Deregulation & Deportation

Dismantling of EU standards, disguised as “common return system”

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Executive summary

The recently agreed Return Regulation (RR) marks a nefarious dismantling of European Union (EU) standards on deportation non-citizens from its Member States' territories. The legal text agreed in June 2026 by the European Parliament and the Council and entering into force mainly in the coming year is an unprecedented deterioration of legal safeguards in contempt of good law-making and evidence.

Under the disguise of a Regulation, the RR affords EU countries the widest possible discretion to domestically legislate around and beyond EU rules, from the contents of return decisions and the possibility to offer voluntary departure periods to the definition of 'security cases', cooperation obligations, sanctions for non-compliance, and grounds for detention. Granting such sweeping powers to states turns the very aim of harmonisation of national systems on its head and defeats any prospect of effective oversight, monitoring and enforceability of the EU system, given that the near total of core RR rules can be exceeded by national provisions. In sum, the "common return system" hailed by the EU is a Regulation only in name.

The RR also brings about an extensive 'criminal law creep' that enables Member States to rely on their criminal law to exceed or circumvent EU rules altogether, and to (mis)use their criminal law against individuals deemed not to cooperate with a broad set of containment, surveillance and punishment rules throughout their deportation process. It also establishes a contestable 'security cases' derogation regime applicable to a broad range of people, including those who commit any offence punishable by a two-year imprisonment term. This includes every person irregularly entering or staying in some national legal orders. The 'security cases' derogation regime empowers states to impose indefinite pre-removal detention in prisons, criminal punishment, and indefinite entry bans.

Further tension with and direct contravention of established human rights standards underlies the RR rules on the concept of "return decision", on agreements or "arrangements" with non-EU countries for the purpose of establishing "return hubs", and on a regime of containment, surveillance and punishment of people set out through elaborate obligations on people to "cooperate" with their deportation.

The RR attempts to dismantle hard-fought safeguards of humane treatment of people through veiled deregulation of EU standards and unprecedented criminal law inroads into migration policy. This paper analyses the core nefarious elements of the agreed Regulation and calls for legal and policy contestation thereof at national and European level in view of its imminent implementation throughout the continent. At a minimum, Member States implementing the RR should:

- Refrain from enacting domestic rules permitting additional sanctions, grounds for detention, criminal penalties in the return process.

- Conduct a thorough assessment of the compatibility of the RR provisions with the state's primary EU law and international obligations. Such an assessment should be sufficiently thorough to allow domestic authorities and courts to:

- Interpret and apply RR provisions in compliance with human rights instruments they are a party to, in full consideration of existing jurisprudence of the Court of Justice of the European Union, the European Court of Human Rights and other relevant jurisdictions.

- Set aside those provisions that directly contravene human rights obligations, such as issuance of return decisions without prior *non-refoulement* assessment, non-suspensive appeals against return decisions or removal orders, indefinite pre-removal detention.

Introduction*

In just over a year, the European Union (EU) completed a nefarious dismantling of standards on deportation through an overhaul of the process and rules by which its countries seek to remove non-citizens from their territories.

On 11 March 2025, the European Commission presented a proposal for a Return Regulation (hereafter "RR")[1] with the aim of repealing the 2008 Return Directive.[2] This marked the withdrawal of the Commission's previous proposal to recast the Directive in 2018. On 8 December 2025, national governments in the Council of the European Union adopted their position, termed Council "general approach" on the proposal,[3] as the basis for interinstitutional negotiations with the European Parliament. For its part, the European Parliament agreed its own position on the text on 9 March 2026,[4] following an indefensible decision of the European People's Party (EPP) to align with far-right political groups and to push adoption of an "alternative compromise amendments" text,[5] circumventing the negotiations led by the Parliament rapporteur. By 1 June 2026, the EU co-legislators had reached a political agreement on the reform.[6]

The text of the RR is to enter into force upon publication in the Official Journal,[7] as already agreed by the Council and European Parliament and as analysed in the present paper. The European Parliament has proceeded to formal adoption of the text on 17 June 2026. The Member States have twelve months to prepare for the implementation of the RR in their national law and practice before it comes into full effect. The rules on returns to third countries and "return hubs" are immediately applicable, however.

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1 European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union*, COM(2025) 101, 11 March 2025, available here.

2 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 [2008] OJ L 348/98.

3 Council of the European Union, *Proposal for a Regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union*, 16521/25, 5 December 2025, available here.

4 European Parliament, *Report on the Proposal for a Regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union*, A10-0048/2026, 10 March 2026, available here.

5 European Parliament, *Alternative compromise amendments: Regulation of the of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union*, 9 March 2026, available here.

6 Council of the European Union, 'Council and Parliament reach deal on returns of illegally staying third-country nationals', 1 June 2026, available here.

7 Subject to renumbering of articles and recitals.

This paper echoes the sharp and wide criticism levelled by the Council of Europe, United Nations, civil society and others against both the original RR proposal and the co-legislators' positions and final adopted text as an affront to good law-making, contempt for literature and evidence on individual agency, participation and compliance in return procedures, unprecedented deterioration of legal safeguards.[8] The adoption of the RR constitutes an **unacceptable retreat of EU legislation and a direct affront to human rights and general principles** that supersede any contrary Regulation provision **and to an abundance of Court of Justice of the European Union (CJEU) jurisprudence on return** from 2008 to present. The rules are liable to proliferate precarity for people, cause harm, and undermine the rule of law. The RR must therefore be opposed in its entirety and most of its provisions must be disapplied by domestic authorities and courts, as they are required to set aside any provision that breaches their primary EU law obligations.[9]

This paper offers a prompt analysis of the core nefarious elements of the consolidated agreed text that endanger human rights and warrant legal and policy contestation at national and European level in the months and years to come. Focus is primarily placed on (i) the general threads of 'criminal law creep' and deregulation of deportation rules pursued by the Council, and on (ii) selected provisions governing the Return Regulation scope, the concept of "return decision", including mutual recognition of such decisions, agreements or "arrangements" with non-EU countries on "return hubs", the regime of containment, surveillance and punishment of people through elaborate obligations to "cooperate".

8 For instance, Council of Europe Commissioner for Human Rights, 'Council of Europe Commissioner alerts to human rights risks in upcoming EU Returns Regulation', 2 March 2026, available here; United Nations Special Rapporteur on the human rights of migrants et al., OL OTH 166/2025, 26 January 2026, available here; ECRE, 'ECRE Statement: European Parliament Vote on the Return Regulation', 26 March 2026, available here; PICUM, 'Far right hijacks EU deportation bill', 10 March 2026, available here; ECRE et al., 'Joint Civil Society Statement on the Council's Position on the Return Regulation Proposal', 4 December 2025, available here; *Comments on the proposal for a Return Regulation*, June 2025, available here; PICUM et al., 'Over 250 Organisations: Inhumane Deportation Rules Should be Rejected', 15 September 2025, available here; The Left, Assessing the Impacts of the 2025 Returns and Safe Countries European Commission's Proposals, 10 December 2025, available here.

9 CJEU, C-924/19 PPU *Országos Idegenrendeszeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, 14 May 2020, para 183.

Overarching threads of the new Return Regulation

'Criminal law creep'

States' increasing interest in (mis)use of their criminal law against undocumented people runs as a consistent thread throughout the Return Regulation. The text enables Member States to rely on criminal law so as to exceed or circumvent EU rules altogether.[10] Since criminal law in the EU largely remains non-harmonised, the effects of the Regulation may therefore fundamentally differ from one country to another depending on the criminal standards defined by national prerogative. This is starkly reflected in the rules agreed by co-legislators on:

- The **possibility to derogate from the entire Return Regulation when Member States impose return as a criminal law sanction** or as a consequence thereof.[11] Member States have widely different standards on the use of return as a sentence in criminal proceedings.[12]

- The application of the contestable 'security cases' derogation regime to persons committing, inciting or participating in any criminal offence that carries a term of imprisonment of at least two years in the Member State or multiple offences punishable by a one-year imprisonment term or suspected as intending to do so (see **Security Cases**).[13]

- The use of prisons for (indefinite) administrative pre-removal detention of persons caught under the 'security cases' derogation regime.[14]

- The use of "investigative measures" aimed at "preparing or ensuring an effective return".[15]

Furthermore, the Regulation grants Member States various powers to punish individuals in the return process through **express provisions of criminal imprisonment sentences** against individuals who do not comply with the **Containment, Surveillance & Punishment Regime** entrenched in the return process.[16] The CJEU has long found that a custodial sentence of imprisonment imposed for reasons of unauthorised stay on the territory *before* the return procedure has been exhausted is impermissible and contrary to the

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10 Similar possibilities have been introduced under the New Pact on Migration and Asylum. Note, for instance, Article 18(6) Screening Regulation.

11 Article 2(4)(c) RR compromise text.

12 (Greece) Article 72(1) Criminal Code, Law 4619/2019 foresees deportation as a criminal sanction for persons convicted of felonies punishable by imprisonment whose stay in the country "does not align with the terms of social coexistence".

