence on domestic decision-making than their funding regulations allow.<sup>lxxvii</sup> The risk is that domestic authorities will just rubber stamp the return decision unofficially prepared by Frontex. The involvement of Frontex (and its influence) increases if a Member State experiences undefined “challenges with regard to their return systems.” In such circumstances, Frontex’s “help” (Article 48(2)) includes a wide range of “services”: the provision of interpretation services; practical information and recommendations on destination countries; advice on the implementation and management of return procedures; advice on and assistance in relation to detention and alternatives to detention, as well as equipment, resources and expertise for the implementation of return decisions and for the identification of third-country nationals. The Regulation does not clarify that Frontex deploys *independent* interpreters, so it can be well Frontex’s staff providing that service. Further, what will the advice and assistance as regards detention involve? It cannot be excluded that Frontex will advise authorities on whether detention should be applied in a given case and then assist with the implementation of this measure. Overall, the Regulation leaves great leeway for Frontex to unduly influence Member States in relation to return (and detention).

#### *c) Cooperation with third countries*

The Frontex Regulation tasks the Agency with assisting states with the acquisition of travel documents, including by means of consular cooperation, without disclosing information relating to the fact that an application for international protection have been made, nor information that is not necessary for the purpose of the return (Article 48(1)(a)(ii)). But which information will be “necessary for the purpose of the return”? This formulation allows Frontex to share sensitive information with the countries of origin which, in turn, can create the risks for the returnees.

Consular or other authorities of countries of origin must never have access to information about the identity of people who may need international protection. The country of origin can be requested to confirm the nationality of the potential returnee and to issue the necessary travel documents only after any risk upon return has been thoroughly assessed and excluded and the person had access to an effective appeal to challenge his expulsion. As it happened in Belgium in 2017, Sudanese officials were invited to identify the persons slated for removal, who afterwards were ill-treated upon return.<sup>lxxviii</sup> The identification interview, which was not preceded by an assessment of the applicant's protection needs, was one of the reasons leading the ECtHR to conclude that Belgium violated the prohibition of *refoulement* in the *M.A.* case.<sup>lxxix</sup>

Further, the Regulation vaguely mentions that third country authorities will participate in the integrated return management system (Article 48(1)(a)(i)). Again, there is a risk that the authorities of the countries of origin will have access to information about returnees which will place them at risk of human rights violations upon return. This risk is compounded by the possibility for Frontex, under the Regulation, to transfer personal data to a third country if this is necessary for the performance of the Agency's tasks. Such transfers should not prejudice the rights of asylum seekers, in particular as regards *non-refoulement* (Article 86(3)-(4)). This provision implies that people whose asylum application has been refused do not benefit from this protection. Yet, under international law and the EU Charter, everyone, and not solely asylum seekers, is protected from *refoulement*.

#### d) Data sharing

The 2019 Regulation expands the Agency's powers to manage databases.<sup>lxxx</sup> Frontex should operate and further develop an integrated return management platform for processing information, including personal data transmitted by the Member States' return management systems, which is necessary for the Agency to provide technical and operational assistance. To this end, the Agency should develop and operate information systems and software applications functioning as communication infrastructure. These should link the domestic return management systems with the platform for the purpose of exchanging personal data and information for the purpose of return (Article 48(1)(d) and 49). Personal data should only include biographic data or passenger lists and should be transmitted only where they are necessary for the Agency to assist in the coordination or organisation of return operations. Such data should be transmitted to the platform only once a decision to launch a return operation has been taken and should be erased as soon as the operation is terminated.

The Agency may also use the platform for transmitting biographic or biometric data, including all types of documents which can be considered as proof or *prima facie* evidence of the nationality of people subject to return decisions, when the transmission of such personal data is necessary for the Agency to provide assistance in confirming the identity and nationality of the persons concerned. Such data should not be stored on the platform and should be erased immediately following a confirmation of receipt (Article 49).

In addition, Frontex may establish internal rules restricting the application of Regulation 2018/1725 on the protection of natural persons regarding the processing of personal data by the Union institution, bodies, offices and agencies<sup>21</sup> if the return procedure risks being jeopardised (Article 86(2)). The processing of personal data by Frontex raises serious concerns about the right to data protection and privacy respectively under Article 8 of the EU Charter and Article 8 of the ECHR.

## V- Coercive returns disguised in practices

The two previous sections focused mainly on removal (forced return). This section looks at different measures which in practice function as removals. These are the so-called “voluntary” departures in circumstances where a dignified and adequate alternative does not exist (5.1) and pushbacks (5.2).

### 5.1. “Voluntary departure” or standing between a rock and a hard place

As discussed earlier,<sup>22</sup> the so-called voluntary departure laid down in Article 7 of the Return Directive is preferred over forced return (removal/deportation) regulated under Article 8 of the Directive. Yet, under the Directive, these two forms of return should not be regarded as entirely distinct. The so-called “voluntary” departure is not genuinely voluntary because the alternatives faced by the person are often forced return, combined with pre-removal detention, or destitution.<sup>lxxxii</sup> Hence, there is no clear dividing line between “voluntary” and enforced return under the Directive, as the degree of coercion can be seen on a sliding scale<sup>lxxxiii</sup> or indeed as “deportation continuum”<sup>lxxxiii</sup>. This “return spectrum,” (i.e. a classification of a return according to the degree of coercion as opposed to the person’s free will) includes five levels: solicited, voluntary, reluctant, pressured, obliged and forced return.<sup>lxxxiv</sup> In some cases, even if the person is not directly threatened with forced return, the circumstances in the host state are so adverse that he/she is literally compelled to accept the pressure of a “voluntary” departure.

For instance, as an apparent implementation of the EU-Turkey deal,<sup>23</sup> people have been held on the Greek Aegean islands and prevented from moving to the mainland. They are subject to protracted degrading reception conditions due to the hotspots being overcrowded while the admissibility of their asylum application is being examined. They are often detained<sup>lxxxv</sup> and the risk of deportation to Turkey (pursuant to the EU-Turkey deal), is hanging on them.

---

<sup>21</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1725>

<sup>22</sup> See Section 2.1

<sup>23</sup> See Section 3.1

As a consequence, many give up their asylum claims or the right to appeal against negative asylum decisions by accepting the return within an Assisted Voluntary Return (AVR) programme implemented by the International Organization for Migration (IOM). Although IOM maintains that the participation in the AVR programme is entirely voluntary as the person has a freedom of choice and takes an informed decision, people are driven into accepting AVR due to lack of other possibilities to escape the dire situation in the Greek hotspots.<sup>lxxxvi</sup> The implementation of an AVR resembles removal/forced return as people are detained prior to the flight and then escorted by the Greek police. Ironically, considerably more people left Greece to their home countries via AVR programme than were returned to Turkey pursuant to the EU-Turkey deal.<sup>lxxxvii</sup>

Another example is the so-called humanitarian evacuation and return of people detained or stranded in Libya, notorious for torture, sexual abuse and forced labour.<sup>lxxxviii</sup> Under the UNHCR-run humanitarian evacuation programme, people are released from detention and transferred to transit centres in Niger and, to a lesser extent, Rwanda and Romania. They receive humanitarian assistance in Emergency Transit Mechanisms in Niger and Rwanda and await a durable solution.<sup>lxxxix</sup> Since its inception in 2017, this programme has benefited around 4,000 people. Only a minority of evacuations were in fact relocations – mainly to Italy.<sup>xc</sup> Co-funded with the EU Trust Fund for Africa (EUTF)<sup>xcj</sup>, the programme pulls out people from their ordeal in Libya while keeping them away from the EU. The EUTF also funds the IOM-run so-called Voluntary Humanitarian Return programme in Libya started in 2015. Since 2017, the programme has been a part of the EU-IOM Joint Initiative for Migrant Protection and Reintegration and reportedly covered over 50,000 persons returned to over 40 countries of origin.<sup>xcii</sup> Besides Libya, under the EU-IOM Joint Initiative for Migrant Protection and Reintegration, the IOM also offers AVR to migrants stranded in other countries *en route* to the EU, notably in Niger, Mali, Burkina Faso and Mauritania. In Niger, for instance, accepting the AVR allows migrants to access shelter, health care and food, often after life-threatening deportation to the desert by Algeria.<sup>xciii</sup> <sup>24</sup>

People who accept the AVR offer have to sign a “voluntary return declaration,” in which they agree for themselves and their dependents that in the event of personal injury or death during or after participation in the AVR, neither IOM nor any other participating agency or government can be held liable or responsible.<sup>xciv</sup> Such a declaration was at stake in the case of *N.A. v. Finland* in front of the ECtHR.<sup>xcv</sup> The applicant’s father was a Sunni Muslim who had previously worked for the national army under Hussein and the Inspector General Office. His asylum application was refused and after exhausting all appeal channels, he accepted the IOM-administered AVR and left for Iraq. He was killed within less than three weeks. In the proceedings before the ECtHR, Finland relied on the “voluntary return declaration” signed by the applicant’s father and argued that he had returned voluntarily to Iraq. The Court held that against the factual background of the applicant’s father’s flight from Iraq he would not have returned there under the AVR without the enforceable removal order issued against him. Consequently, his departure was not “voluntary” in terms of his free choice.<sup>xcvi</sup>

---

<sup>24</sup> The term “voluntary” has also been misused in the context of return of people of concern to the UNHCR, including Syrian refugees from Lebanon and Turkey. Since May 2018, Lebanon facilitated and organised returns of Syrian refugees. Although Syrians are not forced to leave, they face increasing poverty, lack of residency rights, restrictions on freedom of movement, and restriction on legal employment and access to basic services in Lebanon, and at the same time Syria cannot be considered safe (Sawa 2019, AI 2019, Refugee Protection Watch 2020). In addition, there have been reported cases of forced return from Lebanon and Turkey, whereby Syrians were coerced to sign a voluntary return form and then transferred to the border, despite expressing fear of returning to Syria. In Turkey those returns are reportedly widespread and involve violence (HRW 2019a, 2019b)

He had to choose between either staying in Finland without any possibility of obtaining a legal residence permit, being detained to facilitate his forced return, and receiving a two-year entry ban, as well as attracting the attention of the Iraqi authorities upon return; or agreeing to leave Finland voluntarily and take the risk of ill-treatment upon return. According to the Court, in these circumstances, the applicant's father did not have a genuinely free choice between these options, which rendered his supposed waiver of his right to protection in the "voluntary return declaration" invalid. Consequently, his removal to Iraq had to be considered as a forced return engaging the responsibility of the expelling state.<sup>xcvii</sup>

## 5.2. [Pushback or return before arrival](#)

The forced return can also take the form of a "pushback." The EU Agency for Fundamental Rights (FRA) defines a pushback as apprehension of a person after an irregular border crossing and a summary return to a neighbouring country without assessing their individual circumstances on a case-by-case basis.<sup>xcviii</sup> For the Parliamentary Assembly of the Council of Europe (PACE), pushbacks mean refusal of entry and expulsion without any individual assessment of protection needs. Pushbacks involve actions towards migrants who have already crossed the border and find themselves inland, but also towards people who are present near or at the border, attempting to cross it.<sup>xcix</sup> In some cases, pushback policy takes the form of "pushbacks by proxy," as it relies on actions by neighbouring/third countries. Based on an agreement typically involving some form of benefits, the neighbouring country prevents the person from leaving its territory/jurisdiction and entering/arriving to an EU Member State and takes the person back. These practices can be referred to as "pull-backs".<sup>c</sup> <sup>25</sup> Overall, pushback practices and policies aim at preventing the person from entering the country and requesting international protection. They are typically accompanied by excessive force (ill-treatment), arbitrary detention, and destruction of personal property.<sup>ci</sup>

