

A punitive approach to return will not be safe and dignified for the people concerned



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New EU return procedure

The EU's return framework covers rules on how the EU Member States should treat people without legal stay, such as rejected asylum seekers. The current legal instrument, the so-called Return Directive, applies to all EU Member States, except Ireland, and the Schengen associated countries.

With the aim to ensure a common EU return system for all EU Member States, the European Commission, in March 2025, presented a [proposal for a new Return Regulation](#). The proposal can be seen as an extension of the agreement on the EU Pact on migration and asylum (the EU Pact) that was adopted in 2024, because it relates to the external dimension of EU asylum and migration policy.

The proposal will now be negotiated by the European Parliament and the Council. It is concerning that the proposal does not include a so-called legislative impact assessment which could guide the co-legislators on the need for reform, including an overview of the proposal's possible restrictions on the rights of refugees and migrants.

With this policy brief, Danish Refugee Council (DRC) presents its position on a well-functioning return procedure and reflections on the legislative proposal.

“Accepted return”

Return is often described as being either “voluntary” or “forced”, but in practice the process usually falls in a grey area. For rejected asylum seekers, return is rarely voluntary given that they have applied for international protection and have had their claim refused. As such it is rather a result of limited options. Recognizing the limitation in choices, [DRC uses the term “accepted return”](#) instead of “voluntary return” to reflect the influence of legal orders and potential sanctions.

DRC's position on a well-functioning return procedure

To DRC, a well-functioning return procedure is part of a well-functioning asylum system that safeguards the principle of *non-refoulement*.

It is paramount that all asylum seekers get access to fair and efficient asylum procedures, and that those who need it are granted international protection. If a claim for asylum is rejected, there should be a dignified return procedure, which allows the individual person sufficient time to make informed decisions about the future and take part in return arrangements.

Forced removal and punitive measures such as sanctions and detention should be avoided as much as possible, as it has serious human consequences for the individual person. Less coercive measures and alternatives to detention should always be explored to ensure that people are treated with dignity. Children should never be detained.

Instead, the EU Member States should establish return systems that have the necessary capacity to assist rejected asylum seekers in the return procedures and ensure adequate and dignified reception conditions. Respecting the dignity of people in the return procedure and empowering them to make informed decisions about their future will also make the system more workable and support sustainable reintegration.

To support rejected asylum seekers in making decisions about voluntary return, it is important that people have access to impartial counselling on both the legal matters of the asylum case and other forms of legal stay as well as return and meaningful reintegration support.

For reasons beyond their control, some rejected asylum seekers cannot be returned, although they have consistently cooperated with the authorities. For people in that situation, there should be options for regularization within a reasonable time after the return decision, such as residence permits in the EU Member States.

The proposed reform of the EU return procedure attempts to establish the legal basis for EU Member States to make agreements with third countries on so-called “return hubs”. DRC is concerned that such schemes – if ever functional in practice – risk creating “zones of exemption” when it comes to compliance with fundamental rights, with excessive use of force including restricting freedom of movement, hindering access to legal and medical assistance etc.

It is in the EU’s interest that the EU Member States take responsibility for ensuring well-functioning asylum and return systems with the necessary capacity and resources. The search for so-called “innovative solutions” to deter arrivals of asylum seekers does not contribute to making return safe and dignified. Instead, it risks making the system extremely expensive and ineffective while also undermining the respect for human dignity in and around the EU.

DRC reflections on key aspects of the proposed Return Regulation

Introduction of a European Return Order (art. 7 and 8)

With the EU Pact, decisions on asylum and return have become closely linked. Decisions on return must be mutually recognised and enforced by the EU Member States, regardless of where the rejected asylum seeker is staying. That means that if a rejected asylum seeker moves to another EU Member State, the second state must deport the person. With the introduction of a “European Return Order” as a digital registration of a return decision, it will be easier for the EU Member States to ensure that return orders are enforced.

Currently, the national asylum systems have very different capacity and the recognition rates for refugees are not harmonized. If the EU Member States are to enforce each other’s return decision, it is paramount that the EU Member States all have well-functioning asylum systems that safeguard the principle of *non-refoulement*.

Extended use of entry bans (art. 10 and art. 16)

The EU Member States get a wider possibility to issue entry bans, e.g. as sanction for not complying with the obligation to cooperate on the return procedure. The grounds for issuing entry bans due to security reasons have also been extended. The duration of the entry bans has been prolonged from five to ten years with possible further extension due to security concerns.

Increased use of entry bans can have serious consequences for rejected asylum seekers, especially people, who have family in the EU. It is thus paramount that rejected asylum seekers have access to effective remedies, including legal aid.