13 Article 16(1)(b) and (1)(ba) and (2a) RR compromise text.

14 Article 16(3)(c) and (d) RR compromise text.

15 Article 23a RR compromise text.

16 Article 23b(1)(f) and Recital 28 RR compromise text.

objectives of EU return rules since it delays return and thereby thwarts the effectiveness of the administrative process.[17]

The Regulation also introduces **oblique forms of punishment** by enabling states to (i) impose financial penalties and any "other measures or consequences" in their domestic law against individuals who do not comply with the broad set of obligations,[18] (ii) seize "personal belongings, electronic devices, and other items of relevance" as an "investigative measure",[19] (iii) claims of the costs of removal from individuals who request a withdrawal or amendment of their entry ban.[20]

It is through such rules that the EU doubles down on criminal law inroads into a return framework that should remain non-punitive in nature and only pursue "effective return" of people have no right to stay as its core objective.[21] This criminal law creep conflates the Return Regulation's purpose of delivering the outcome of return of people without a right to stay in EU countries with punishing human beings for the mere fact of not leaving the territory of a country.[22] The 'security cases' regime starkly illustrates that conundrum: the stated objective of "swift removal" of people who "threaten the security of the Member States"[23] is incongruent with provisions granting express powers to subject them to indefinite pre-removal detention.

The legislative design of the Return Regulation is therefore liable to be perceived by state authorities as encouraging and facilitating the performance of increasingly repressive and harmful measures against individuals present on their soil and subject to their jurisdiction.

Further nefarious effects of the criminal law creep pursued by the Regulation include a weakening of certainty in the legal orders of the Member States. Blurring the boundaries between administrative and criminal law, i.e. bodies of rules adjudicated by separate jurisdictions in many Member States, foreseeably creates risks of confusion both on matters of court competence and on substantive standards applicable in sites used for return proceedings. For instance, would an individual detained in a Greek prison for the purpose of removal under **Article 16(3)(c) or 34(1)** be challenging their detention conditions through

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17 CJEU, C-329/11 *Achugbabian*, 6 December 2011, para 39; C-61/11 PPU *El Dridi*, 28 April 2011, para 59. The case law remains pertinent within the boundaries set by subsequent case law: C-290/14 *Celaj*, 1 October 2015, para 29; C-47/15 *Affum*, 7 June 2016, paras 54 and 64; C-444/17 *Arib*, 19 March 2019, paras 40 and 66; C-806/18 *JZ*, 17 September 2020, paras 38-39; C-143/22 *ADDE*, 21 September 2023, para 44.

18 Article 23b(1)(g) and (h) RR compromise text.

19 Article 23a(1)(b) RR compromise text.

20 Article 11(4a) RR compromise text.

21 Article 1(1) RR compromise text. See also CJEU, C-150/24 *Aroja*, 5 March 2026, para 55; C-313/25 PPU *Adrar*, 4 September 2025, para 50; C-241/21 *Politsei- ja Piirivalveamet*, 6 October 2022, para 32.

22 On the use of detention, for instance, note Joint Statement from FAiR, GAPS, MIrreM and MORE in Response to the Reference to these Four Projects in the European Commission's Proposal for a Regulation Establishing a Common System for Returns, 21 March 2025, available here: "the research demonstrates that detention is not a suitable tool for its intended purpose, as it is often used punitively rather than as a governance mechanism. Findings also highlight that eliminating detention is both feasible and beneficial, as evidenced by existing examples, and that other measures outside of confinement can be effectively implemented with fewer harmful consequences."

23 Recital 22 RR compromise text. See also RR proposal, Explanatory Memorandum, 11.

objections before an Administrative Court[24] or by appealing to the Sentence Execution Court established by prison legislation?[25] And what happens if said individual is handed an **Article 23b(1)(f)** imprisonment sentence for failing to comply with obligations to cooperate in their return?

Deregulation & defeat of EU harmonisation

The main stated objectives of the "common return system" set out in the Return Regulation are to clarify and simplify rules on returns for both Member States and individuals,[26] and to establish common rules on returns through "the necessary degree of uniformity and effectiveness" offered by an EU Regulation.[27]

Governments represented in the Council have secured the opposite. The text agreed by co-legislators introduces sweeping provisions into the text that grant Member States broad powers to define return rules beyond or *in lieu* of EU standards across core tenets of the Return Regulation. The text expressly permits them to:

1. Derogate from the Return Regulation altogether when they impose return as a sanction under their criminal law.[28]
2. Extend the use of the special derogation regime for 'security cases' to "any other security threat" they identify in their domestic law beyond the extensive circumstances listed in the Return Regulation.[29]
3. Enact "other measures" to address security risks beyond the derogations introduced by the 'security cases' regime of the Return Regulation.[30]
4. Refrain from issuing a return decision when deporting individuals to another EU country under the "transfer procedure" of the Schengen Borders Code (SBC)[31] or a bilateral agreement, or when apprehending a person exiting an external border.[32]
5. Decide whether or not to indicate a country of return at the time of issuing a return decision.[33]
6. Decide whether to enact rules on when voluntary departure is granted, on the grounds for granting a voluntary departure period and on its duration.[34]
7. Invoke further grounds for immediately removing an individual from their territory beyond those listed in the Return Regulation.[35]

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24 (Greece) Article 14 Return Act, Law 5226/2026.
25 (Greece) Articles 6A and 86 Penitentiary Code, Law 2776/1999.
26 Recital 8 RR compromise text. See also Explanatory Memorandum, 5, 9, 10.
27 RR proposal, Explanatory Memorandum, 6, 10.
28 Article 2(4)(c) RR compromise text.
29 Article 16(1)(ca) RR compromise text.
30 Article 16(4) RR compromise text.
31 Article 23a Regulation (EU) 2016/399 of the European Parliament and 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 [2016] OJ L 77/1.
32 Article 8(1) RR compromise text.
33 Article 7(4) and Recital 15 RR compromise text.
34 Article 7(1a) to (1c) RR compromise text.
35 Article 12(1)(da) RR compromise text.

8. Decide whether a return decision is directly enforceable or whether a separate removal decision is required prior to removing an individual from their territory.[36]
9. Enact additional grounds for imposing entry bans beyond those listed in the Return Regulation.[37]
10. Enact "relevant additional measures in relation to return" to impose on individuals, beyond the extensive list of obligations set out in the Return Regulation.[38]
11. Enact "other investigative measures" than those introduced by the Return Regulation.[39]
12. Enact "any other measure or consequence" against non-compliance on the part of an individual with the wide set of "cooperation" obligations, beyond the broad list of sanctions laid down in the Return Regulation.[40]
13. Enact additional criteria for determining a "risk of absconding" beyond the broad presumptions and criteria already set out in the Return Regulation.[41]
14. Enact additional alternatives to detention beyond those listed in the Return Regulation.[42]
15. Enact additional detention grounds beyond those listed in the Return Regulation.[43]
16. Decide whether suspensive effect of appeals is granted *ex officio* or upon request.[44]

The EU legislature has therefore adopted an instrument of direct application that affords Member States the **widest possible discretion to domestically legislate around and beyond it**. This is a deeply flawed approach to EU rule-making that turns the very aim of harmonisation of national systems on its head. Crucially, it also defeats any prospect of effective oversight, monitoring and enforceability of the Regulation by the Commission and European Parliament, given that the near total of core Return Regulation rules may be exceeded by national provisions. In essence, the Regulation promotes **deregulation through a return of legislative powers to national governments under the guise of a harmonisation instrument**. In sum, it is an EU Regulation only in name.

36 Article 12(2) RR compromise text.
37 Article 10(2) RR compromise text.
38 Article 21(2)(la) RR compromise text. Note also Recital 31 RR compromise text: "Common rules, without restricting the right of Member States to establish additional measures and criteria in national law, should streamline requirements under the obligation to cooperate and the criteria for determining a risk of absconding."
39 Article 23a(1)(c) RR compromise text.
40 Article 23b(1)(h) RR compromise text.
41 Article 21a(2)(h) RR compromise text.
42 Article 23c(1)(c) RR compromise text.
43 Article 29(3)(f) RR compromise text.
44 Article 28(1) RR compromise text.

Analysis of selected provisions of the RR

Scope of EU return rules

Interplay with the Common European Asylum System

The adopted text appears to have taken some steps towards addressing contradictions between the original RR proposal and the Regulations adopted by the EU legislature following the 2024 reform of the Common European Asylum System (CEAS). **Article 2(3)** provides that the application of the Return Regulation is "without prejudice" to the Asylum Procedures Regulation (APR),[45] the Return Border Procedure Regulation (RBPR)[46] and the Asylum and Migration Management Regulation (AMMR).[47]

Despite this proviso, however, certain provisions directly contradict rules set out in CEAS instruments, contrary to the proposal's stated objective of aligning return standards to the New Pact on Migration and Asylum instruments.[48] Specifically, **Article 4(3)** does not envision EU countries as "countries of return" and **Article 8(2)** in principle forbids Member States from issuing decisions ordering return *within* the EU. This runs counter to **Articles 37 and 38(1)(c) APR** which *require* Member States to immediately adopt a return decision when they dismiss an asylum claim as inadmissible on the ground that the individual holds international protection in another EU country (see **Returns Within the European Union**). Such contradictions in forthcoming EU law standards are liable to lead to confusion, legal uncertainty and arbitrary application in practice.