The evidence of wide-spread pushbacks along the EU external and internal borders has been growing in the past years. Reliable reports of pushbacks from Greece to Turkey are long-standing and involve detention upon entry without any guarantees, confiscation of the person's belongings (mobile phones and sometimes footwear) and transfer across the Evros River. The pushbacks are allegedly carried out across Aegean Sea, whereby people having reached Aegean Islands were re-embarked on a dinghy and towed back to Turkish waters, where they were left adrift.<sup>cii</sup> In the Eastern Mediterranean, more recently pushbacks started being reported from Cyprus. As Chapter 6 details, people are prevented from disembarking and put on vessels and returned to Lebanon and Turkey.<sup>ciii</sup> Further, the Balkan route is notorious for wide-spread and indeed chain pushbacks, where the person risks being repetitively pushed-back, notably from Italy to Slovenia, from Slovenia to Croatia, from Croatia to Bosnia and Herzegovina or to Serbia.<sup>civ</sup> Pushbacks by Croatia involve an unprecedented level of violence, including beating, sexual abuse, robbery and humiliation.<sup>cv</sup> Like pushbacks from Italy and Slovenia confirm, such practice occurs also within the Schengen area, for instance from France to Italy through the Alpine border and the Ventimiglia-Menton border<sup>cvi</sup> and from France to Spain.<sup>cvi</sup>

---

<sup>25</sup> Pull-backs (pushbacks by proxy) are more difficult to be proved due to lack of direct contact between an EU Member States and the person concerned. GLAN (Global Legal Action Network) challenged this practice in front of the UN Human Rights Committee (*SDG v. Italy*) and, with Forensic Oceanography, before the ECtHR (*SS v. Italy*). As of December 2020, both cases were pending, see GLAN 2020, ASGI 2020

In the Western Mediterranean, as Chapter 2 discusses, pushbacks from Spanish enclaves in Ceuta and Melilla to Morocco are long-standing and include so-called hot pushbacks, whereby people are arrested and returned to Morocco without any identification and access to a lawyer and interpreter.<sup>cxviii</sup> In the Central Mediterranean, the return to Libya has a form of pushbacks by proxy or pull-backs. Under a memorandum of understanding between Italy and Libya, Libyan Coast Guards intercept people and take them back to Libya, where they are at risk of arbitrary detention, torture and sexual abuse, as it has been previously documented. Similar pushbacks by proxy are carried out from Maltese search and rescue zones.<sup>cxix</sup>

Preventing entry, blocking access to asylum procedure and pushbacks violate several fundamental rights, most notably the right to asylum under Article 18 of the EU Charter, the prohibition of *refoulement* under Article 3 of the ECHR and Article 19(2) of the EU Charter, and the prohibition of collective expulsion under Article 4 of the Protocol 4 to the ECHR and Article 19(1) of the EU Charter. To avoid their human rights responsibilities in the border context, states tend to argue either that they lack jurisdiction over the person or that the prohibition of *refoulement* or collective expulsion applies only to removal from the state's territory. Human rights bodies rebutted both lines of argument. First, as regards the jurisdiction, in line with ECtHR's rulings in *Sharifi v. Italy and Greece*<sup>cx</sup> and *M.K. v. Poland*<sup>cxii</sup>, refusal of entry at the border places the concerned people under the effective control of the state. The same goes even for extraterritorial operations. According to *Hirsi v. Italy*, interceptions on the high seas by the authorities of a State constitute an exercise of jurisdiction which engages the responsibility of the State in question.<sup>cxiii</sup> Secondly, these rulings also confirm that non-admission at the border may amount to *refoulement* or collective expulsion. In *Sharifi*, Italy violated the prohibition *refoulement* and collective expulsion by immediately returning the applicants from its port to Greece, without assessing the risk they were facing there.<sup>cxiii</sup> Poland violated these obligations in *M.K.*, as it refused to receive asylum applications at the border and removed the applicants to Belarus.<sup>cxiv</sup> As *Hirsi* confirms, intercepting a group of migrants in the high seas and handling them over to a place where they face a real risk of ill-treatment violates the prohibition of *non-refoulement* and of collective expulsion.<sup>cxv</sup> Hence, people requesting protection at the border should be granted access to asylum procedure.<sup>cxvi</sup> The principle of *non-refoulement* imposes procedural requirements on states, notably to carry out individualised procedure to thoroughly assess human rights bars to return and ensure that the person is properly informed, has access to legal and linguistic assistance to challenge negative decision, and is protected from removal before the appeal decision is rendered. These obligations apply also when a group of persons cross the border in an undocumented way as under the prohibition of collective expulsion, states should not remove migrants as a group, unless each person had his/her claim individually assessed.

Growing evidence of pushbacks has triggered responses from several organisations. At the EU level, it is believed that reports of wide-spread and violent pushbacks prompted the Commission's proposal under the Pact package from September 2020 to establish border monitoring mechanism, discussed below.<sup>26</sup> In October 2020, investigative journalists revealed that Frontex was involved in pushbacks carried out by the Greek Coast Guard.<sup>cxvii</sup>

---

<sup>26</sup> See Section 6.2

These allegations were denied by the Agency but led to a number of processes, ongoing as of January 2021, notably an internal inquiry by a specially-established working group within the Agency's Management Board, a European Ombudsman's own-initiative inquiry into the effectiveness of Frontex's complaint mechanism and independence of Frontex's Fundamental Rights Officer<sup>cxviii</sup>, and an investigation of the European Anti-Fraud Office over allegations of pushbacks and internal harassment and misconduct<sup>cxix</sup>. Opinions were also expressed within the Parliament of a need to establish a Parliamentary inquiry committee to scrutinise Member States' conduct at the EU's external borders, the role of Frontex and the Commission's response in that regard.<sup>cxx</sup> At the CoE level, in December 2020, the PACE Committee on Migration, Refugees and Displaced Persons appointed a Rapporteur on pushbacks to investigate these practices (Special Representative of the Secretary General on Migration and Refugees 2020). At the UN level, the Special Rapporteur on the Human Rights of Migrants (SRHRM) will dedicate his next report to the Human Rights Council to the human rights impact of pushbacks.<sup>cxxi</sup>

## VI- Human rights monitoring

Given the risk of serious human rights violations in the context of removal and border management activities, independent human rights monitoring has come to be seen as a crucial safeguard, whereby it reduces the risk of rights violations, provides feedback and increases accountability of the actors involved. This section first looks at removal monitoring provided under the Return Directive and points out to the need to extend such monitoring to the post-arrival phase (6.1). Secondly, the section discusses border monitoring, not (yet) regulated under EU law. Against the background of current and past border monitoring projects in various countries, the analysis discusses the Commission's recent proposal to establish a border monitoring mechanism under the Screening Regulation (6.2).

### 6.1. Removal and post-removal monitoring

Under Article 8(6) of the Return Directive, Member States should provide for an effective forced-return monitoring system.<sup>27</sup> According to FRA, to be effective, monitoring should fulfil three criteria. It should be carried out on an ongoing basis, by an organisation which is independent of the authorities in charge of removal, and it should cover all stages of the operation (pre-departure, in-flight, and arrival phase).<sup>cxii</sup>

---

<sup>27</sup> Under Article 50(5) of the Frontex Regulation, every return operation organised or coordinated by the Agency (as discussed in Section 4) should be monitored in accordance with Article 8(6) of the Return Directive. The monitoring should be carried out by the forced-return monitors, deployed from the Frontex's pool of monitors under Article 51. While laudable, this system cannot be considered independent as the monitors may also be Agency staff and they report to Frontex's Executive Director (and also the Fundamental Rights Officer and the competent national authorities of all the Member States involved in the given operation). Follow-up is ensured by the Frontex's Director and competent national authorities respectively. As a result, NPMs from a dozen of Member States set up a so-called Naphlion initiative to ensure involvement of independent bodies



There are three main categories of bodies carrying out monitoring, namely National Human Rights Institutions (NHRIs)/Ombudspersons,<sup>28</sup> civil society organisations (CSOs), and bodies affiliated to authorities in charge of removal or belonging to the enforcement machinery. According to information compiled by FRA, as of 2019, NHRIs and National Preventive Mechanisms (NPM) under Optional Protocol to the CAT were carrying out monitoring in 11 Member States, CSOs in 11 Member States, and bodies affiliated to law enforcement or migration agency in five Member States.<sup>cxxiii</sup> Only monitoring by the first two categories, if the organisation is independent from authorities, including compliance by NHRI with the Paris Principles, can be considered independent. NHRIs, especially if they also have the mandate of NPMs, are well placed to carry out monitoring given their standing vis-à-vis government.<sup>29</sup> For this task, however, they require adequate capacity and funding, which are often not forthcoming.<sup>cxxiv</sup> As regards CSOs, the funding for monitoring activities is even more challenging and access to detention and airport areas typically needs to be allowed in advance. Funding available to the monitoring body considerably influences the frequency of inspections and the scope of monitoring.<sup>cxxv</sup> Arguably, removal monitoring by independent bodies implements Article 8(6) of the Return Directive, hence it should be funded by EU funds, typically Asylum, Migration and Integration Fund (AMIF) should be used to cover these activities. According to data collected by FRA, overall, monitoring rarely extends to the in-flight phase. The number of flights with a monitor on board in 2019 ranged from 134 in Cyprus to one in Bulgaria and Lithuania.<sup>cxxvi</sup>

Unlike removal monitoring, monitoring of the post-removal phase is not provided in EU legislation or policy documents. In addition, the Commission stressed that the return monitoring under Article 8(6) of the Return Directive does not cover the period after reception of the person in the destination country.<sup>cxxvii</sup> As documented by journalists, researchers and CSOs, upon return, people often face human rights violations, including arrest, charge of treason, extortion, ill-treatment, and deprivation of nationality<sup>cxxviii</sup>.<sup>30</sup> A handful of organisations have begun to monitor the situation of returnees and provide them with assistance upon return.<sup>31</sup> Sometimes such projects are funded by expelling states. For instance, in Uganda and DRC, local CSOs carry out post-return monitoring of unaccompanied children removed from Norway and Belgium, respectively.<sup>cxxix</sup> In 2012, the Fahamu Refugee Programme set up the Post- Deportation Monitoring Network to enable organisations based in deporting and receiving countries to be connected.<sup>cxxx</sup> Post-return monitoring reduces the risks to returnees and enhances transparency. It also documents human rights violations and hence points to necessary changes in asylum and return procedures. It is noteworthy that in its Resolution on the Implementation of the Return Directive, the Parliament urged the Commission to establish a post-return monitoring mechanism to understand the fate of returned people, facilitate the exchange of good practices among the Member States on post-return monitoring and allocate sufficient funding for this purpose.<sup>cxxxi</sup>

<sup>28</sup> NHRIs, which fulfil the Paris Principles, are State bodies with a constitutional and/or legislative mandate to protect and promote human rights. They are part of the State apparatus and are funded by the State. However, they operate and function independently from government as per the Paris Principles, see GANHRI 2021.

<sup>29</sup> As regards public reporting, the findings of monitoring are included in the annual reports of the NHRI/NPM. See the return monitoring project carried out by the Italian NPM, National Guarantor for the Rights of Persons Detained or Deprived of Liberty 2020.

<sup>30</sup> Overall, post-deportation risks can be systematised in three categories, namely economic and psychological risks, insecurities at hands of authorities, and inhumane and degrading treatment (Alpes and Nyberg Sorensen 2016)

<sup>31</sup> For instance, as of 2012, Justice First helped Congolese deportees and the Refugee Law Project supported deportees in Kampala (Podeszfa and Manicom 2012). French ANAFE (Association Nationale d'Assistance aux Frontières pour les Etrangers) monitored the post-return fate of people whom it supported in transit zones and organised several missions to the countries of return (ANAFE 2020)

As the above initiatives demonstrate, post-monitoring programmes need adequate funding and capacities and appropriate guarantees of safety and access to deportees for the monitors. Hence, involvement of NHRIs/NPMs from the expelling states or regional organisations (the EU or CoE) would help ensure that the monitoring is effective and sustainable. Ideally, the independent observers monitoring removal (NHRI or CSOs) could monitor the reception phase and afterwards, the monitors based in the destination country should be involved. Such monitoring would thus involve cooperation between CSOs and Ombudspersons in both countries involved (the European Network of Ombudsmen could liaise between Ombudspersons from the sending and destination countries) and be supported by the CPT. The key question however remains as to the follow-up and consequences of documented violations.

