**Respecting rights for more effective return policies**

Rights areas:

* [Asylum, migration and borders](https://fra.europa.eu/en/taxonomy/term/962)



Adequate and enforceable fundamental rights safeguards need to accompany proposals to return irregularly staying non-EU nationals more effectively, finds the latest Opinion from the EU Agency for Fundamental Rights.

**Publication**

[**The recast Return Directive and its fundamental rights implications**](https://fra.europa.eu/node/36036)

FRA’s [Opinion on the revisions to the EU Return Directive](http://fra.europa.eu/en/opinion/2019/returns-recast)examines the fundamental rights implications of the proposed changes to the directive.

It shows how respect for fundamental rights is in the interest of the national authorities and avoids rights violations during return procedures. Violations can lead to challenges thatcan undermine the effectiveness and credibility of the EU’s return policy.

Based on the proposed changes, key FRA suggestions for improvement include:

1. Avoid stricter rules limiting the use of voluntary departure while making it compulsory for Member States to have in place a national system for assisted voluntary returns. Narrowing the use of voluntary departure runs contrary to the aim of prioritising voluntary over forced returns and should be reconsidered. EU funding should be available to help Member States in all key areas to develop and carry out return measures in an effective, safe and dignified manner.
2. Ensure that streamlined return procedures do not increase the risk of fundamental rights violations. Safeguards are needed so that combining end of legal stay and return decisions does not hamper asylum claims and appeals. This also applies to obliging non-EU nationals to cooperate with authorities which could lead to revealing asylum seekers’ information to their country of origin. Issuing entry bans without return decisions should also be avoided as expedited procedures might prevent people from exercising their right to be heard.
3. Safeguard appeals against return decisions. Five days should not be set as a maximum period for lodging an appeal nor should EU law prevent Member States from postponing returns during judicial review.
4. Ensure detention remains a last resort rather than widen the scope for its use. Deciding whether non-EU nationals are at risk of absconding should always be based on a full individual assessment, and never be presumed automatically. Criminal cases and risks to public policy, public security and national security should continue to be dealt with through criminal law and other relevant measures, not pre-removal detention.
5. Protect personal data in return procedures. Clear and adequate safeguards should be established before personal data collected by Member States is shared with the European Border and Coast Guard Agency. Personal data should be shared with non-EU countries only when necessary and in full compliance with EU law.
6. Postpone discussions on a new border procedure to rapidly return rejected applicants for international protection, as it creates serious fundamental rights risks, until the new asylum framework has been agreed upon.

The EU’s Return Directive was adopted in 2008. It provides Member States with common standards and procedures for non-EU nationals who do not fulfil the conditions for entry, stay or residence in a Member State.

The European Commission proposes revising the Directive to overcome the difficulties Member States face in returns and to increase the effectiveness of EU return policies.

In light of this, the European Parliament asked FRA for this Opinion, which will feed its position on the proposal.

It also complements an earlier [FRA Opinion on the enhanced role of the European Border and Coast Guard Agency](https://fra.europa.eu/en/opinion/2018/eu-border-agency) from November 2018 which also partly covers return matters.

FRA issues [Opinions on specific thematic topics](http://fra.europa.eu/en/publications-and-resources/opinions), following requests for advice from the European Parliament, the EU Council or the European Commission.

These legal Opinions are part of the agency's fundamental rights assistance and expertise that it provides to EU institutions and Member States.