Derogations from the application of the RR

Article 2(4) allows Member States to circumvent the scope of application of the Return Regulation in the cases of persons:

(a) Refused entry at external borders pursuant to Article 14 of the Schengen Borders Code. The text maintains the Commission proposal's codification CJEU case law to correctly point out that a refusal of entry may only be issued at external Schengen borders.[49]

(b) Apprehended or intercepted in connection with an unauthorised external border crossing and have not subsequently obtained an authorisation or right to stay in that country.

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45 Regulation (EU) 2024/1348 of the European Parliament and of the Council of 22 May 2024 establishing a common procedure for international protection in the Union [2024] OJ L 22.5.2024.

46 Regulation (EU) 2024/1349 of the European Parliament and of the Council of 22 May 2024 establishing a return border procedure [2024] OJ L 22.5.2024. Recital 32 RR compromise text appears to address the issue of calculation of detention periods spent under the RBPR and the RR, not accumulated under the Council text.

47 Regulation (EU) 2024/1351 of the European Parliament and of the Council of 22 May 2024 on asylum and migration management [2024] OJ L 22.5.2024.

48 RR proposal, Explanatory Memorandum, 6, 10.

49 CJEU, C-143/22 *ADDE*, 21 September 2023, para 36; C-444/17 *Arib*, 19 March 2019, paras 45 and 67; C-47/15 *Affum*, 7 June 2016, para 69.

(c) Subject to return as a domestic law criminal sanction.
(d) Facing extradition.

The terms "subsequently obtained an authorisation or right to stay in that country" in **Article 2(4)(b)** should be understood as including people who apply for asylum after irregularly entering the territory of a Member State, as stated by the Commission in the Return Handbook.[50] This is not explicit in the text, though the APR and AMMR supersede the application of the Return Regulation as *lex specialis*, per the express reference of **Article 2(3)**.

The text also fails to incorporate the important clarifications brought by CJEU case law and echoed in the Return Handbook[51] on the meaning of the terms "in connection with". The jurisprudence of the Court specifies that there needs to be a "direct temporal and spatial link between the apprehension or interception of the third-country national and the crossing of the external border of a Member State", meaning that the person is apprehended or intercepted "at the very time of the irregular crossing of the border or near that border after it has been so crossed".[52]

In any event, there is neither principled reason nor harmonisation merit in maintaining a derogation from common return rules under the above circumstances. Practice also reveals that Member States making use of the derogation under point (b), currently found in Article 2(2)(a) of the Return Directive, resort to arbitrary, systematic deportation orders against entrants who (i) apply for asylum and thereby enjoy an authorisation to stay on the territory until their claim is heard, (ii) have not been apprehended in spatial and temporal proximity to an irregular border crossing. Greece is an instructive example. It is among the top five Member States issuing orders to third-country nationals and stateless persons to leave its territory. Return decisions issued by police authorities follow a standardised format and fail to specify a country of return (see **Country of Return**). In 2024, return decisions issued under the Return Directive (12,390) were far exceeded by "deportation decisions" taken under 2005 national legislation in derogation from the Directive (19,239). This was repeated in 2025, with 11,877 return decisions and 14,650 "deportation decisions". The latter are systematically issued to asylum seekers arriving on the islands, including people who come from countries with near-100% recognition rates such as Syria, Afghanistan, Palestine, Yemen and Sudan.[53]

The impact of the derogation is particularly felt in the near-automatic imposition of pre-removal detention in decisions taken outside the scope of the Directive. More than 99% of such "deportation decisions" issued by Greece in 2024 and 2025 were accompanied by a detention order,[54] despite the absence of a reasonable prospect of removal in most cases.[55]

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50 Return Handbook, para 2.1.
51 *Ibid*.
52 CJEU, C-444/17 *Arib*, 19 March 2019, para 46; C-47/15 *Affum*, 7 June 2016, para 72.
53 RSA, *Deportation and immigration detention statistics in Greece in 2025: A constant practice of deprivation of refugees' liberty*, March 2026, available here; *Immigration detention statistics in Greece in 2024: Systematic deportation and detention orders against refugees*, May 2025, available here.
54 *Ibid*.
55 The European Commission has explicitly raised the matter with Greece: European Commission, *Enhancing collaboration for strengthening Returns*, Ares(2024)990858, 9 February 2024, 4.

Unclear scope on returns within the European Union

The RR text is riddled with ambiguity and inconsistency as regards the applicability of the Return Regulation to returns of third-country nationals *within* the European Union, i.e. from one Member State to another.[56]

RR scope: Returns only to third countries
art 2(1), 4(3), 4(4) RR

RR return decisions for transfers of people *within* the EU

Category of people subject to transfer to an EU country	**RR rules**	**Other EU *acquis***
People granted international protection in the other MS (inadmissible asylum claim)	Forbidden art 8(2) RR	Mandatory art 37 APR
People seeking asylum in either of the two MS (Dublin procedure)	-	Forbidden art 36 AMMR
People with no right to stay in either MS, caught in internal Schengen borders under bilateral cooperation between the two neighbouring MS	Optional art 8(1)(a) RR	Optional art 23a(2) SBC
People with no right to stay in either MS bound by bilateral readmission agreement or arrangement	Optional art 8(1)(b) RR	-

A significant number of people – not least persons whose asylum claim is dismissed on the ground that they already hold international protection in another EU country – and are faced with deportation within the EU that falls outside the scope of intersecting EU law instruments such as the AMMR[57] and the Schengen Borders Code.[58] In 2024, for example, 10,775 third-country nationals returned from one Member State to another following an order to leave. In 2025, the number rose to 19,950. Germany was the main country carrying out such returns: 3,315 in 2024 and 6,780 in 2025.[59]

The ambiguity of the original RR proposal as to the applicability of the Regulation to returns within the EU has not been alleviated by the co-legislators. **Article 2(1)** of the agreed text states that the RR applies to "third-country nationals staying illegally on the territory of *the Member States*", whereas the current equivalent provision found in Article 2(1) of the Return Directive refers to "third-country nationals illegally

56 On the intersecting EU law standards governing transfers within the EU, see also PRO ASYL, *Submission to the Committee of Ministers of the Council of Europe in the case of H.T. v. Germany*, 23 June 2025, available here.

57 "Take back" procedures exclude beneficiaries of international protection: Article 36(1) AMMR.

58 Transfer procedures for people apprehended at internal Schengen borders in the context of bilateral border control cooperation exclude beneficiaries of international protection: Article 23a Schengen Borders Code.

59 Eurostat, migr_eirtn1.

staying on the territory of *a Member State*". The wording of the proposal would point to the conclusion that third-country nationals who enjoy a right to stay in *any* EU country are excluded from the RR.

Similarly, **Article 4(4)** defines "return decision" as an administrative or judicial decision "imposing or stating an obligation to leave the territory of the Member States". The definition restricts the current definition in Article 3(4) of the Return Directive insofar as it is circumscribed to orders "to leave the territory of the Member States" altogether. This is echoed by **Article 4(3)** which strictly limits the definition of "country of return" to non-EU countries, and by **Article 10(8)** per which entry bans "start from the date on which the third-country national left the territory of the Member States". On literal interpretation of those definitions, EU Member States would not qualify as "countries of return" and return of third-country nationals *within* the Union would fall outside the scope of a "return decision" in the meaning of the RR.