## 6.2. [Border monitoring](#)

Allegations of violent pushbacks at EU external borders discussed earlier<sup>32</sup> unveil the need for independent monitoring of border management activities. The term border monitoring is understood here as oversight of border control activities to assess their compliance with international refugee and human rights law.<sup>cxviii</sup> Similar to removal monitoring addressed above, to be considered independent, the monitoring should be carried out by the CSOs and/or NHRIs/Ombudspersons, which fulfil the Paris Principles. In many Member States, NHRI are indeed involved in promoting and protecting human rights in the context of border management. Preventive actions include NHRIs going to the border crossing points and other places at the border and collecting data, visiting border reception and detention centres and police facilities (if they are designated as the NPM), and interviewing migrants. Thanks to their special standing, NHRIs are interlocutors for the government and parliament and may be able to advise on or review legislation, policy and practice. Within reactive actions, where legislation, policy or practice are not compliant with human rights, NHRIs can adopt official recommendations and some of them can challenge the lawfulness of the provisions before domestic tribunals. As remedial actions, where violations of migrants' rights at the border have occurred, NHRIs can ensure that they have access to an effective remedy, including providing information about redress mechanisms. Additionally, some NHRIs can receive and handle individual complaints and adopt formal conclusions and recommendations to authorities. To work effectively and independently, NHRIs need sufficient capacity and budget; these are yet often lacking. Further, in some Member States, NHRIs face obstacles, lack of cooperation from the authorities or even threats when they work on migration issues. Cooperation with CSOs, especially those who are present at the borders, can alert NHRIs about violations committed and prompt their response.<sup>cxviii</sup>

Indeed, CSOs play a crucial role in monitoring border management activities. Created in 2016, Border Violence Monitoring Network (BVMN) is a noteworthy initiative. BVMN monitors EU external borders along the Balkans and in Greece, collects testimonies and evidence of violence and pushbacks, makes them public and advocates for a change.

---

<sup>32</sup> See Section 5.2

Out of 11 civil society organisations constituting BVMN, five organisations are located in areas along the relevant borders and collect pushback cases via a standardised methodology, five organisations are involved in advocacy, and one ensures management and administrative coordination.<sup>cxxxiv</sup> Among country offices in the Balkans of the Danish Refugee Council (DRC), the country office in Bosnia and Herzegovina is engaged in border monitoring. Established in 2018, the country office systematically documents pushbacks and violence at the Croatian-Bosnian border and publishes “Border Monitoring Monthly Snapshot” on its website.<sup>cxxxv</sup> At other borders, CSOs carry out border monitoring activities which are of small scale due to limited capacity or because they are included within other projects. The cross-border nature of pushbacks requires transnational cooperation between CSOs. For instance, as of 2018, the Italian ASGI (Association for Legal Studies on Immigration) coordinated with partners in France and Switzerland.<sup>cxxxvi</sup> To be able to carry out border monitoring, CSOs need access to border crossing points to be granted by the authorities and adequate funding. In that regard a UNHCR initiative from early 2000 is noteworthy. A series of tripartite agreements (UNHCR-state border authorities-CSO) were signed with eastern European countries (including Poland, Slovakia, Hungary,<sup>33</sup> Bulgaria, Romania, and Lithuania) ahead of their accession to the EU. In 2017, a tripartite agreement was signed with Croatia. Under the tripartite agreement, the funding is provided by the UNHCR and a CSOs acts as an implementing partner which visits border areas (with various degrees of involvement of the UNHCR). The access granted by border authorities differs between the countries. While, as of 2018, in Bulgaria, the implementing partner could access all border detention facilities without limitation or prior permission (but not border crossing points per se), in Romania, the border police were notified in advance, and in Poland, the findings were not publicly available.<sup>cxxxvii</sup>

Seemingly as a response to reported violence and pushbacks at the EU external borders, the proposal for the Screening Regulation<sup>cxxxviii</sup>, accompanying the Pact, provides for fundamental rights monitoring. According to Article 7(1), states should adopt relevant provisions to investigate allegations of non-respect for fundamental rights in relation to the screening. Under Article 7(2), Member States should establish an independent monitoring mechanism to ensure 1) compliance with EU and international law, including the EU Charter, during the screening, 2) compliance with national rules on detention of the person concerned, in particular concerning the grounds and the duration of the detention, and 3) that allegations of non-respect for fundamental rights in relation to the screening, including in relation to access to the asylum procedure and non-compliance with the principle of *non-refoulement*, are dealt with effectively and without undue delay. Article 7(2) further provides that states should put in place adequate safeguards to guarantee the independence of the mechanism and may invite relevant national, international and non-governmental organisations and bodies to participate in the monitoring. The Regulation foresees a role for the FRA. The agency should issue “general guidance” for Member States on the setting up of such a mechanism and its independent functioning. Furthermore, Member States may request the FRA to support them in developing their national monitoring mechanism, including the safeguards for independence of such mechanisms, as well as the monitoring methodology and appropriate training schemes.

---

<sup>33</sup> The agreement was terminated by the police in 2017, see ECRE 2018: 16

This proposal is a positive first step towards addressing violations at the border. The mechanism should build upon existing monitoring arrangements and good practices developed by NHRIs and CSOs, discussed above, and not duplicate work and dissipate available funds. In line with the opinion of CSOs and academics, to be effective and independent, several amendments to Article 7 of the Screening Regulation are necessary.<sup>cxvix</sup> First, the scope of the monitoring should be extended beyond the screening procedure at official border crossing points and cover all human rights sensitive activities during border management activities. Border guards should actively cooperate with the mechanism and monitors should have access to border crossing points and unannounced visits should be foreseen in the mechanism. Further, as victims of pushbacks often find themselves on the other side of the border, the mechanism should be able to act upon allegations received from individuals or organisations who find themselves abroad. Second, in order to be independent, the mechanism should be carried out by NHRIs complying with the Paris Principles and CSOs. International and regional monitoring bodies, such as CPT, can support the work of the mechanism. The role and the mandate of the involved organisations should be provided in a written document. Since NHRIs are to be involved, at least some of the monitors would be able to receive individual complaints. To perform these tasks, NHRIs and CSOs should be protected from threats and intimidation. They should have adequate capacities and funding for this mandate, including from Integrated Border Management Fund (IBMF). Third, the findings and conclusions should be publicly available and monitoring mechanisms should lead to accountability measures. Potential victims should receive legal advice and have effective access to justice. There should be an investigation carried out and potential sanctions for wrongdoers. Finally, to close the monitoring cycle, the office of the European Ombudsman should be involved to ensure regular assessment of the monitoring mechanisms in the Member States and share good practices across the countries.

## VII- Conclusions

This chapter discussed recent EU legislative and policy measures and some selected Member States' practices in the field of return/expulsion. Although return has been regulated under the Return Directive for over a decade, it was the 2015 refugee crisis which placed the EU return policy high on the EU agenda. The Commission has developed an argument that increasing the rate of return was necessary for the functioning of the whole EU migration and asylum system. Under this approach, several measures have been introduced. The 2018 proposal for the recast of the Return Directive, which was not based on an impact assessment, restricts procedural safeguards, expands the legal basis for detention, adds new circumstances when an entry ban may be imposed, and limits the applicability of "voluntary" departure. Other return-related legislative proposals accompanied the new Pact on Migration and Asylum. Indeed, the revised proposal for APR lays down a border return procedure, characterised by limited procedural safeguards, and the proposal for RAMM introduces a return sponsorship mechanism, as a form of solidarity towards Member States under migratory pressure or who allowed disembarkation after a search and rescue operation. Further, the Pact emphasises cooperation with third countries in the area of readmission, which have been characterised in the past by a growing informalisation and lack of transparency. To be able to rely on the cooperation with third countries, the EU and its Member States designate them as "safe." The concepts of safe country of origin and safe third country give rise to human rights concerns as they entail accelerated asylum procedures and swift returns, trumping the requirement for individual assessment. Under the 2016 CEAS reform proposals, both concepts would be expanded in the APR.

Furthermore, the new Pact cements Frontex's role in returns, which had been expanded in 2019 with the new Regulation in any case. Besides growing mandate regarding return operations, Frontex acquired wide advisory functions in the area of return (and detention) and mandate to cooperate with third countries for identification purposes. The line between decision making powers by the Agency and the Member States is increasingly difficult to draw.

Alongside these legislative measures, some practices are a growing cause of concern, notably pushbacks and the so-called "voluntary" departures which are coercive in practice. To prevent human rights violations, human rights monitoring can play a key role. To be effective, removal monitoring foreseen under the Return Directive should be carried out by an independent actor (NHRI and/or CSO), on an ongoing basis, and should cover all stages of the operation, until the handover of the person. Possibilities should be explored to extend it to post-arrival phase and cooperate with local actors in order to shed some light on the fate of returnees. A novelty at the EU level, the Pact proposed establishing a border monitoring mechanism. However, for it to be effective in preventing pushbacks, several provisions need to be inserted in the legislation. Measures discussed in the chapter risk leading to various violations of human rights. Member States should be mindful that the implementation of EU legislation does not dispense them from their international human rights obligations.

## Recommendations

### Member States

- respect international and regional human rights obligations and relevant norms and standards when implementing the EU return policy;
- refrain from any pushback policy or measures and ensure access to individual procedure to anyone apprehended at the border;
- put in place an effective return monitoring mechanism, covering the pre-removal, removal and post-removal phases, starting the monitoring from the notification of expulsion and ending it, ideally, 3-4 months after the person was returned; expand the network of monitors on the national territory, thus involving more independent experts and local CSOs, and link it with the monitoring network in the country of return.

### European Union

#### *European Commission DG HOME*

- reconsider the focus on return rate as the main indicator of the effectiveness of the EU return policy and include fundamental rights compliance and sustainability of return in the assessment of effectiveness;
- encourage measures of regularisation of non-returnable people, as an integral part of the return system;
- investigate allegations of pushbacks by the EU Member States;
- investigate allegations of Frontex's involvement in pushbacks;
- offer genuine partnerships beneficial for both sides rather than pressuring countries of origin or transit into cooperation with the EU on readmission;
- carry out a human rights impact assessment before concluding a readmission agreement and cease readmission cooperation with countries that do not respect human rights norms and standards;
- include human rights assessment in the monitoring of the implementation of readmission agreements;
- include and define a clearer post-return monitoring role for NHRIs/Ombudspersons in readmission agreements;
- opt for formal readmission agreements rather than informal arrangements;
- propose an amendment to the Frontex Regulation to involve European Ombudsman in the complaint mechanism.

### *European Commission DG DEVCO*

- ensure that development assistance is not used for migration management;
- resist migration control conditionality being attached to development assistance.

### *European Parliament LIBE Committee*

- In the context of the negotiations on the recast Return Directive, oppose amendments expanding detention and linking asylum and return procedures;
- In the context of the negotiations on the APR, oppose the proposal for the border return procedure;
- In the context of the negotiations on the RAMM, oppose the proposal for the return sponsorship mechanism;
- In the context of the negotiations on the Screening Regulation, propose amendments to ensure that the border monitoring mechanism is independent, effective, and properly funded;
- oppose informal readmission arrangements;
- regularly invite Frontex's Executive Director for hearings;
- request FRA to prepare Opinion on the human rights implications of the proposals for APR, RAMM and Screening Regulation;
- ensure that funding allocations under the EU Trust Fund for Africa comply with human rights.

### *European Court of Auditors*

In the context of the ECA's ongoing audit of readmission cooperation, investigate whether a human rights assessment is carried out within a monitoring of the implementation of readmission agreements.

### *European Ombudsman*

- via the European Network of Ombudsmen, support national Ombudspersons in their return and border monitoring work;
- via the European Network of Ombudsmen, liaise with Ombudspersons of the destination countries to ensure post-return monitoring;
- advocate for assigning the role of monitors in the new border monitoring mechanism to national Ombudspersons.



### *EU Fundamental Rights Agency (FRA)*

- ensure that the guidance to be prepared by the Agency under Article 7 of the Screening Regulation promotes independent and effective border monitoring mechanism;
- support the Member States in their setting up of the border monitoring mechanism;
- map out the bodies involved in border monitoring and systematically update this list (similarly to the list of return monitoring bodies).

### *Frontex: Executive Director*

- suspend return operations when allegations of violations of fundamental rights are reported;
- act upon Serious Incident Reports and complaints about human rights violations during Frontex's operations;
- hire the 40 fundamental rights monitors pursuant to the 2019 Regulation;
- cease supporting Member States engaging in systematic rights violations.

### *Frontex Fundamental Rights Officer*

- act upon Serious Incident Reports and complaints about human rights violations during Frontex's operations;
- ensure independency of the 40 fundamental rights monitors to be hired;
- liaise with the Consultative Forum on a regular basis;
- provide human rights training for the monitors and escorts.

## United Nations

### *Special Rapporteur on the Human Rights of Migrants*

- closely monitor EU developments in relation to the return policy and its implementation;
- promote his 2018 report on return with EU institutions and formulate recommendations concerning amendments to the Return Directive;
- promote his recent report on detention of children at the EU level;
- formulate recommendations to the EU on the migration-control conditionality attached to development assistance;

- in the framework of the current research into pushbacks, seek input from a variety of sources to address wide spectrum of pushback policies;
- invite the EU Delegation to the UN and other international organisations in Geneva for hearings.

### *Working Group on Arbitrary Detention*

- closely monitor EU developments in relation to the return policy and its implementation with the implications on detention;
- formulate recommendations to the EU as regards the amendments to the Return Directive which risk expanding detention;
- request information from the European Commission on how the return border procedure and return sponsorship will supposedly avoid detention;
- carry out visits to the EU Member States to assess their detention practices;
- invite the EU Delegation to the UN and other international organisations in Geneva for hearings.

## Council of Europe

### *Committee of Ministers*

- promote its 2005 *Twenty Guidelines on Forced Return* as a set of standards regulating expulsion/return in the context of upcoming negotiations on the recast Return Directive;
- promote its 2009 *Guidelines on human rights protection in the context of accelerated asylum procedures* in the context of upcoming negotiations on recast of the Return Directive and border return procedure under the proposal for the APR which would merge asylum and return procedures;
- exhort the governments to reject and prevent any pushback policy and action;
- draw up guidelines on human rights compliant border control and border surveillance, which would prevent pushbacks;
- prioritise swift implementation of ECtHR's judgments relating to pushbacks (such as *Sharifi v. Italy and Greece* and *MK. v. Poland*).

### *Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly and its recently appointed Rapporteur on pushbacks*

- urge EU Member States to refrain from pushbacks and ensure independent border monitoring;
- call on the European Commission to urge EU Member States to halt pushbacks and to investigate allegations of pushbacks;
- recommend that the Committee of Ministers prepare guidelines on human rights compliant border control and border surveillance;
- encourage its members from EU Member States to encourage their governments to accept border monitoring mechanism under the Screening Regulation to be independent, cover all border situation, and lead to accountability;
- disseminate and teach CoE standards precluding pushbacks among national parliaments.

### *Special Representative of the Secretary General on Migration and Refugees*

- carry out fact-finding missions to EU Member States with external EU borders (Greece, Italy, Spain, Croatia, Hungary, and Poland) to collect information on the human rights situation at the border;
- provide input to the Secretary General on ways to enhance CoE's assistance and advice to the states on human rights treatment of migrants in an irregular situation;
- keep alternatives to detention among the priorities and promote the 2018 *Legal and practical aspects of effective alternatives to detention in the context of migration* of the Steering Committee for Human Rights;
- promote CoE standards within Frontex Consultative Forum and support its activities;
- engage with the EU institutions to promote CoE standards on return, detention, and access to asylum procedures.

### *Commissioner for Human Rights*

- report on and condemn pushbacks, arbitrary or inadequate return and detention measures by the EU Member States;
- submit third party intervention to the ECtHR on EU Member States practices which violate the ECHR, such as pushbacks, arbitrary detention, and inadequate appeal procedure against return decisions;
- issue recommendations on access to territory and asylum compliant with CoE standards;
- visit EU Member States with a focus on detention and overall treatment of migrants in an irregular situation;
- support NHRIs involved in return or border monitoring and encourage all NHRIs to take up this mandate.

### *Committee for the Prevention of Torture*

- keep focusing on immigration detention during its country visits;
- remain alert to testimonies of interviewed detainees alleging to have previously been pushed back;
- monitor issues of removal operations and Frontex's involvement during visits to EU Member States;
- support the future border monitoring mechanism under the Screening Regulation.

### List of interviews

1. Gabriel Almeida (European Network of National Human Rights Institutions (ENNRI))
2. Jean-Pierre Cassarino (College of Europe)
3. Marta Gionco (Platform for International Cooperation on Undocumented Migrants (PICUM))
4. Mariana Gkliati (Leiden University)
5. Josephine Liebl (European Council on Refugees and Exiles (ECRE))
6. Officer (European Union Agency for Fundamental Rights (FRA))
7. Officer (Office of European Ombudsman)
8. Mark Provera (Independent consultant)
9. Olivia Sandberg (European Policy Centre (EPC))

## References

- Ahumuza Onyoin, Ch. (2017) 'A Grim Return: Post- Deportation Risks in Uganda', *Forced Migration Review* 54, p. 81– 84.
- AI (Amnesty International) (2016) Greece: Evidence points to illegal forced returns of Syrian refugees to Turkey.
- AI (2018) Belgium: Returns to Sudan violated principle of non-refoulement.
- AI (2019) Q&A-Why Are Returns of Refugees from Lebanon to Syria Premature?
- Alpes, J. (2019) 'After Deportation, Some Congolese Returnees Face Detention and Extortion', *Migration Policy Institute Online Journal*, <https://www.migrationpolicy.org/article/after-deportation-some-congolese-returnees-face-detention-and-extortion>
- Alpes, J. (2020) Emergency returns by IOM from Libya and Niger: A protection response or a source of protection concerns?, Brot für die Welt and Medico International.
- Alpes, J. and N. Nyberg Sorensen (2016) Post-Deportation Risks: People Face Insecurity and Threats after Forced Returns, Danish Institute for International Studies.
- Alpes, J. and I. Majcher (2020) Who Can Be Sustainably Reintegrated After Return? Using Post-Return Monitoring for Rights-Based Return Policies, UNU CRIS.
- Anafe (2020) Suivi des personnes refoulées, <http://www.anafe.org/spip.php?mot11>
- Anafe (2021) L'Etat français renvoie illégalement un enfant à la frontière franco-espagnole, <http://www.anafe.org/spip.php?article591>
- ASGI (2020) Country Report: Italy (2019 Update), *Asylum Information Database (AIDA)*, <https://www.asylumineurope.org/reports/country/italy/asylum-procedure/access-procedure-and-registration/access-territory-and-push>
- Baldaccini, A. (2009) 'The Return and Removal of Irregular Migrants under EU Law: An Analysis of the Returns Directive', *European Journal of Migration and Law* 11(1), p. 1–17.
- Barigazzi, J. (2021) 'EU watchdog opens investigation into border agency Frontex', *Politico*, <https://www.politico.eu/article/olaf-opens-investigation-on-frontex-for-allegations-of-pushbacks-and-misconduct/>
- Basilien-Gainche, M.-L. (2014) 'Removal Orders and the Right to Be Heard: The CJEU Fails to Understand the Dysfunctional French Asylum System', *EU Law Analysis*, [eulawanalysis.blogspot.com/2014/12/removal-orders-and-right-to-be-heard.html](http://eulawanalysis.blogspot.com/2014/12/removal-orders-and-right-to-be-heard.html)
- Bathke, B. (2019) 'Stuck in Libya: UNHCR calls for more humanitarian evacuations', *Info Migrants*, <https://www.infomigrants.net/en/post/19503/stuck-in-libya-unhcr-calls-for-more-humanitarian-evacuations>
- Bowerman, E. (2017) 'Risks Encountered after Forced Removal: The Return Experiences of Young Afghans', *Forced Migration Review* 54, p. 78– 80.
- Broomfield, M. (2018) 'Investigation: Coercive 'voluntary' Deportations Leave Refugees Trapped in Jail and Facing Torture', *The New Arab*, <https://www.alaraby.co.uk/english/indepth/>
- BVMM (Border Violence Monitoring Network) (2020) About us, <https://www.borderviolence.eu/about/>
- Carabott, S. (2020) 'Malta 'complicit' in Libya rights violations', *Times of Malta*, <https://timesofmalta.com/articles/view/malta-complicit-in-libya-rights-violations.837908>

Caritas Europa et al. (2018) Recommendations for Humane Return Policies in Europe.

Cassarino, J.-P. (2018) 'Informalizing EU Readmission Policy', in A. Ripoll Servent and F. Trauner (eds.) *The Routledge Handbook of Justice and Home Affairs Research*. Routledge, p. 83-98.

Cassarino, J.-P. (2020a) 'Are Current 'Return Policies' Return Policies? A Reflection and Critique', in T. Bastia and R. Skeldon (eds.) *Routledge Handbook of Migration and Development*. Routledge, p. 343-52.

Cassarino, J.-P. (2020b) 'Readmission, Visa Policy and the "Return Sponsorship" Puzzle in the New Pact on Migration and Asylum', *ADiM Blog*, <http://www.adimblog.com/2020/11/30/readmission-visa-policy-and-the-return-sponsorship-puzzle-in-the-new-pact-on-migration-and-asylum/>

Cassarino, J.-P. (2021) Inventory of the bilateral agreements linked to readmission, <https://www.jeanpierreccassarino.com/datasets/ra/>

Cassarino, J.-P. and M. Giuffré (2017) Finding Its Place in Africa: Why has the EU opted for flexible arrangements on readmission?, University of Nottingham.

Ceriani P. (2009) 'La Directiva de Retorno de La Unión Europea: Apuntes Críticos Desde Una Perspectiva de Derechos Humanos', *Anuario de Derechos Humanos* 5, p. 85-94.

CJEU (Court of Justice of the European Union) (2009) Saïd Shamilovich Kadzoev (Huchbarov), C-357/09 PPU.

CJEU (2014a) Bashir Mohamed Ali Mahdi, C-146/14 PPU.

CJEU (2014b) Centre Public d'action Sociale d'Ottignies- Louvain- La- Neuve v. Moussa Abdida, C-562/13.

CJEU (2014c) Khaled Boudjlida v. Préfet Des Pyrénées-Atlantiques, C-249/13.

CJEU (2015a) Abdoulaye Amadou Tall v. Centre Public d'action Sociale de Huy, C-239/14.

CJEU (2015b) Z. Zh. v. Staatssecretaris Voor Veiligheid En Justitie and I. O. v. Staatssecretaris Voor Veiligheid En Justitie, C-554/13.

CJEU (2017) Policie ČR, Krajské Ředitelství Policie Ústeckého Kraje, Odbor Cizinecké Policie v. Salah Al Chodor, Ajlin Al Chodor, Ajvar Al Chodor, C-528/15.

CJEU (2021) TQ v. Staatssecretaris van Justitie en Veiligheid, C-441/19.

Clarke, L. (2018) 'In the hands of the Libyan Coast Guard: pushbacks by proxy', *Open Migration*, <https://openmigration.org/en/analyses/in-the-hands-of-the-libyan-coast-guard-pushbacks-by-proxy/>

Cleton, L. and S. Chauvin (2020) 'Performing freedom in the Dutch deportation regime: bureaucratic persuasion and the enforcement of 'voluntary return'', *Journal of Ethnic and Migration Studies* 46(1).

Council of the European Union (2019) Note from Presidency to Delegations: 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): Revised Presidency Compromise Text, 10144/19.

CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) (2020) Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020, CPT/Inf (2020) 35.