These definitions are, however, directly contradicted elsewhere in the agreed text of the RR. **Article 8(1)** allows Member States to refrain from issuing a return decision in the cases of transfers of third-country nationals *inter se* either under **Article 23a SBC** or under any bilateral agreement or arrangement therewith. On the one hand, that provision implies that a return decision under the RR *may* in principle be issued for the purpose of return to another Member State. On the other hand, Article 8(1) confirms that certain transfers of third-country nationals between Member States *do* come within the remit of the RR, since they are not listed in the **Article 2(4)** derogations from its scope. The same reading has been confirmed by CJEU case law on the corollary provisions of the current Return Directive.[60]

On the other hand, **Article 8(2)** forbids Member States from immediately issuing a return decision to irregularly staying third-country nationals holding a valid residence permit, long-stay visa or other authorisation offering a right to stay in another Member State. Under **Article 8(3)**, these people must be "required" to "go to the territory of that other Member State immediately" on their own means.[61] Only in the event they do not comply with that obligation can the state issue a return decision against them and/or request said country to "support the departure" of these persons towards its territory according to **Article 44(1)(da)**. These cases therefore also fall within the scope of the RR.[62]

CJEU case law clarifies that Member States cannot immediately issue a return decision on the assumption that the person will likely not comply with the obligation to return to the EU country where they hold a right to stay.[63] Yet, a similar conundrum emerges upon juxtaposition of these rules to the APR provisions. **Articles 37 and 38(1)(c) APR** states that a Member State dismissing a person's asylum application as inadmissible on the ground that they have already been granted international protection in another EU country[64] *must* issue them a return decision "respecting [the Return Directive]" either "at the same time and together with

60 CJEU, C-47/15 *Affum*, 7 June 2016, paras 82-83.

61 CJEU, C-629/22 *Migrationsverket*, 26 April 2023, paras 26-27.

62 CJEU, C-673/19 *M*, 24 February 2021, para 36.

63 CJEU, C-629/22 *Migrationsverket*, 26 April 2023, paras 26-27 and 33.

64 Article 38(1)(c) APR. This ground of inadmissibility of the asylum application may be applied without a prior interview of the asylum seeker: Article 13(11)(e) APR.

the decision rejecting the application for international protection or without undue delay thereafter". This would necessarily require Member States to immediately issue a return decision against them.

The proposal would therefore lead to circumstances where **Member States would have to abide by conflicting obligations under two separate EU Regulations**. Though states would have to give precedence to gives precedence to APR standards over RR provisions in line with **Article 2(3)**, doing so would require them to breach the **Article 8(2)** prohibition on issuing return decisions to people who have a right to stay in another EU country before they have been given the opportunity to go there on their own.

Similar issues would arise in respect of other lawfully residing third-country nationals who move between Member States and e.g. highly skilled "Blue Card" workers, students or researchers, who are to be returned to the Member State that issued their original residence permit. Relevant Directives provide that such transfers should be based on return decisions,[65] contrary to the **Article 8(2)** prohibition.

Derogation regime for a 'catch all' class of 'security cases'

Established case law of the CJEU reminds Member States that restrictive measures taken against non-nationals in matters of residence for reasons of public policy, public order or public security must be based on individual conduct that reaches a sufficient level of severity. The Court adopts a narrow reading of those concepts in the interpretation of the Return Directive, highlighting the requirement of "a **genuine, present and sufficiently serious threat affecting one of the fundamental interests of society**".[66] That standard has been applied to related concepts in other EU instruments such as "danger to the community" and "compelling reasons of public order" in the Qualification Directive[67] or "national security" in the Reception Conditions Directive.[68]

Conversely, **Article 16(1) and (2a)** of the RR grants Member States astonishingly broad, open-ended powers to classify as 'security cases' individuals who:

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65 Recital 61 Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment (Blue Card Directive) [2021] OJ L 382/1; Recital 50 Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast) [2016] OJ L 132/21.

66 CJEU, C-18/19 *Stadt Frankfurt am Main*, 2 July 2020, paras 44-46.

67 CJEU, C-8/22 *Commissaire général aux réfugiés et aux apatrides*, 6 July 2023, para 55; C-373/13 *H.T.*, 24 June 2015, paras 77-79, regarding Articles 14(4)(b) and 24(1) 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 (recast) [2011] OJ L 337/9

68 CJEU, C-601/15 PPU *J.N.*, 15 February 2016, para 67 regarding Article 8(3)(e) Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) [2013] OJ L 180/96.

- Have committed or intend to commit any of the 32 offences listed in the Council Framework Decision on the European Arrest Warrant[69] according to "reasonable indications".
- Have committed, incited or participated in any criminal offence punishable by national law by a term of imprisonment of at least two years or a combination of offences punishable by a one-year imprisonment term or intend to do so, according to "reasonable indications".
- Are involved in or incite Counter-Terrorism Directive[70] terrorist offences, offences relating to a terrorist group and offences related to terrorist activities or intend to do so, according to "reasonable indications".
- Pose a "threat to public policy, to public security or to national security".[71]
- Are subject to a Schengen Information System (SIS) alert for refusal of entry and stay.[72]
- Pose "any other security threat as identified under national law" according to "reasonable indications".

Here, the text epitomises both an **impermissible attempt to misuse the criminal law** of the Member States and an **effort to deregulate existing EU standards** so as to create a **'catch all' class of 'security cases'** going well beyond situations of people who "threaten the security"[73] of host societies.

The broad, open-ended categories listed in **Article 16(1) and (2a)** extend the reach of the 'security cases' regime to people whose conduct in no way meets the threshold of severity of a genuine, present and sufficiently serious threat. Several countries e.g. Germany, France or Greece foresee imprisonment terms of at least one year for criminal offences such as "illegal entry" or "illegal stay" in their domestic law.[74] This means that **the 'security cases' derogation regime introduced in the RR would cover virtually all persons entering or present in an irregular situation** in an EU country. It would also cover a long list of misdemeanours such as road traffic offences. In Greece, for instance, this includes dangerous driving,[75]

69 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States [2002] OJ L 190/1.

70 Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism [2017] OJ L 88/6.

71 CJEU, C-18/19 *Stadt Frankfurt am Main*, 2 July 2020, paras 44-46: "'risk to public policy'… presupposes, in any event, the existence, in addition to the disturbance of the social order which any infringement of the law involves, of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society… 'public security'… a threat to the functioning of institutions and essential public services and the survival of the population, as well as the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations, or a risk to military interests, may affect public security…"

72 Article 24 Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks [2018] OJ L 312/14.

73 Recital 22 RR compromise text.

74 (Germany) Section 95(1) Residence Act; (Greece) Article 83(1) Law 3386/2005, as amended by Article 27 Law 5226/2025; (France) Article L821-1 Aliens Entry and Residence and Asylum Code.

75 (Greece) Article 290a Criminal Code.

driving despite confiscation of a driver's licence,[76] damage to roadworks,[77] advertising on highways, parking on railroads, failure to award priority to trains or to stop before crossing rail tracks.[78]

The "SIS alert for refusal of entry and stay" ground has equally far-reaching implications. Countries like Germany have issued SIS alerts against recognised refugees who leave the EU country that granted them protection and seek asylum anew.[79]

The RR, of course, goes further. The permissive, open-ended **Article 16(1)** categories are indicative and in no way preclude Member States from extending the 'security cases' regime to "any other security threat" they identify in their domestic law. This strikingly runs counter to the EU law requirement that such derogations be strictly interpreted "so that their scope cannot be determined unilaterally by each Member State without any control by the institutions of the European Union".[80]

The RR lays down severe legal consequences for individuals caught under the 'security cases' derogation regime. People falling under any of the above categories are:

- Only informed of the essence of the grounds on which a return decision is taken against them.[81]
- Not granted voluntary departure, as a rule.[82]
- Banned from re-entering the territory for 20 years or even indefinitely.[83]
- Detainable for the purpose of removal on the sole ground of qualifying as a 'security case'.[84]
- Indefinitely detainable for the purpose of removal.[85]
- Detained for the purpose of removal regular prisons without unequivocal separation from people serving a criminal sentence.[86]
- Liable to face "other measures under national law" aimed at addressing "the threat to public policy, to public security or to national security".[87]

Both the scope and effects of the 'security cases' regime set out in **Article 16** of the agreed RR text breach the general EU law principles of proportionality and legal certainty, in addition to human rights such as the right to liberty or the right of defence.

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76 (Greece) Article 98(4)(b) Road Traffic Code, Law 5209/2025.

77 (Greece) Article 51(5) Road Traffic Code.

78 (Greece) Articles 38(11)(f), 30(8) and 31(2) Road Traffic Code.

79 RSA & Stiftung PRO ASYL, *Recognised refugees in Greece – 2026*, April 2026, 14, available here.

80 CJEU, C-18/19 *Stadt Frankfurt am Main*, 2 July 2020, para 42; C-554/13 *Zh. and O.*, 11 June 2015, para 48.

81 Article 7(3) RR compromise text: "where national law provides for the right to information to be restricted or where it is necessary to safeguard public order, public security or national security and for the prevention, investigation, detection and prosecution of criminal offences".

82 Article 16(2) Recital 22 RR compromise text.

83 Article 16(3)(a) and Recital 22 RR compromise text.

84 Article 16(3)(b) RR compromise text.

85 Article 16(3)(d) RR compromise text.

86 Article 16(3)(c) RR compromise text.

87 Article 16(4) RR compromise text.

Return decision

Country of return

Both the original RR proposal and the agreed RR text introduce a broad expansion of the scope of countries to which states may order an individual to travel. **Article 4(3)** expands the categories of "countries of return" to which an individual may be ordered to leave. In addition to the country of origin or habitual residence, a "country of return" may be a country determined as a first country of asylum or a safe third country for that person in the context of an asylum process, regardless of whether or not the Member State in question applies the APR, a country of transit, a country where the person has a right to enter and reside, or a country which accepts the person based on an agreement or an informal "arrangement" concluded under **Article 17** (see further **Return Hubs**).