DRC (Danish Refugee Council) (2020) Bosnia and Herzegovina, <https://drc.ngo/our-work/where-we-work/europe/bosnia-and-herzegovina/>

EC (European Commission) (2014) Communication from the Commission to the Council and the European Parliament on EU Return Policy, COM(2014) 199.

EC (2015a) An EU “Safe Countries of Origin” List, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2\\_eu\\_safe\\_countries\\_of\\_origin\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_safe_countries_of_origin_en.pdf)

EC (2015b) Communication from the Commission to the European Parliament and the Council: EU Action Plan on Return, COM(2015) 453.

EC (2015c) Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU, COM(2015) 452.

EC (2017a) Better regulation: guidelines and toolbox, [https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox\\_en](https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en)

EC (2017b) 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, OJ 2017 L 339/83.

EC (2017c) Commission Recommendation (EU) 2017/432 of 7 March 2017 on Making Returns More Effective When Implementing the Directive 2008/115/EC of the European Parliament and of the Council, OJ 2017 L 66/15.

EC (2017d) Communication from the Commission to the European Parliament and the Council on a More Effective Return Policy in the European Union: A Renewed Action Plan, COM(2017) 200.

EC (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), COM(2018)634.

EC (2020a) Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, COM(2020) 611.

EC (2020b) An extraordinary meeting of the Frontex Management Board on 9 December 2020, [https://ec.europa.eu/home-affairs/news/extraordinary-meeting-frontex-management-board-9-december-2020\\_en](https://ec.europa.eu/home-affairs/news/extraordinary-meeting-frontex-management-board-9-december-2020_en)

EC (2020c) Communication from the Commission to the European Parliament, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, COM(2020) 609.

EC (2020d) EU Readmission agreements and other “EU arrangements” –State of play, Ares(2020)4923453.

EC (2020e) Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, COM(2020) 612.

EC (2020f) Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund], COM(2020) 610.

EC (2020g) Voluntary Return and Reintegration Strategy: Roadmap, Ares(2020)7609930.

ECRE (European Council on Refugees and Exiles) (2009) Information Note on the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals.

ECRE (2016) ECRE Comments on the Commission Proposal for an Asylum Procedures Regulation COM(2016) 467.



ECRE (2017) Debunking the “Safe Third Country” Myth.

ECRE (2018a) Access to protection in Europe: Borders and entry into the territory.

ECRE (2018b) ECRE Comments on the Commission Proposal for a Recast Return Directive COM(2018) 634.

ECRE (2018c) ECRE Comments on the Commission Proposal for a Regulation on the European Border and Coast Guard (COM(2018) 631).

ECRE (2018d) Voluntary Departure and Return: Between a Rock and a Hard Place.

ECRE (2020a) ECRE Comments on the Amended Proposal for an Asylum Procedures Regulation COM(2020) 611: Border Asylum Procedures And Border Return Procedures.

ECRE (2020b) ECRE Comments on the Commission Proposal for a Screening Regulation COM(2020) 612.

ECRE (2020c) Med: Former Maltese Official Admits Push-Back while another 62 People are Left Stranded, <https://www.ecre.org/med-former-maltese-official-admits-push-back-while-another-62-people-are-left-stranded/>

ECRE (2020d) Migration Control Conditionality: a flawed model.

ECRE (2021) Asylum Information Database (AIDA), <https://asylumineurope.org/reports/>

ECRE et al. (2020a) Joint Statement: The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded.

ECRE et al. (2020b) Turning rhetoric into reality: New monitoring mechanism at European borders should ensure fundamental rights and accountability.

ECtHR (European Court of Human Rights) (2007) Salah Sheekh v. the Netherlands, 1948/ 04.

ECtHR (2008) Sadaykov v. Bulgaria, 75157/01.

ECtHR (2010) Baysakov and Others v. Ukraine, 54131/08.

ECtHR (2011) M.S.S v. Belgium and Greece, 30696/09, GC.

ECtHR (2012) Hirsi Jamaa and Others v. Italy, 27765/ 09, GC.

ECtHR (2014) Sharifi and Others v. Italy and Greece, 16643/09.

ECtHR (2018) M.A. and Others v. Lithuania, 59793/ 17.

ECtHR (2019) N.A. v. Finland, 25244/18.

ECtHR (2020a) M.A. v. Belgium, 19656/18.

ECtHR (2020b) M.K. and Others v. Poland, 40503/17, 42902/17, 43643/17.

Eisele, K. (2019) ‘The EU’s readmission policy: of agreements and arrangements’, in S. Carrera, J. Santos Vara, and T. Strik (eds.) *Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis*. Elgar, p. 135-54.

EMN (European Migration Network) (2020) EMN Glossary, [https://ec.europa.eu/home-affairs/what-we-do/networks/european\\_migration\\_network/glossary\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_en)

ENNHRI (European Network of National Human Rights Institutions) (2020a) Guidance: Monitoring human rights of migrants at the borders: Building on the mandate and functions of National Human Rights Institutions.

ENNHRI (European Network of National Human Rights Institutions) (2020b) Protecting human rights of migrants at the borders: Evidence and work of European National Human Rights Institutions.

EP (European Parliament) (2020a) Draft Report on the 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), 2018/0329(COD).

EP (2020b) Implementation report on the Return Directive: European Parliament resolution of 17 December 2020 on the implementation of the Return Directive, 2019/2208(INI).

EPC (European Policy Centre) (2019) Diminishing safeguards, increasing returns: Non-refoulement gaps in the EU return and readmission system.

EPC (European Policy Centre) (2021) EU return sponsorships: High stakes, low gains?

EPRS (European Parliamentary Research Service) (2019) Substitute Impact Assessment on the Proposed Return Directive (Recast), PE 631.727.

EPRS (2020a) Asylum procedures at the border: European Implementation Assessment, PE 654.201.

EPRS (2020b) The Return Directive 2008/115/EC: European Implementation Assessment, PE 642.840.

EuroMed Rights (2020) Analysis of the New EU Pact on Migration and Asylum: A “fresh start” for human rights violations.

EuroMed Rights, AEDH (European Association for the defence of Human Rights), FIDH (International Federation for Human Rights) (2016) Safe countries: A denial of the right of asylum.

European Council (2016) EU-Turkey statement.

European Ombudsman (2020) Ombudsman opens inquiry to assess European Border and Coast Guard Agency (Frontex) ‘Complaints Mechanism’, <https://www.ombudsman.europa.eu/en/news-document/en/134739>

FRA (Fundamental Rights Agency) (2012) Fundamental rights: challenges and achievements in 2012.

FRA (2019) The Recast Return Directive and Its Fundamental Rights Implications.

FRA (2020a) Forced return monitoring systems: State of play in EU Member States, <https://fra.europa.eu/en/publications-and-resources/data-and-maps/return?mdq1=dataset>

FRA (2020b) Migration: Fundamental Rights Issues at Land Borders.

Frontex (2020a) Budget 2019 VOB.

Frontex (2020b) 2019 In Brief.

GANHI (Global Alliance of National Human Rights Institutions) (2021) Roles and types of NHRIs, <https://nhri.ohchr.org/EN/AboutUs/Pages/RolesTypesNHRIs.aspx>

García Hernández, C. C. (2015) *Crimmigration Law*. American Bar Association.

GCR (Greek Council for Refugees) (2020) Country Report: Greece (2019 Update), *Asylum Information Database (AIDA)*, <https://asylumineurope.org/reports/country/greece/>

Gkliati, M. (2020) ‘Frontex Return Operations and their Human Rights Implications’, in I. Soysüren and M. Nedelcu (eds) *Deportation of Foreigners: EU instruments, Nation-State practices and social actors’ involvement*. Peter Lang, forthcoming.

GLAN (Global Legal Action Network) (2020) Privatised Migrant Abuse by Italy and Libya, <https://www.glanlaw.org/nivincase>

Gostoli, Y. (2020) 'Europe's chain of migrant expulsion, from Italy to Bosnia', *The New Humanitarian*, <https://www.thenewhumanitarian.org/news-feature/2020/11/17/europe-italy-bosnia-slovenia-migration-pushbacks-expulsion?>

Grange, M. (2013) *Smoke Screens: Is There a Correlation between Migration Euphemisms and the Language of Detention?*, Global Detention Project.

Hänsel, V. (2020) 'Returns Without Warranty - The Grey Zone of "Voluntary Return" in the Framework of the EU-Turkey Deal', in J.-P. Cassarino (ed.) *La question de l'expulsion des étrangers dans les relations euro-méditerranéennes: faire la lumière sur la zone grise*. Les cahiers de Tunisie, p. 21-39.

HRW (Human Rights Watch) (2019a) Lebanon: Syrians Summarily Deported from Airport, <https://www.hrw.org/news/2019/05/24/lebanon-syrians-summarily-deported-airport>

HRW (2019b) Turkey: Syrians Being Deported to Danger: Authorities Use Violence, Threats, Detention to Coerce Returns, <https://www.hrw.org/news/2019/10/24/turkey-syrians-being-deported-danger>

HRW (2020) Violent Pushbacks on Croatia Border Require EU Action, <https://www.hrw.org/news/2020/10/29/violent-pushbacks-croatia-border-require-eu-action>

Info Migrants (2021) Critical situation for migrants at Italian-French border, <https://www.infomigrants.net/en/post/30151/critical-situation-for-migrants-at-italian-french-border>

Info Migrants (2020) 'if a migrant is in the Ventimiglia area, it's because he wants to leave', <https://www.infomigrants.net/en/webdoc/211/if-a-migrant-is-in-the-ventimiglia-area-it-s-because-he-wants-to-leave>

IOM (International Organization for Migration) (2020a) First IOM Libya Voluntary Return Charter in Five Months Assists Over 100 Ghanaian Migrants <https://www.iom.int/news/first-iom-libya-voluntary-return-charter-five-months-assists-over-100-ghanaian-migrants>

IOM (2020b) More than 50,000 Migrants Benefited from Voluntary Humanitarian Return Assistance from Libya Since 2015, <https://www.iom.int/news/more-50000-migrants-benefited-voluntary-humanitarian-return-assistance-libya-2015>

Iyodu, B. (2010) 'Uganda: The Silent Practice of Deportations', *Pambazuka News*, <https://www.pambazuka.org/governance/uganda-silent-practice-deportations>

Kalir, B. and L. Wissink (2016) 'The Deportation Continuum: Convergences between State Agents and NGO Workers in the Dutch Deportation Field', *Citizenship Studies* 20(1), p. 34–49.

Majcher, I. (2019) *The European Union Returns Directive and Its Compatibility with International Human Rights Law*. Brill/Nijhoff.

Majcher, I. (2020) 'The Effectiveness of the EU Return Policy at All Costs: The Punitive Use of Administrative Pre-Removal Detention', in N. Kogovšek Šalamon (ed.) *Causes and Consequences of Migrant Criminalisation*. Springer, p. 109–29.

Majcher, I. (2021) 'The implementation of the EU Return Directive: The European Parliament aligns the EU expulsion policy with recommendations of UN human rights expert mechanisms', *EU Law Analysis*.

Majcher, I., M. Flynn, and M. Grange (2020). *Immigration Detention in the European Union: In the Shadow of the "Crisis."* Springer.

McVeigh, K. (2019) 'Life-saving': hundreds of refugees to be evacuated from Libya to Rwanda', *The Guardian*, <https://www.theguardian.com/global-development/2019/sep/10/hundreds-refugees-evacuated-libya-to-rwanda>

Molnár, T. (2018) 'The Place and Role of International Human Rights Law in the EU Return Directive and in the Related CJEU Case-Law: Approaches Worlds Apart?' in S. Carrera, L. den Hertog, M. Panizzon, and D. Kostakopoulou (eds.) *EU External Migration Policies in an Era of Global Mobilities: Intersecting Policy Universes*. Brill/Nijhoff, p. 105–24.

Mommers, Ch. (2020) 'The proposed recast of the EU Returns Directive: voluntary return under threat?', *EU Law Analysis*, <http://eulawanalysis.blogspot.com/2020/08/the-proposed-recast-of-eu-returns.html>

MSF (Medecins sans Frontieres) (2019) Trading in suffering: detention, exploitation and abuse in Libya, <https://www.msf.org/libya%E2%80%99s-cycle-detention-exploitation-and-abuse-against-migrants-and-refugees>

National Guarantor for the Rights of Persons Detained or Deprived of Liberty (2020) Implementation of a forced return monitoring system, <https://www.youtube.com/watch?v=t-i6EgEARgc>

Newland, K. and B. Salant (2017) 'Increased Focus on Forced Return of Migrants and Asylum Seekers Puts Many in Peril', *Migration Policy Institute Online Journal*, <https://www.migrationpolicy.org/article/top-10-2017-issue-7-increased-focus-forced-return-migrants-and-asylum-seekers-puts-many>

Nielsen, N. and A. Fotiadis (2019) 'Inhumane' Frontex forced returns going unreported', *EUobserver*, <https://euobserver.com/migration/146090>

PACE (Parliamentary Assembly of the Council of Europe) (2019) Pushback policies and practice in Council of Europe member States, Resolution 2299.

PICUM (Platform for International Cooperation on Undocumented Migrants) (2015) PICUM Position Paper on EU Return Directive.

PICUM (Platform for International Cooperation on Undocumented Migrants) (2020) More detention, fewer safeguards: How the new EU Pact on Migration and Asylum creates new loopholes to ignore human rights obligations.

Podeszfa, L. and Ch. Manicom (2012) 'Avoiding Refoulement: The Need to Monitor Deported Failed Asylum Seekers', *Oxford Monitor of Forced Migration* 2(2), p. 10– 15.

Podeszfa, L. and F. Vetter (2013) 'Post- Deportation Monitoring: Why, How and by Whom?', *Forced Migration Review* 44, p. 68– 69.

Refugee Protection Watch (2020) Trapped in between Lebanon and Syria: The absence of durable solutions for Syria's refugees.

RRE (Refugee Rights Europe) and End Pushbacks Partnership (2020) Pushbacks and Rights Violations at Europe's Borders: The State of Play in 2020.

Save the Children (2018) From Europe to Afghanistan: Experiences of Child Returnees.

SAWA (2019) Unpacking Return: Syrian Refugees' Conditions and Concerns.

Special Representative of the Secretary General on Migration and Refugees (2020) Newsletter December 2020, <https://www.coe.int/en/web/special-representative-secretary-general-migration-refugees/newsletter-december-2020>

SRHRM (2020) Call for inputs for the Special Rapporteur's report on pushback practices and their impact on the human rights of migrants, <https://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/Pushback-practices.aspx>

Statewatch (2020) Deportation Union: Rights, accountability and the EU's push to increase forced removals.

Stefan, M. and R. Cortinovis (2020) 'Setting the right priorities: is the new Pact on Migration and Asylum addressing the issue of pushbacks at EU external borders?', *Asile Forum*, <https://www.asileproject.eu/setting-the-right-priorities-is-the-new-pact-on-migration-and-asylum-addressing-the-issue-of-pushbacks-at-eu-external-borders/>

Strik, T. (2020) Pushbacks in the EU: How to end impunity?', *European Policy Centre*, <https://epc.eu/en/Publications/Pushbacks-in-the-EU-How-to-end-impunity~3a6efc>

UNHCR (2005) UNHCR Provisional Comments on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status.

UNHCR (2018) UNHCR Position on the Proposal for a Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals.

UNHCR (2019) New UNHCR evacuation of refugees from Libya to Italy, as Tripoli fighting continues, <https://www.unhcr.org/news/press/2019/9/5d7a30584/new-unhcr-evacuation-refugees-libya-italy-tripoli-fighting-continues.html>

UNHCR (2020a) UNHCR's life-saving flights from Libya resume after seven-month suspension, <https://www.unhcr.org/news/briefing/2020/10/5f894f954/unhcrs-life-saving-flights-libya-resume-seven-month-suspension.html>

UNHCR (2020b) UNHCR Update Libya (20 November 2020), <https://reliefweb.int/report/libya/unhcr-update-libya-20-november-2020-enar>

UNHCR and UNICEF (2014) Safe & Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe.

Van Houte, M. and T. Davids (2014) 'Moving Back or Moving Forward?: Return Migration, Development and Peace-Building', *New Diversities* 16(2), p. 71–87.

Waters, N., E. Freudenthal and L. Williams (2020) 'Frontex at Fault: European Border Force Complicit in 'Illegal' Pushbacks', *Bellingcat*, <https://www.bellingcat.com/news/2020/10/23/frontex-at-fault-european-border-force-complicit-in-illegal-pushbacks/>

Webber, F. (2011) 'How Voluntary Are Voluntary Returns?', *Race & Class* 52(4), p. 98–107.

WGAD (Working Group on Arbitrary Detention) (2018) Revised Deliberation No. 5 on Deprivation of Liberty of Migrants, A/HRC/39/45.

## Endnotes

- <sup>i</sup> Cassarino, J.-P. (2020a) 'Are Current 'Return Policies' Return Policies? A Reflection and Critique', in T. Bastia and R. Skeldon (eds.) *Routledge Handbook of Migration and Development*. Routledge, p. 343-52.
- <sup>ii</sup> CJEU (2014a) Bashir Mohamed Ali Mahdi, C-146/14 PPU: 38.
- <sup>iii</sup> EC (2015b) Communication from the Commission to the European Parliament and the Council: EU Action Plan on Return, COM(2015) 453: 3-19.
- <sup>iv</sup> EC (2017d) Communication from the Commission to the European Parliament and the Council on a More Effective Return Policy in the European Union: A Renewed Action Plan, COM(2017) 200: 2-3.
- <sup>v</sup> EC (2017c) Commission Recommendation (EU) 2017/432 of 7 March 2017 on Making Returns More Effective When Implementing the Directive 2008/115/EC of the European Parliament and of the Council, OJ 2017 L 66/15.
- <sup>vi</sup> Baldaccini, A. (2009) 'The Return and Removal of Irregular Migrants under EU Law: An Analysis of the Returns Directive', *European Journal of Migration and Law* 11(1), p. 1-17; Ceriani P. (2009) 'La Directiva de Retorno de La Unión Europea: Apuntes Críticos Desde Una Perspectiva de Derechos Humanos', *Anuario de Derechos Humanos* 5, p. 85-94; Majcher, I. (2019) *The European Union Returns Directive and Its Compatibility with International Human Rights Law*. Brill/Nijhoff; PICUM (Platform for International Cooperation on Undocumented Migrants) (2015) PICUM Position Paper on EU Return Directive; UNHCR (2018) UNHCR Position on the Proposal for a Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals.
- <sup>vii</sup> EC (2014) Communication from the Commission to the Council and the European Parliament on EU Return Policy, COM(2014) 199.
- <sup>viii</sup> EC (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), COM(2018)634.
- <sup>ix</sup> CJEU (2014c) Khaled Boudjlida v. Préfet Des Pyrénées-Atlantiques, C-249/13: § 48-50; FRA (2019) The Recast Return Directive and Its Fundamental Rights Implications: 30-33
- <sup>x</sup> CJEU (2021) TQ v. Staatssecretaris van Justitie en Veiligheid, C-441/19: 83
- <sup>xi</sup> EPC (European Policy Centre) (2019) Diminishing safeguards, increasing returns: Non-refoulement gaps in the EU return and readmission system: 9
- <sup>xii</sup> ECtHR (2010) Baysakov and Others v. Ukraine, 54131/08; §40
- <sup>xiii</sup> CJEU (2014b) Centre Public d'action Sociale d'Ottignies- Louvain- La- Neuve v. Moussa Abdida, C-562/13; §50, 52, CJEU (2015a) Abdoulaye Amadou Tall v. Centre Public d'action Sociale de Huy, C-239/14: §58
- <sup>xiv</sup> ECtHR (2011) M.S.S v. Belgium and Greece, 30696/09, GC: § 293
- <sup>xv</sup> Webber, F. (2011) 'How Voluntary Are Voluntary Returns?', *Race & Class* 52(4), p. 103-105, Caritas Europa et al. (2018) Recommendations for Humane Return Policies in Europe
- <sup>xvi</sup> ECRE (2018d) Voluntary Departure and Return: Between a Rock and a Hard Place
- <sup>xvii</sup> EPRS (2020b) The Return Directive 2008/115/EC: European Implementation Assessment, PE 65-66
- <sup>xviii</sup> CJEU (2015b) Z. Zh. v. Staatssecretaris Voor Veiligheid En Justitie and I. O. v. Staatssecretaris Voor Veiligheid En Justitie, C-554/13: §49
- <sup>xix</sup> CJEU (2015b) Z. Zh. v. Staatssecretaris Voor Veiligheid En Justitie and I. O. v. Staatssecretaris Voor Veiligheid En Justitie, C-554/13: §42, 48, 70
- <sup>xx</sup> Mommers, Ch. (2020) 'The proposed recast of the EU Returns Directive: voluntary return under threat?', *EU Law Analysis*, <http://eulawanalysis.blogspot.com/2020/08/the-proposed-recast-of-eu-returns.html>
- <sup>xxi</sup> WGAD (2018) Revised Deliberation No. 5 on Deprivation of Liberty of Migrants, A/HRC/39/45: §12 and 16
- <sup>xxii</sup> CJEU (2009) Saïd Shamilovich Kadzoev (Huchbarov), C-357/09 PPU: § 69-71
- <sup>xxiii</sup> García Hernández, C. C. (2015) *Crimmigration Law*. American Bar Association; Majcher, I. (2020) 'The Effectiveness of the EU Return Policy at All Costs: The Punitive Use of Administrative Pre-Removal Detention', in N. Kogovšek Šalamon (ed.) *Causes and Consequences of Migrant Criminalisation*. Springer, p. 109-29
- <sup>xxiv</sup> EC (2020g) Voluntary Return and Reintegration Strategy: Roadmap, Ares(2020)7609930
- <sup>xxv</sup> EPRS (2019) Substitute Impact Assessment on the Proposed Return Directive (Recast), PE 631.727: 115, EPRS (2020a) Asylum procedures at the border: European Implementation Assessment, PE 654.201: 83; Majcher, I., M. Flynn, and M. Grange (2020). *Immigration Detention in the European Union: In the Shadow of the "Crisis."* Springer
- <sup>xxvi</sup> ECRE (2018b) ECRE Comments on the Commission Proposal for a Recast Return Directive COM(2018) 634: 5-7; Majcher, I. (2019) *The European Union Returns Directive and Its Compatibility with International Human Rights Law*. Brill/Nijhoff: 690-691
- <sup>xxvii</sup> EC (2017a) Better regulation: guidelines and toolbox, [https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox\\_en](https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en)
- <sup>xxviii</sup> EPRS (2019) Substitute Impact Assessment on the Proposed Return Directive (Recast), PE 631.727: 9-14
- <sup>xxix</sup> EP (2020b) Implementation report on the Return Directive: European Parliament resolution of 17 December 2020 on the implementation of the Return Directive, 2019/2208(INI); Majcher, I. (2021) 'The implementation of the EU Return Directive: The European Parliament aligns the EU expulsion policy with recommendations of UN human rights expert mechanisms', *EU Law Analysis*
- <sup>xxx</sup> EPRS (2020b) The Return Directive 2008/115/EC: European Implementation Assessment, PE 642.840