All of the above are defined as "third countries" to the EU and thereby exclude EU Member States. The internal contradictions of the proposal on the matter of returns within the EU is discussed in **Returns within the European Union**.

The definition employed above further dissociates the "return procedure" from the ordinary meaning of the notions of 'return' and 'readmission'.[88] "Return" in EU law jargon is no longer being conceptualised as "going back" to a country, as stated in Article 3(3) of the Return Directive. The EU legislature instead promotes a vision of **"return" as euphemism for deportation in the likely direction of places never visited or encountered before**. That much is confirmed by the definitions of "return" in **Article 4(4a)** and "voluntary return" in **Article 4(6)**.

Crucially, **Article 7(4)** and **Recital 15** permit states to issue a return decision without indicating a "country of return". States would thereby be able to impose a legal obligation on an individual to leave their territory without a specified destination. **Article 7(4b)** explicitly permits Member States to adopt a return decision even where removal to the country of return they specify would be impermissible due to a risk of *refoulement*, provided that they subsequently postpone removal.

The provisions are in clear contravention of the *non-refoulement* principle as elaborated by CJEU case law. The determination of **a specified destination country is an essential element of the decision imposing an obligation to leave**: "the actual imposition or declaration of an obligation to return constitutes one of the two components of a return decision, such an obligation to return being inconceivable… unless a destination… is identified".[89] They also attempt to circumvent the general, well-established prohibition on adopting a return decision without prior assessment of risks of *refoulement* or of breach of other human

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88 ECRE, *Comments on the proposal for a Return Regulation*, June 2025, 12: "the term 'country of return' is a misnomer".

89 CJEU, C-202/25 *Tadmur*, 26 March 2026, paras 31 and 42-43; C-636/23 *Al Hocaima*, 1 August 2025, para 70; C-924/19 PPU *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, 14 May 2020, para 115. See also CJEU, C-156/23 *Ararat*, 17 October 2024, para 34; C-143/22 *ADDE*, 21 September 2023, para 41; C-663/21 *Bundesamt für Fremdenwesen und Asyl*, 6 July 2023, para 46.

rights in the event of removal to the specified destination country, as set out in constant CJEU case law.[90] In fact, where return to the specific country in question is precluded due to *non-refoulement* considerations, the Court precisely stresses that states "cannot… adopt a return decision without designating the country of destination in order to make up for the fact that the return of the third-country national concerned to his or her country of origin is precluded."[91]

EU legislators' attempts to flout well-established primary EU law and jurisprudential standards carry serious consequences in practice. The adopted provisions of the Return Regulation in essence place an unreasonable and disproportionate expectation on individuals, among others, (i) to organise their departure,[92] (ii) to comply with the extensive duties laid down in **Article 21**, including to not "verbally oppose the return",[93] and (iii) to leave within a set departure period (if provided by the state's domestic law)[94] without knowing where they are being ordered to travel.

Initiating return proceedings where return is legally prohibited or otherwise not feasible is both harmful and unnecessary a use of administrative resources.[95] On the one hand, undermining legal certainty in the return process inevitably hampers the state's own ability to effectively and predictably organise a person's departure from its territory.[96] Return decisions without a specified destination or an assessment of legal obstacles to removal, often adopted in standardised format, cannot be effectively implemented or followed up by the authorities involved. The Commission and Council have confirmed as much in their Schengen Evaluations of national return practice in countries like Greece,[97] Czechia[98] or Croatia.[99] The Council itself has conceded in **Recital 18b** that return decisions without a country of return are unenforceable and should not be subject to mutual recognition.

On the other hand, a return decision without a specified destination is unenforceable by the state but still produces legal effects against the individual, imposes an obligation upon them to depart from the territory,

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90 CJEU, C-202/25 *Tadmur*, 26 March 2026, paras 35-36; C-313/25 PPU *Adrar*, 4 September 2025, paras 60-64; C-349/24 *Nuratau*, 5 June 2025, paras 49-50; C-663/21 *Bundesamt für Fremdenwesen und Asyl*, 6 July 2023, paras 49-50; C-69/21 *Staatssecretaris van Justitie en Veiligheid*, 22 November 2022, para 56; C-924/19 PPU *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, 14 May 2020, paras 116-119; C-82/16 *K.A.*, 8 May 2018, para 103; C-249/13 *Boudjilida*, 11 December 2014, para 49.

91 CJEU, C-202/25 *Tadmur*, 26 March 2026, para 41.

92 Recital 15b RR compromise text: "The third-country national with an obligation to leave should have the primary responsibility for departing the territory of the Member States."

93 Article 21(2)(aa) RR compromise text.

94 Article 7(1a) RR compromise text.

95 Council of Europe, *Ensuring Human Rights-Compliant End to Refugeehood through Integration, Naturalisation or Voluntary Repatriation*, 2026, 69, available here.

96 ECtHR, *Auad v. Bulgaria*, App No 46390/10, 11 October 2011, para 133, cited in ECRE*, Comments on the proposal for a Return Regulation*, June 2025, 17.

97 European Commission, *Report of the 2024 Revisit of Greece related to the Serious Deficiencies Identified in 2021 in the Field of Return*, Annex C(2025) 3532, 3 July 2025, 2 and 11; *Enhancing collaboration for strengthening Returns*, Ares(2024)990858, 9 February 2024, 3-4.

98 European Commission, *Schengen Evaluation of Czechia: Executive Summary and Recommendations*, December 2024, para 57, available here.

99 European Commission, *Schengen Evaluation of Croatia: Executive Summary and Recommendations*, February 2024, para 97, available here.

and triggers an array of sanctions going up to criminal imprisonment if they do not (see **Containment, Surveillance & Punishment**).[100] These effects are liable to amount to constructive or disguised *refoulement*,[101] given that the circumstance of **a person departing from the territory following a legal obligation to leave and in order to avoid coercive consequences still amounts to forced removal** in the eyes of human rights law.[102] That much may be inferred from recent CJEU case law, which clarifies that "the mere fact that a decision imposing such an obligation [to leave the territory] does not allow the removal of the person concerned is not sufficient for that decision to be regarded as being compatible with" the principle of *non-refoulement*.[103]

The risk of *refoulement* is all more potent given that the individual would have no effective means to challenge the decision requiring them to leave without being made aware of the essential element of the destination country, not least whether the "country of return" is one in which they face a risk of ill-treatment.[104] In fact, the Regulation impermissibly places the burden of proof on the individual to substantiate a risk of *refoulement* before the authorities discharge their own duty to assess compliance with the principle.[105]

In light of the above, **Article 7(4) and (4b)** also runs counter to superseding EU law rules governing return decisions issued in the asylum process. **Article 37 APR** provides that upon rejection of an asylum claim, "Member States shall issue a return decision that respects [the Return Directive] and that is in accordance with the principle of *non-refoulement*."

Enforcement of return decisions

The grant of voluntary departure is an essential element of the return decision that should be amenable to challenge, according to CJEU case law.[106] However, **Article 7(1a)** grants Member States unfettered discretion to decide (i) whether or not a return decision should grant a period of voluntary departure and (ii) whether or not they wish to enact rules on when a voluntary departure period is to be granted. Specific features relating to the duration and extension of voluntary departure are also deferred to regulation through domestic law.[107]

Accordingly, the deregulation of standards pursued by the text not only **eliminates the prioritisation afforded by the current Return Directive to voluntary departure** of individuals ordered to leave whilst

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100 Article 23b(1)(f) and Recital 28 RR compromise text.

101 Penelope Mathew, 'Non-refoulement' in Cathryn Costello, Michelle Foster & Jane McAdam (eds), *Oxford Handbook of international refugee law* (OUP 2021). The term "constrictive *refoulement*" is also cited in ECtHR, *M.A. and Z.R. v. Cyprus*, App No 39090/20, 8 October 2024, para 56.

102 ECtHR, *N.A. v. Finland*, App No 25244/18, 14 November 2019, para 60; *M.S. v. Belgium*, App No 50012/08, 31 January 2012, paras 124-125.

103 CJEU, C-202/25 *Tadmur*, 26 March 2026, para 49.

104 ECtHR, *Asalya v. Turkey*, App No 43875/09, 15 April 2014, para 113, cited in ECRE, *Comments on the proposal for a Return Regulation*, June 2025, 17.

105 Articles 12(3) and 26(3) RR compromise text.

106 CJEU, C-636/23 *Al Hoceima*, 1 August 2025, paras 45-47 and 73-75.

107 Articles 7(1a), (1b) and (1c) RR compromise text.

they are at liberty,[108] but fails to ensure even minimum certainty and foreseeability to enable people to know when to expect voluntary departure, and to exercise their right to a remedy when it is not offered. The RR thereby pushes investment in – and performance of – forced removals, in contestation of evidence pointing to deportation as harmful, costly, and ineffective.[109]

Furthermore, neither the original RR proposal nor the adopted text provide sufficient clarity on the enforceability of return decisions i.e. whether the return decision alone is enough for states to carry out removal or whether a separate administrative act must be adopted. The text makes repeated reference to the term "enforceable return decision"[110] without drawing a distinction between 'enforceable' and 'unenforceable' decisions.[111] This yet again defeats harmonisation of national systems, strips individuals of legal certainty and fair warning, and carries significant adverse effects for their right to an effective remedy against their deportation. It also fails to provide administrations with clear rules on which return decisions can be subject to mutual recognition under **Article 9**, as discussed below.

Inferences drawn from the **Recitals 16 and 18b** would support the view that the determination of a country of return is one of the "essential elements of a return decision",[112] meaning that a return decision cannot be enforceable unless it states a single destination country. However, this is not clearly stated in the rules.

The RR provisions on removal regrettably exacerbate the ambiguity on the enforceability of return decisions. The Council has included various references to the concept of "decision ordering the removal" as a separate act to a return decision.[113] However, **Article 12(2)** grants Member States unfettered discretion to decide whether or not to adopt a "decision ordering the removal" prior to deporting a person. EU law would therefore refrain from setting uniform standards on when a return decision issued under **Article 7(1)** is enforceable and when a separate administrative act is required for the state to perform deportation.

The undue discretion afforded to states vis-à-vis the determination of the destination country in a return decision is largely replicated in the RR provisions on removal. **Articles 4(4b), 12(2a) and (2b)** of the text allow states to set "one or more countries of return" when ordering removal. Here too, the proposed rules contravene states' duty to (re)assess compliance with the *non-refoulement* principle at every stage of the

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108 CJEU, C-636/23 *Al Hoceima*, 1 August 2025, paras 43 and 77; C-61/11 PPU *El Dridi*, 28 April 2011, para 37.

109 Joint Statement from FAiR, GAPS, MIrreM and MORE in Response to the Reference to these Four Projects in the European Commission's Proposal for a Regulation Establishing a Common System for Returns, 21 March 2025, available here: "The proposal focuses on strengthening forced returns without increasing investments in voluntary return programmes. Additionally, it includes stricter sanctions for migrants. FAiR's research shows that discourses from the Global South are generally more favourable about voluntary returns than about forced returns... The increased emphasis on forced removals is both a less humane and a less sustainable long-term strategy."

110 Articles 9(1) and (13) and Recitals 16, 18, 18b, 19b and 37 RR compromise text.

111 For instance, the proposal refers to 'enforcement' of return decisions by a Member State even where their effects have been suspended by the Member State that issued them: Article 9(6) RR compromise text.

112 These are to be included in the European Return Order: Article 7(7) RR compromise text.

113 Articles 4(4b) 7(7), 9(1), 9(5), 9(6), 10(2), 10(3), 12(2), 12(2a), 12(2b), 12(2c), 21(3)(e), 26(3), 27(4) RR compromise text.

process[114] and fail to provide affected persons with sufficient information on essential elements of removal to be challenged.

Mutual recognition of return decisions

Mutual recognition of return decisions and removal orders is regulated in **Article 9**, one of the last elements to be agreed in the interinstitutional negotiations between the Council and European Parliament. This is a largely discretionary provision which allows Member States to directly enforce another EU country's return decision or removal order, or to issue a decision of their own.[115] The RR does not render mutual recognition of return decisions and removal orders mandatory for Member States.

The APR and AMMR provisions supersede the RR according to **Article 2(3)**. Therefore, in the event a person enters one EU country after having their claim rejected in another, the former would in principle have to follow a "take back" procedure vis-à-vis the latter under **Article 36(1)(b) AMMR**, unless it decides to declare itself responsible for the individual under the **Article 35(1) AMMR** discretionary clause.

"Return hubs"

The RR introduces legislative footing for so-called "return hubs", the latest iteration of European governments' and EU institutions' political efforts to externalise migration control beyond their soil.[116]

Article 17 sets out a specific process for removing individuals to a non-EU country that has formally or informally agreed to serve as a "return hub" and that is neither their country of origin or habitual residence, nor a country in which they have a right to reside.[117] Only unaccompanied children are exempt from return to a non-EU country under a "return hub" agreement or arrangement.[118]

States are bound by their human rights obligations when expelling individuals from their territory regardless of whether removal takes place to the home country or to an "intermediary country". The principle of *non-refoulement* sets strict, absolute conditions aimed at protecting people from ill-treatment. These include a thorough assessment of the material conditions they risk facing in the country of return, of risks of potential onward removal amounting to *refoulement*, and of the reasonableness and actual possibility to travel, gain admittance and settle in said country.[119] The RR provisions must be construed in line with the principle of *non-refoulement*[120] and in no way allow states to circumvent their duties under human rights law.

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114 CJEU, C-156/23 *Ararat*, 17 October 2024, para 34.

115 Article 9(1), (2), (6) and (7) RR compromise text.

116 Council of Europe Committee of Ministers, Chişinău Declaration, CM(2026)99-final, 15 May 2026, para 46.

117 Article 4(3)(g) RR compromise text.

118 Article 17(4) RR compromise text.

119 For further analysis, PRO ASYL, *Disconnected from Law: Comments on the Commission proposal amending the concept of safe third country*, July 2025.

120 Enshrined *inter alia* in Article 19(2) Charter of Fundamental Rights.

The sole substantive condition set by the EU legislature for concluding such agreements or arrangements is that "international human rights standards and principles in accordance with international law, including the principle of *non-refoulement*, are respected" in the country concerned.[121] The text refrains from spelling out what "international human rights standards and principles" should be observed so as to ensure that people may reasonably be expected to stay in a country they have no ties with and have possibly never encountered. These should go beyond civil and political rights such as freedom from inhuman or degrading treatment, the right to liberty, the right to private life or the right to an effective remedy. They must encompass crucial socio-economic rights to employment, to education, to health care and so forth.

On correct reading of **Article 17(1)** in line with the human right to an effective remedy, the determination by a state that the non-EU country in question complies with international human rights standards must stem from a thorough assessment of up-to-date authoritative evidence and such evidence must be available to the individual.[122]

The Council and European Parliament have further watered down the formal requirements set by the Commission proposal for "return hub" agreements or informal arrangements with non-EU countries. Under **Article 17(2)**, an agreement or arrangement need only regulate the transfer to the non-EU country concerned, the conditions of stay therein and the human rights standards said country needs to observe. "Return hub" agreements or arrangements need not be independently monitored and need not foresee consequences in case of a significant change in circumstances in the non-EU country, unless they specifically provide for onward removal to the country of origin or to another non-EU country.[123] Governments are only required to inform fellow Member States that share borders with the non-EU country of "return hub" negotiations and inform the Commission and Member States of agreements or arrangements concluded.[124]

Where it includes an obligation on the part of the non-EU country to process asylum claims of people transferred thereto, the agreement or arrangement may come under the **amended 59(5)(b) APR**,[125] in which case the country in question may be classified as a "safe third country" under **Article 4(3)(e)** of the RR text. In such a case, states need not follow the **Article 17** standards on "return hubs".

Containment, surveillance & punishment regime

The RR establishes an elaborate apparatus of containment, surveillance and punishment measures through **largely overlapping regimes of general restrictions, sanctions against failure to "cooperate", and "absconding" measures that defeat *effet utile* and cover the near-total population** at the receiving end of return proceedings in EU countries. The text overregulates individual conduct while affording the

121 Article 17(1) RR compromise text.

122 CJEU, C-758/24 *Alace*, 1 August 2025, paras 85-88, since Article 17(1) sets a presumption akin to the designation of safe countries of origin and safe third countries.

123 Article 17(2a) RR compromise text.

124 Article 17(3) RR compromise text.

125 Regulation (EU) 2026/463 of the European Parliament and of the Council of 24 February 2026 amending Regulation (EU) 2024/1348 as regards the application of the concept of safe third country [2026] OJ L 26.2.2026.

widest possible discretion to states to choose measures from a broad pool of restrictions and sanctions without clear hierarchy, sequencing or fair warning.

These measures are also decoupled from the strict purpose of executing return, as **Article 14(7)** allows states to apply all of the above even where removal has been postponed.

General restrictions

The RR empowers Member States to extensively interfere with people's human rights to private and family life, data protection, liberty and freedom of movement by way of general rule in the return procedure. **Articles 23 and 23a** set out general containment and surveillance measures that may be pursued "for the purpose of preparing and ensuring an effective return" even in the absence of any individual conduct suggesting that the person does not intend to leave the territory:

General measures: art 23 RR
(optional)
- Residence in a geographical area
- Residence in a designated place
- Reporting obligations
- "Other measures" in national law

Investigative measures: art 23a RR
(optional)
- Search of the person and their premises
- Seizure of personal belongings
- "Other investigative measures" in national law

Neither provision is exhaustive. The EU legislature affords Member States unfettered discretion to legislate beyond **Articles 23 and 23a** and to introduce any "other measures" they see fit. This is one of several examples of deregulation of EU standards pursued through the RR.