- 
- <sup>xxxi</sup> EP (2020a) Draft Report on the 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), 2018/0329(COD)
- <sup>xxxii</sup> Council of the European Union (2019) Note from Presidency to Delegations: 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): Revised Presidency Compromise Text, 10144/19
- <sup>xxxiii</sup> EC (2020c) Communication from the Commission to the European Parliament, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, COM(2020) 609
- <sup>xxxiv</sup> ECRE (2020a) ECRE Comments on the Amended Proposal for an Asylum Procedures Regulation COM(2020) 611: Border Asylum Procedures And Border Return Procedures
- <sup>xxxv</sup> EPC (European Policy Centre) (2021) EU return sponsorships: High stakes, low gains?: 6
- <sup>xxxvi</sup> EC (2020a) Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, COM(2020) 611
- <sup>xxxvii</sup> ECRE (2020a) ECRE Comments on the Amended Proposal for an Asylum Procedures Regulation COM(2020) 611: Border Asylum Procedures And Border Return Procedures: 32-36; EuroMed Rights (2020) Analysis of the New EU Pact on Migration and Asylum: A “fresh start” for human rights violations: 9-11
- <sup>xxxviii</sup> PICUM (Platform for International Cooperation on Undocumented Migrants) (2020) More detention, fewer safeguards: How the new EU Pact on Migration and Asylum creates new loopholes to ignore human rights obligations: 2
- <sup>xxxix</sup> EPRS (2020a) Asylum procedures at the border: European Implementation Assessment, PE 654.201: 149
- <sup>xl</sup> EC (2020f) Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund], COM(2020) 610
- <sup>xli</sup> EPC (European Policy Centre) (2021) EU return sponsorships: High stakes, low gains?: 9-11
- <sup>xlii</sup> EuroMed Rights (2020) Analysis of the New EU Pact on Migration and Asylum: A “fresh start” for human rights violations: 11-14
- <sup>xliii</sup> ECRE (2020a) ECRE Comments on the Amended Proposal for an Asylum Procedures Regulation COM(2020) 611: Border Asylum Procedures And Border Return Procedures
- <sup>xliv</sup> Cassarino, J.-P. (2020b) ‘Readmission, Visa Policy and the “Return Sponsorship” Puzzle in the New Pact on Migration and Asylum’, *ADiM Blog*, <http://www.adimblog.com/2020/11/30/readmission-visa-policy-and-the-return-sponsorship-puzzle-in-the-new-pact-on-migration-and-asylum/>?
- <sup>xlv</sup> EPC (European Policy Centre) (2021) EU return sponsorships: High stakes, low gains?: 19
- <sup>xlvi</sup> EMN (European Migration Network) (2020) EMN Glossary, [https://ec.europa.eu/home-affairs/what-we-do/networks/european\\_migration\\_network/glossary\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_en)
- <sup>xlvii</sup> EPRS (2020b) The Return Directive 2008/115/EC: European Implementation Assessment, PE 642.840: 165-66
- <sup>xlviii</sup> EC (2020d) EU Readmission agreements and other “EU arrangements” –State of play, Ares(2020)4923453
- <sup>xlix</sup> ECRE (2020d) Migration Control Conditionality: a flawed model
- <sup>i</sup> Cassarino, J.-P. and M. Giuffrè (2017) Finding Its Place in Africa: Why has the EU opted for flexible arrangements on readmission?, University of Nottingham; EPRS (2020b) The Return Directive 2008/115/EC: European Implementation Assessment, PE 642.840: 167-68; Eisele, K. (2019) ‘The EU’s readmission policy: of agreements and arrangements’, in S. Carrera, J. Santos Vara, and T. Strik (eds.) *Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis*. Elgar, p. 135-54
- <sup>ii</sup> Cassarino, J.-P. (2018) ‘Informalizing EU Readmission Policy’, in A. Ripoll Servent and F. Trauner (eds.) *The Routledge Handbook of Justice and Home Affairs Research*. Routledge, p. 87-88.
- <sup>iii</sup> Cassarino, J.-P. (2018) ‘Informalizing EU Readmission Policy’, in A. Ripoll Servent and F. Trauner (eds.) *The Routledge Handbook of Justice and Home Affairs Research*. Routledge, p. 83-98: 88-89.
- <sup>iiii</sup> Cassarino, J.-P. (2018) ‘Informalizing EU Readmission Policy’, in A. Ripoll Servent and F. Trauner (eds.) *The Routledge Handbook of Justice and Home Affairs Research*. Routledge, p. 89-94.
- <sup>lv</sup> EPRS (2020b) The Return Directive 2008/115/EC: European Implementation Assessment, PE 642.840: 243-64, Cassarino, J.-P. (2018) ‘Informalizing EU Readmission Policy’, in A. Ripoll Servent and F. Trauner (eds.) *The Routledge Handbook of Justice and Home Affairs Research*. Routledge, p. 83-98: 89-94
- <sup>lv</sup> European Council (2016) EU-Turkey statement
- <sup>lvi</sup> EuroMed Rights, AEDH (European Association for the defence of Human Rights), FIDH (International Federation for Human Rights) (2016) Safe countries: A denial of the right of asylum: 5 and 7
- <sup>lvii</sup> EuroMed Rights, AEDH (European Association for the defence of Human Rights), FIDH (International Federation for Human Rights) (2016) Safe countries: A denial of the right of asylum: 6-7
- <sup>lviii</sup> EC (2015c) Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU, COM(2015) 452.
- <sup>lix</sup> EC (2015a) An EU “Safe Countries of Origin” List, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2\\_eu\\_safe\\_countries\\_of\\_origin\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_safe_countries_of_origin_en.pdf)
- <sup>lx</sup> EuroMed Rights, AEDH (European Association for the defence of Human Rights), FIDH (International Federation for Human Rights) (2016) Safe countries: A denial of the right of asylum: 7



- <sup>lxi</sup> ECRE (2016) ECRE Comments on the Commission Proposal for an Asylum Procedures Regulation COM(2016) 467: 58-59
- <sup>lxii</sup> ECRE (2021) Asylum Information Database (AIDA), <https://asylumineurope.org/reports/>
- <sup>lxiii</sup> Majcher, I. (2019) *The European Union Returns Directive and Its Compatibility with International Human Rights Law*. Brill/Nijhoff: 629-31, ECRE 2017: 2
- <sup>lxiv</sup> UNHCR (2005) UNHCR Provisional Comments on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status: 35-38
- <sup>lxv</sup> ECRE (2017) Debunking the “Safe Third Country” Myth: 2-3
- <sup>lxvi</sup> ECRE (2016) ECRE Comments on the Commission Proposal for an Asylum Procedures Regulation COM(2016) 467: 55-58
- <sup>lxvii</sup> ECtHR (2007) Salah Sheekh v. the Netherlands, 1948/ 04: § 141
- <sup>lxviii</sup> ECtHR (2012) Hirsi Jamaa and Others v. Italy, 27765/ 09, GC: § 150-158
- <sup>lxix</sup> ECtHR (2018) M.A. and Others v. Lithuania, 59793/ 17: § 105-115
- <sup>lxx</sup> EC (2020c) Communication from the Commission to the European Parliament, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, COM(2020) 609: 8
- <sup>lxxi</sup> ECRE (2018c) ECRE Comments on the Commission Proposal for a Regulation on the European Border and Coast Guard (COM(2018) 631: 13-16; Gkliati, M. (2020) ‘Frontex Return Operations and their Human Rights Implications’, in I. Soysüren and M. Nedelcu (eds) *Deportation of Foreigners: EU instruments, Nation-State practices and social actors’ involvement*. Peter Lang, forthcoming: 2-3
- <sup>lxxii</sup> Frontex (2020a) Budget 2019 VOB: 3; Majcher, I. (2019) *The European Union Returns Directive and Its Compatibility with International Human Rights Law*. Brill/Nijhoff: 615
- <sup>lxxiii</sup> Majcher, I. (2019) *The European Union Returns Directive and Its Compatibility with International Human Rights Law*. Brill/Nijhoff: Annex 14, Frontex (2020b) 2019 In Brief: 15
- <sup>lxxiv</sup> Statewatch (2020) Deportation Union: Rights, accountability and the EU's push to increase forced removals: 42; AI (2016) Greece: Evidence points to illegal forced returns of Syrian refugees to Turkey
- <sup>lxxv</sup> Nielsen, N. and A. Fotiadis (2019) ‘Inhumane’ Frontex forced returns going unreported’, *EUobserver*, <https://euobserver.com/migration/146090>
- <sup>lxxvi</sup> Majcher, I. (2019) *The European Union Returns Directive and Its Compatibility with International Human Rights Law*. Brill/Nijhoff: 616-18
- <sup>lxxvii</sup> Statewatch (2020) Deportation Union: Rights, accountability and the EU's push to increase forced removals: 30
- <sup>lxxviii</sup> AI (2018) Belgium: Returns to Sudan violated principle of non-refoulement
- <sup>lxxix</sup> ECtHR (2020a) M.A. v. Belgium, 19656/18: § 109-111
- <sup>lxxx</sup> Statewatch (2020) Deportation Union: Rights, accountability and the EU's push to increase forced removals, Gkliati, M. (2020) ‘Frontex Return Operations and their Human Rights Implications’, in I. Soysüren and M. Nedelcu (eds) *Deportation of Foreigners: EU instruments, Nation-State practices and social actors’ involvement*. Peter Lang, forthcoming: 13-14
- <sup>lxxxi</sup> Webber, F. (2011) ‘How Voluntary Are Voluntary Returns?’, *Race & Class* 52(4), p. 98–107: 103-105, Caritas Europa et al. (2018) Recommendations for Humane Return Policies in Europe
- <sup>lxxxii</sup> Van Houte, M. and T. Davids (2014) ‘Moving Back or Moving Forward?: Return Migration, Development and Peace-Building’, *New Diversities* 16(2), p. 71–87: 78
- <sup>lxxxiii</sup> Kalir, B. and L. Wissink (2016) ‘The Deportation Continuum: Convergences between State Agents and NGO Workers in the Dutch Deportation Field’, *Citizenship Studies* 20(1); Cleton, L. and S. Chauvin (2020) ‘Performing freedom in the Dutch deportation regime: bureaucratic persuasion and the enforcement of ‘voluntary return’’, *Journal of Ethnic and Migration Studies* 46(1), p. 297-313.
- <sup>lxxxiv</sup> Newland, K. and B. Salant (2017) ‘Increased Focus on Forced Return of Migrants and Asylum Seekers Puts Many in Peril’, *Migration Policy Institute Online Journal*, <https://www.migrationpolicy.org/article/top-10-2017-issue-7-increased-focus-forced-return-migrants-and-asylum-seekers-puts-many> : 4
- <sup>lxxxv</sup> GCR (Greek Council for Refugees) (2020) Country Report: Greece (2019 Update), *Asylum Information Database (AIDA)*, <https://asylumineurope.org/reports/country/greece/> : 88-102
- <sup>lxxxvi</sup> Broomfield, M. (2018) ‘Investigation: Coercive ‘voluntary’ Deportations Leave Refugees Trapped in Jail and Facing Torture’, *The New Arab*, <https://www.alaraby.co.uk/english/indepth/>; Hänsel, V. (2020) ‘Returns Without Warranty - The Grey Zone of “Voluntary Return” in the Framework of the EU-Turkey Deal’, in J.-P. Cassarino (ed.) *La question de l'expulsion des étrangers dans les relations euro-méditerranéennes: faire la lumière sur la zone grise*. Les cahiers de Tunisie: 33-38
- <sup>lxxxvii</sup> Hänsel, V. (2020) ‘Returns Without Warranty - The Grey Zone of “Voluntary Return” in the Framework of the EU-Turkey Deal’, in J.-P. Cassarino (ed.) *La question de l'expulsion des étrangers dans les relations euro-méditerranéennes: faire la lumière sur la zone grise*. Les cahiers de Tunisie: 32-33, 35-36
- <sup>lxxxviii</sup> MSF (Medecins sans Frontieres) (2019) Trading in suffering: detention, exploitation and abuse in Libya, <https://www.msf.org/libya%E2%80%99s-cycle-detention-exploitation-and-abuse-against-migrants-and-refugees>
- <sup>lxxxix</sup> UNHCR (2020a) UNHCR’s life-saving flights from Libya resume after seven-month suspension, <https://www.unhcr.org/news/briefing/2020/10/5f894f954/unhcrs-life-saving-flights-libya-resume-seven-month-suspension.html>; UNHCR (2020b) UNHCR Update Libya (20 November 2020), <https://reliefweb.int/report/libya/unhcr-update-libya-20-november-2020-enar>
- <sup>xc</sup> UNHCR (2019) New UNHCR evacuation of refugees from Libya to Italy, as Tripoli fighting continues, <https://www.unhcr.org/news/press/2019/9/5d7a30584/new-unhcr-evacuation-refugees-libya-italy-tripoli-fighting-continues.html>; MSF (Medecins sans Frontieres) (2019) Trading in suffering: detention, exploitation and abuse in Libya, <https://www.msf.org/libya%E2%80%99s-cycle-detention-exploitation-and-abuse-against-migrants-and-refugees>