Failure to "cooperate"

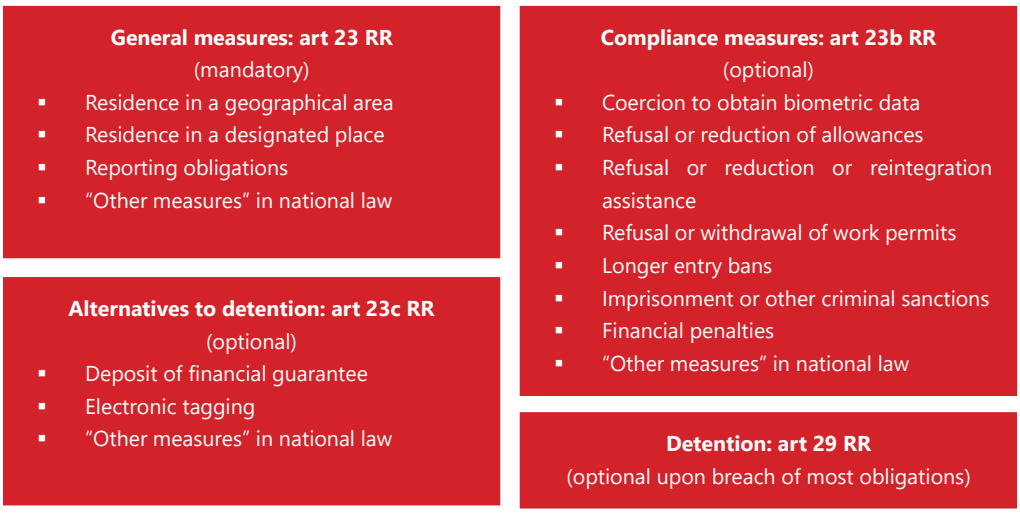
The RR introduces sweeping obligations on individuals to "cooperate" with the authorities of the country they are ordered to leave. These obligations are incumbent upon them upon the moment their stay is deemed irregular,[126] even where no enforceable return decision exists against them. **Article 21(1) and (2)** sets out a non-exhaustive list of obligations, divided into the following main categories:

- To leave the territory of the Member State.
- To remain available to the authorities, to provide and update contact details, to attend any appointments ordered by the authorities and to present themselves for departure.
- To promptly provide biometric data and all relevant information and documents they have in their possession or "are reasonable presumed to be able to obtain". This includes identity and travel documents which people should "cooperate on obtaining" and provide plausible explanations for not holding.
- To "not physically or verbally oppose the return".
- To participate in "return and reintegration counselling".

126 Article 21(1) RR compromise text.

- To comply with "other relevant additional measures in relation to return".

Failure on the part of the individual to observe of any of these obligations triggers an extensive regime of both administrative implications and criminal sanctions as follows:



Here too, the text grants Member States discretion to exceed both the catalogue of "cooperation" obligations and the consequences of non-compliance.

The introduction of overlapping, far-reaching sanctions and restrictions available to Member States in the event of failure to "cooperate" flouts the general principles of legal certainty and proportionality that form part of primary EU law. The RR not only fails to limit states' treatment of individuals to measures proportionate to their conduct,[127] but permits them to impose sanctions which by nature undermine the effectiveness of the process e.g. imprisonment before the return procedure has been exhausted.

"Absconding" measures

"Absconding" is defined in **Article 4(7)** as the "action by which the third-country national does not remain available to the competent administrative or judicial authorities". The risk of such a situation coming about is foreseen as a ground for deprivation of liberty or alternatives to detention. A "risk of absconding" should thus be assessed based on objective criteria defined with "clarity, predictability and protection against arbitrariness" so as to enable "the persons concerned to foresee, with the necessary degree of certainty, in what circumstances they might be placed in detention".[128]

The RR, however, allows states to infer a "risk of absconding" from an extremely broad set of circumstances, some of which are an almost automatic adjunct to undocumented status:

127 CJEU, C-636/23 *Al Hoceima*, 1 August 2025, paras 43 and 77; C-61/11 PPU *El Dridi*, 28 April 2011, para 37.
128 CJEU, C-241/21 *Politsei- ja Piirivalveamet*, 6 October 2022, para 54.

Presumption of absconding: art 21a(1) RR

- (Attempted) irregular entry into any EU country
- Return decision in another EU country
- (Intended) non-compliance with general restrictions
- Re-entry in breach of entry ban

Indicators of absconding: art 21a(2) RR

- Lack of fixed residence
- Failure to leave within departure period
- Intention not to show up for departure
- False information / documents or disposal thereof
- Non-attendance of return counselling
- Lack of "social anchoring" in the country
- Failure to "cooperate"
- "Other criteria" in national law

Article 21a(1) establishes a rebuttable presumption of a risk of absconding based on a particularly broad set of circumstances, including the mere fact that the individual has attempted or in fact irregularly entered the territory of a Member State or has expressed intention not to comply with any of the **Article 23** general restrictions and **Article 23a** "investigative measures".

Article 21a(2) adds further criteria based on which Member States may use as indicators of a risk of absconding in the context of an individual assessment. Several of those criteria point not to individual conduct but to general circumstances beyond their control e.g. lack of fixed residence or lack of social ties to the country. Here again, the list is non-exhaustive and allows states to legislate beyond the RR.[129]

In essence, co-legislators impermissibly enable states to establish a "risk of absconding" in an unprecedentedly broad set of cases, even where no individual conduct of the person suggests that they will not participate in the return process.[130] This would **expand immigration detention to the entire class of people entering the EU undocumented and/or without a home or sufficient financial resources**,[131] and lead to massive deprivation of liberty contrary to human rights standards.

Detention for the purpose of removal

The Commission, Council and European Parliament have pursued a multidimensional expansion of the scope of pre-removal detention in striking contravention of the human right to liberty. The agreed RR text allows states to **deprive people of their liberty on additional grounds, for longer periods and subject to more stringent conditions** than those currently set out in the Return Directive. These changes, both individually and cumulatively, pose potent risks of breach of the human right to liberty.

Article 29(3) expands the grounds for pre-removal detention to allow its application when:

(a) There is a risk of absconding.
(b) The individual hampers or avoids return.
(c) The individual is classified as a **Security Case** under **Article 16**.

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129 Article 21a(2)(h) and Recital 31 RR compromise text.

130 See in particular CJEU, C-146/14 PPU *Mahdi*, 5 June 2014, paras 70-74; C-430/11 *Sagor*, 6 December2012, para 41 on the need to assess a "risk of absconding" against the person's individual conduct.

131 Article 29(3)(a) RR compromise text.

(d) The identity or nationality of the individual has not been determined.
(e) The individual does not comply with their **Cooperation Obligations** to remain available and to not abscond, to provide and not destroy any relevant information or documents, to comply with travel requirements, to observe general restrictions on freedom of movement under **Article 23(1)** or alternatives to detention under **Article 23c(1)**, to attend appointments or to not physically or verbally oppose the return.

Here too, the text grants Member States discretion to enact further grounds for detention in their domestic law beyond the above.[132]

The RR has eliminated the express obligation to discontinue detention where there is no reasonable prospect of removal,[133] i.e. "where it appears unlikely that the person concerned will be admitted to a third country".[134] On the contrary, **Article 14(7)** states that detention may be applied even where removal has been postponed. This is both a breach of the human right to liberty and a contradiction of the reform's stated objective of promoting effective returns.[135]

In a similar vein, both the Commission proposal and the adopted RR text extend the duration of detention to unprecedented levels. **Article 32(3)** doubles the general time limit of detention from 6 to 12 months, in a manner **irreconcilable with states' duty to demonstrate due diligence when resorting to deprivation of liberty and incongruent with the stated RR objective of promoting effective returns**. The same provision repeals states' duty to demonstrate that they have put "all their reasonable efforts" into executing removal prior to prolonging detention for another 12 months on account of lack of cooperation of the individual or of delays in obtaining necessary documentation from third countries.

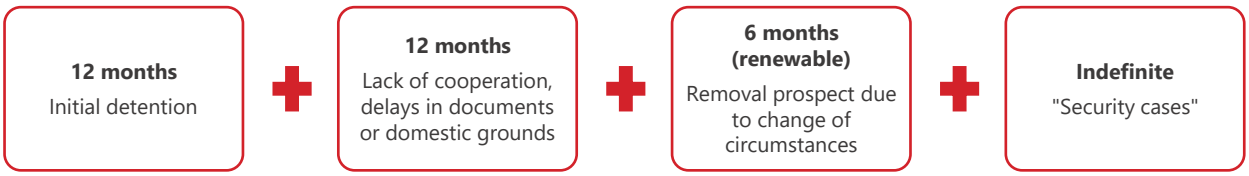
The extended two-year time limit of detention is pushed even further, as the text:

- Allows states to prolong detention beyond the two-year mark for additional periods of up to 6 months "whenever there is a risk of absconding" and "changes in circumstances indicate a reasonable prospect of removal" on account of new information, travel documents or improvement in cooperation with the country of return. This comes as veiled admission of the impermissible use of deprivation of liberty for return purposes without a reasonable prospect of removal, as mentioned above.[136]

- Foresees indefinite pre-removal detention for **Security Cases**,[137] in a manner highly reflective of the 'criminal law creep' underlying the RR.

132 Article 29(3)(f) RR compromise text.
133 Article 15(4) Return Directive.
134 CJEU, C-357/09 PPU *Kadzoev*, 30 November 2009, para 66.
135 CJEU, C-329/11 *Achugbabian*, 6 December 2011, para 45.
136 Article 32(3a) RR compromise text.
137 Article 16(3)(d) RR compromise text.

- Restarts the calculation of the detention period where the individual moves to another Member State.[138] This is not in line with the principle of proportionality as spelled out in CJEU case law,[139] especially in situations where two Member States impose pre-removal detention to execute a single return decision under the **Mutual Recognition** provisions of the RR.



As for conditions of detention, **Article 34(1)** sets out more permissive standards on pre-removal detention in prisons and without separation from criminal detainees where states "cannot provide for detention" in specialised facilities. Here too, the Council attempts to circumvent the boundaries set by CJEU case law on the need for narrow interpretation of any derogation from the use of specialised detention facilities.[140] The co-legislators have also deleted the **Article 43(3)** requirement of maintaining sufficient detention capacity in line with their commitments under **Article 7 AMMR**. The standards set by the latter provision, however, take precedence, as recalled by **Article 2(3)** of the RR.

Crucially, **Article 34(5)** sets impermissible restrictions on access to detention facilities for persons providing assistance to detained persons. Access of lawyers and national, international organisations and civil society organisations, among others, may be conditional upon authorisation and prior security clearance. These restrictions risk excessively restricting individuals' right to legal advice and representation and their ability to effectively exercise their rights.

Procedural safeguards

Information

The elaborate regime of extensive, severe obligations and sanctions imposed upon individuals throughout the RR sharply contrasts with meagre provisions on information. **Article 24(1)** requires states to provide minimal information on the conduct of the return procedure that does not seem to allow affected people to understand, among others, when and why specific restrictions may be applied to them.

138 Article 32(3) RR compromise text.

139 CJEU, C-150/24 *Aroja*, 5 March 2026, para 63. See also CJEU, C-357/09 PPU *Kadzoev*, 30 November 2009, paras 36-37.

140 CJEU, C-18/19 *Stadt Frankfurt am Main*, 2 July 2020, para 31; C-473/13 *Bero and Bouzalmate*, 17 July 2014, para 25.

This approach is echoed in the modes through which those elements are to be explained to people facing return proceedings. Information on the contents of a return decision or decision ordering removal may be provided in a language the person "is reasonably presumed to understand", via standardised information sheets or AI translation.[141] Less permissive standards are retained in respect of detention orders.[142]

Remedies

The agreed RR text provides access to a remedy before a "court or tribunal". The use of the terms "court or tribunal" align the RR to **Article 67(1) APR** and address contradictions raised by the original RR proposal.

Articles 26(1) and 27(2) provide for a remedy against a return decision, a decision ordering removal and an entry ban decision. However, on correct reading of the Regulation in line with Article 47 of the Charter, individuals should be able to exercise a **remedy against any decision under the RR which affects their legal position**. At a minimum, this includes decisions imposing general restrictions on freedom of movement under **Article 23(6)**, decisions imposing sanctions under **Article 23b**, and decisions imposing an alternative to detention under **Article 23c(2)**.

The time limit for appealing a decision is 14 days. Longer deadlines of up to 30 days may only be maintained by EU countries that already have a 30-day or longer deadline in domestic law.[143]

Appeals against return decisions or decisions ordering removal must be **automatically suspensive to be effective and to prevent *refoulement***, according to settled case law.[144] Yet, **Article 28(1)** grants Member States discretion to decide whether suspensive effect is to be granted automatically or upon request of the individual. This standard falls short of the requirements set by the right to an effective remedy and the principle of *non-refoulement*, as elaborated in case law. It also raises contradictions with **Article 68(4) APR** which allows rejected asylum seekers or persons whose international protection status has been withdrawn to remain on the territory for at least five days so as to submit a request for suspension of enforcement of the return decision.

As regards the assessment of appeals, **Article 26(3)** unduly attempts to restrict the possibility for a court or tribunal to assess compliance of the contested decision with the principle of *non-refoulement* solely to cases where "material in the file brought to the attention of the court or tribunal in charge of the remedy against the return decision or the decision ordering the removal, as supplemented or clarified following adversarial proceedings" suggests such a risk. Such a limitation is prohibited by the *non-refoulement* principle. Courts reviewing *any* decision taken under the RR, including a detention order, "must be in a position to rule on all matters of fact and of law relevant to the review" and "must take into consideration

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141 Articles 7(5), 12(2c) and 24(2) RR compromise text.

142 Article 29(5) RR compromise text.

143 Article 27(1) RR compromise text.

144 CJEU, C-181/16 *Gnandi*, 19 July 2018, para 56; C-239/14 *Tall*, 17 December 2015, paras 57-58; C-562/13 *Abdida*, 18 December 2014, paras 52-53; ECtHR, *M.K. v. Poland*, App No 40503/17, 23 July 2020, paras 143-144; *Conka v. Belgium*, App No 54564/99, 5 February 2002, para 82.

all the elements".[145] **Primary EU law mandates an *ex officio* assessment of compliance of return with human rights by all authorities involved** and at all stages of the process (see also **Country of Return**).

[145] CJEU, C-313/25 PPU *Adrar*, 4 September 2025, paras 71-72; C-39/21 *Staatssecretaris van Justitie en Veiligheid*, 8 November 2022, paras 87-88.

In lieu of epilogue

Political agreement on the RR was reached by the EU legislators on 1 June 2026. The negative transformative effect of the reform is imminent, and already apparent in certain national legal frameworks, policy and practice.

Greece, for instance, has 'frontloaded' implementation of RR provisions through a Return Act adopted in September 2025, well before either of the co-legislators had defined their respective positions on the Commission proposal. The Return Act has heavily invested in constructive *refoulement* as a means to secure departures from the Greek territory. Its express provision for return decisions without a set destination[146] has quickly resulted in standardised return orders from asylum authorities that neither determine a particular country nor assess legal considerations of return thereto. Its criminal provisions punish "illegal stay" by an imprisonment term of at least two years, suspended only on condition of the individual's immediate departure from Greece. Those who refuse this option are imprisoned to serve their sentence. Those who opt for it also end up in deprivation of liberty: they are subject to pre-removal detention until their removal.[147] Any ensuing asylum claim is construed as non-compliance with the terms of suspension of the sentence and lead the individual back to prison. Greece has also adopted legislation implementing the CEAS reform in which it has included domestic rules permitting removal to countries serving as "return hubs".[148]

In Germany, some of the sanctions introduced in EU law e.g. geographical restrictions have been entrenched in domestic law for a long time. A new Return Act has been announced by the Minister of Interior, though no concrete proposal is yet on the table as the Ministry has presumably waited for the RR to be finalised. As it is part of the coalition agreement,[149] the German government is likely to try to introduce indefinite pre-removal detention for "security cases". There is a particular interest in the idea of "return hubs" by the German government and the Ministry of Interior has foreseen €40 million in their budget for 2027 for returns and so-called "innovative solutions". No details are public regarding possible partner countries.

The dismantling of safeguards of humane treatment of people attempted by the RR, through veiled deregulation and unprecedented criminal law inroads into migration policy, warrants strong legal and political contestation at domestic and EU level. At a minimum, Member States should:

- Refrain from enacting domestic rules permitting additional sanctions, grounds for detention, criminal penalties in the return process.

146 (Greece) Article 7 Return Act.

147 (Greece) Article 27 Return Act. See further RSA, 'Criminalisation of "illegal stay" in Greece puts almost 300 people behind bars', 25 February 2026, available here.

148 (Greece) Article 159 Law 5307/2026, Gov. Gazette A' 90/11.06.2026.

149 Coalition Agreement CDU/CSU and SPD, Responsibility for Germany, 2025, 94, available here.

- Conduct a thorough assessment of the compatibility of the RR provisions with the state's primary EU law and international obligations. Such an assessment should be sufficiently thorough to allow domestic authorities and courts to:

- Interpret and apply RR provisions in compliance with human rights instruments they are a party to, in full consideration of existing jurisprudence of the CJEU, the ECtHR and other relevant jurisdictions.

- Set aside those provisions that directly contravene human rights obligations, such as issuance of return decisions without prior *non-refoulement* assessment, non-suspensive appeals against return decisions or removal orders, indefinite pre-removal detention.