- [exploitation-and-abuse-against-migrants-and-refugees](#) ; Bathke, B. (2019) 'Stuck in Libya: UNHCR calls for more humanitarian evacuations', *Info Migrants*, <https://www.infomigrants.net/en/post/19503/stuck-in-libya-unhcr-calls-for-more-humanitarian-evacuations>
- <sup>xc</sup> McVeigh, K. (2019) 'Life-saving': hundreds of refugees to be evacuated from Libya to Rwanda', *The Guardian*, <https://www.theguardian.com/global-development/2019/sep/10/hundreds-refugees-evacuated-libya-to-rwanda>
- <sup>xcii</sup> IOM (2020a) First IOM Libya Voluntary Return Charter in Five Months Assists Over 100 Ghanaian Migrants <https://www.iom.int/news/first-iom-libya-voluntary-return-charter-five-months-assists-over-100-ghanaian-migrants>; IOM (2020b) More than 50,000 Migrants Benefited from Voluntary Humanitarian Return Assistance from Libya Since 2015, <https://www.iom.int/news/more-50000-migrants-benefited-voluntary-humanitarian-return-assistance-libya-2015>
- <sup>xciii</sup> Alpes, J. (2020) Emergency returns by IOM from Libya and Niger: A protection response or a source of protection concerns?, *Brot für die Welt and Medico International*: 12-15
- <sup>xciv</sup> Hänsel, V. (2020) 'Returns Without Warranty - The Grey Zone of "Voluntary Return" in the Framework of the EU-Turkey Deal', in J.-P. Cassarino (ed.) *La question de l'expulsion des étrangers dans les relations euro-méditerranéennes: faire la lumière sur la zone grise*. Les cahiers de Tunisie: 37
- <sup>xcv</sup> ECtHR (2019) N.A. v. Finland, 25244/18
- <sup>xcvi</sup> ECtHR (2019) N.A. v. Finland, 25244/18: § 57
- <sup>xcvii</sup> ECtHR (2019) N.A. v. Finland, 25244/18: § 60
- <sup>xcviii</sup> FRA (2020b) Migration: Fundamental Rights Issues at Land Borders: 4
- <sup>xcix</sup> PACE (2019) Pushback policies and practice in Council of Europe member States, Resolution 2299: § 1 and 7
- <sup>c</sup> PACE (2019) Pushback policies and practice in Council of Europe member States, Resolution 2299: § 8
- <sup>ci</sup> FRA (2020b) Migration: Fundamental Rights Issues at Land Borders: 20
- <sup>cii</sup> CPT 2020: § 53-60
- <sup>ciii</sup> RRE (Refugee Rights Europe) and End Pushbacks Partnership (2020) Pushbacks and Rights Violations at Europe's Borders: The State of Play in 2020: 70-71
- <sup>civ</sup> Gostoli, Y. (2020) 'Europe's chain of migrant expulsion, from Italy to Bosnia', *The New Humanitarian*, <https://www.thenewhumanitarian.org/news-feature/2020/11/17/europe-italy-bosnia-slovenia-migration-pushbacks-expulsion>
- <sup>cv</sup> HRW (2020) Violent Pushbacks on Croatia Border Require EU Action, <https://www.hrw.org/news/2020/10/29/violent-pushbacks-croatia-border-require-eu-action>; RRE (Refugee Rights Europe) and End Pushbacks Partnership (2020) Pushbacks and Rights Violations at Europe's Borders: The State of Play in 2020: 41-44
- <sup>cvi</sup> Info Migrants (2021) Critical situation for migrants at Italian-French border, <https://www.infomigrants.net/en/post/30151/critical-situation-for-migrants-at-italian-french-border>; Info Migrants (2020) 'If a migrant is in the Ventimiglia area, it's because he wants to leave', <https://www.infomigrants.net/en/webdoc/211/if-a-migrant-is-in-the-ventimiglia-area-it-s-because-he-wants-to-leave>
- <sup>cvi</sup> Anafe (2021) L'Etat français renvoie illégalement un enfant à la frontière franco-espagnole, <http://www.anafe.org/spip.php?article591>
- <sup>cvi</sup> RRE (Refugee Rights Europe) and End Pushbacks Partnership (2020) Pushbacks and Rights Violations at Europe's Borders: The State of Play in 2020: 55-58
- <sup>cix</sup> Clarke, L. (2018) 'In the hands of the Libyan Coast Guard: pushbacks by proxy', *Open Migration*, <https://openmigration.org/en/analyses/in-the-hands-of-the-libyan-coast-guard-pushbacks-by-proxy/>; ECRE (2020c) Med: Former Maltese Official Admits Push-Back while another 62 People are Left Stranded, <https://www.ecre.org/med-former-maltese-official-admits-push-back-while-another-62-people-are-left-stranded/> ; Carabott, S. (2020) 'Malta 'complicit' in Libya rights violations', *Times of Malta*, <https://timesofmalta.com/articles/view/malta-complicit-in-libya-rights-violations.837908>
- <sup>cx</sup> ECtHR (2014) Sharifi and Others v. Italy and Greece, 16643/09: § 212
- <sup>cx</sup> ECtHR (2020b) M.K. and Others v. Poland, 40503/17, 42902/17, 43643/17: § § 129-132.
- <sup>cxii</sup> ECtHR (2012) Hirsi Jamaa and Others v. Italy, 27765/09, GC: § 180
- <sup>cxiii</sup> ECtHR (2014) Sharifi and Others v. Italy and Greece, 16643/09: § 210-225).
- <sup>cxiv</sup> ECtHR (2020b) M.K. and Others v. Poland, 40503/17, 42902/17, 43643/17: § 174-86 and 204-11
- <sup>cxv</sup> ECtHR (2012) Hirsi Jamaa and Others v. Italy, 27765/09, GC: § 136-138 and 185-186
- <sup>cxvi</sup> ECtHR (2018) M.A. and Others v. Lithuania, 59793/17: §115
- <sup>cxvii</sup> Waters, N., E. Freudenthal and L. Williams (2020) 'Frontex at Fault: European Border Force Complicit in 'Illegal' Pushbacks', *Bellingcat*, <https://www.bellingcat.com/news/2020/10/23/frontex-at-fault-european-border-force-complicit-in-illegal-pushbacks/>
- <sup>cxviii</sup> European Ombudsman (2020) Ombudsman opens inquiry to assess European Border and Coast Guard Agency (Frontex) 'Complaints Mechanism', <https://www.ombudsman.europa.eu/en/news-document/en/134739>
- <sup>cxix</sup> Barigazzi, J. (2021) 'EU watchdog opens investigation into border agency Frontex', *Politico*, <https://www.politico.eu/article/olaf-opens-investigation-on-frontex-for-allegations-of-pushbacks-and-misconduct/>
- <sup>cx</sup> Strik, T. (2020) Pushbacks in the EU: How to end impunity?, *European Policy Centre*, <https://epc.eu/en/Publications/Pushbacks-in-the-EU-How-to-end-impunity~3a6efc>
- <sup>cx</sup> SRHRM (2020) Call for inputs for the Special Rapporteur's report on pushback practices and their impact on the human rights of migrants, <https://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/Pushback-practices.aspx>
- <sup>cxii</sup> FRA (2012) Fundamental rights: challenges and achievements in 2012: 55
- <sup>cxiii</sup> FRA (2020a) Forced return monitoring systems: State of play in EU Member States, <https://fra.europa.eu/en/publications-and-resources/data-and-maps/return?mdq1=dataset>

- <sup>cxxiv</sup> ENNHRI (European Network of National Human Rights Institutions) (2020b) Protecting human rights of migrants at the borders: Evidence and work of European National Human Rights Institutions: 18-20
- <sup>cxxv</sup> EPRS (2020b) The Return Directive 2008/115/EC: European Implementation Assessment, PE 642.840: 73
- <sup>cxxvi</sup> FRA (2020a) Forced return monitoring systems: State of play in EU Member States, <https://fra.europa.eu/en/publications-and-resources/data-and-maps/return?mdq1=dataset>
- <sup>cxxvii</sup> EC (2017b) 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, OJ 2017 L 339/83: 119
- <sup>cxxviii</sup> Alpes, J. (2019) 'After Deportation, Some Congolese Returnees Face Detention and Extortion', *Migration Policy Institute Online Journal*, <https://www.migrationpolicy.org/article/after-deportation-some-congolese-returnees-face-detention-and-extortion>; Alpes, J. and I. Majcher (2020) Who Can Be Sustainably Reintegrated After Return? Using Post-Return Monitoring for Rights-Based Return Policies, UNU CRIS; Ahumuza Onyoin, Ch. (2017) 'A Grim Return: Post- Deportation Risks in Uganda', *Forced Migration Review* 54, p. 81– 84; Iyodu, B. (2010) 'Uganda: The Silent Practice of Deportations', *Pambazuka News*, <https://www.pambazuka.org/governance/uganda-silent-practice-deportations>; Save the Children (2018) From Europe to Afghanistan: Experiences of Child Returnees; Bowerman, E. (2017) 'Risks Encountered after Forced Removal: The Return Experiences of Young Afghans', *Forced Migration Review* 54, p. 78– 80
- <sup>cxxix</sup> UNHCR and UNICEF (2014) Safe & Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe: 49
- <sup>ccxx</sup> Podeszfa, L. and Ch. Manicom (2012) 'Avoiding Refoulement: The Need to Monitor Deported Failed Asylum Seekers', *Oxford Monitor of Forced Migration* 2(2), p. 10– 15; Podeszfa, L. and F. Vetter (2013) 'Post- Deportation Monitoring: Why, How and by Whom?', *Forced Migration Review* 44, p. 68– 69
- <sup>ccxi</sup> EP (2020b) Implementation report on the Return Directive: European Parliament resolution of 17 December 2020 on the implementation of the Return Directive, 2019/2208(INI): § 35
- <sup>ccxii</sup> ECRE (2018a) Access to protection in Europe: Borders and entry into the territory: 16
- <sup>ccxiii</sup> ENNHRI (European Network of National Human Rights Institutions) (2020a) Guidance: Monitoring human rights of migrants at the borders: Building on the mandate and functions of National Human Rights Institutions: 6-7; ENNHRI (European Network of National Human Rights Institutions) (2020b) Protecting human rights of migrants at the borders: Evidence and work of European National Human Rights Institutions: : 36-38
- <sup>ccxiv</sup> BVMM (2020) About us, <https://www.borderviolence.eu/about/>
- <sup>ccxv</sup> DRC (2020) Bosnia and Herzegovina, <https://drc.ngo/our-work/where-we-work/europe/bosnia-and-herzegovina/>
- <sup>ccxvi</sup> ECRE (2018a) Access to protection in Europe: Borders and entry into the territory: 17
- <sup>ccxvii</sup> ECRE (2018a) Access to protection in Europe: Borders and entry into the territory: 16-17
- <sup>ccxviii</sup> EC (2020e) Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, COM(2020) 612
- <sup>ccxix</sup> ECRE at al. (2020b) Turning rhetoric into reality: New monitoring mechanism at European borders should ensure fundamental rights and accountability; ECRE (2020b) ECRE Comments on the Commission Proposal for a Screening Regulation COM(2020) 612; 36-39; Stefan, M. and R. Cortinovis (2020) 'Setting the right priorities: is the new Pact on Migration and Asylum addressing the issue of pushbacks at EU external borders?', *Asile Forum*, <https://www.asileproject.eu/setting-the-right-priorities-is-the-new-pact-on-migration-and-asylum-addressing-the-issue-of-pushbacks-at-eu-external-borders/>