Limited possibility for voluntary return (art. 13)

The time limits for deciding to return voluntarily have been restricted. Any possible extension will depend on whether the authorities find that the rejected asylum seeker cooperates. The combination of short time limits and conditionality can cause rejected asylum seekers to be removed with force and without reintegration support, if the authorities do not find that their cooperation has been satisfactory.

A dignified return procedure should empower the rejected asylum seeker to make informed decisions about the future, including exploring pathways for legal stay or possibilities to get reintegration support upon return. It requires sufficient time for the rejected asylum seeker to make decisions about and preparations for “voluntary” return and reintegration.

New monitoring mechanism (art. 15)

The introduction of an independent monitoring mechanism to safeguard fundamental rights during the return process is a positive development.

For the scope to be meaningful, the full return process should be monitored, i.e. both the situation before departure or removal and after. It is essential that the monitoring is done by independent actors such as national human rights institutes, ombudsmen, or civil society actors. In case of violations, there must also be access to effective remedies to ensure accountability.

Legal basis for establishing return hubs in third countries (art. 4 and 17)

EU Member States will be allowed to remove a rejected asylum seeker to a third country if there is an agreement or arrangement for a so-called “return hub”. It means that the rejected asylum seeker can be deported to a third country, where the person has never been before, if the EU Member State has made such an agreement.

Schemes aimed at outsourcing responsibility for return of rejected asylum seekers to third countries contains risks of human rights violations. Return hubs can become “zones of exemption”, where fundamental rights are not respected, and people cannot access necessary services. The fact that unaccompanied minors and families with children are exempted from transfers to return hubs underlines the risks such schemes entail.

Additionally, such schemes aimed at forced removals are often characterized by extensive use of force and detention, thereby making them extremely expensive and ineffective, while also undermining the respect for human dignity in and around the EU.

Obligation to cooperate and sanctions for non-compliance (art. 21-22)

Rejected asylum seekers are obligated to cooperate with the authorities at all stages of the return procedure, e.g. remain available to the authorities and provide necessary information. The rejected asylum seeker can be sanctioned in case of non-compliance, e.g. limited possibility for voluntary return and reduced reintegration support as well as refusal of work permits.

However, there are still no binding rules on solutions for rejected asylum seekers, who cannot return despite their full cooperation with the authorities. Although the EU Member States can grant residence on compassionate or humanitarian grounds, they are not obligated to do so, which means that people risk staying in limbo for years.

Limited procedural safeguards (art. 25-28)

Procedural safeguards are weak, e.g. because there is no automatic suspensive effect of appeals. The rejected asylum seeker must apply for the suspension of the enforcement of the return decision as well as for free legal assistance and representation.

There is a risk of *refoulement* when a complaint does not automatically suspend the execution of the return decision. Even though it will also be possible to ask for assistance in relation to the asylum procedure, the access to free legal assistance will ultimately depend on the decisions of the authorities, which makes the safeguard seem inadequate.

Extended use of detention (art. 29-35)

The grounds for detaining rejected asylum seekers have been expanded, especially in relation to the “risk of absconding”. The length of detention has been extended from 18 months up to 24 months, with reviews at least every three months. It is still allowed to detain asylum seekers in prisons, if they are kept separately from prisoners convicted of crime.

As a counter measure, the EU Member States shall provide for “alternatives to detention”. But the incentive for the EU Member States to increase the use of alternatives to detention is not clear enough considering that the application is dependent on the risk of absconding that has been extended.

It is concerning that the possibility to detain children and families has been retained because detention will never be in the best interests of the child. DRC would like to stress that the use of detention should be limited to situations where it is necessary and proportionate. It is not a crime to apply for international protection.

Structures for return and reintegration counselling (art. 46)

The EU Member States have an enhanced obligation to set up structures for return and reintegration counselling. It is a positive development as access to meaningful and sufficient support can help ensure dignified return and sustainable reintegration.

Reintegration assistance is not recognised as an individual right, and the level of assistance depends on whether the rejected asylum seeker has cooperated and complied. Such conditionality in combination with the short deadlines to accept “voluntary” return can cause many rejected asylum seekers to be removed with force and without any reintegration support.

The possibility to get reintegration support should not be conditional upon whether a person has complied with the return procedure. Access to meaningful reintegration support is equally important regardless of whether the rejected asylum decides to cooperate on the return.

DRC’s work with counselling on return and reintegration

Denmark has an opt-out from the area of Justice and Home Affairs, which means that only parts of the European asylum *acquis* apply to the Danish asylum system. However, Denmark is part of the Schengen cooperation and thus implements the EU return procedures.

Since the beginning of the 1980’s, DRC has provided counselling to asylum seekers throughout the asylum procedure in Denmark and other EU Member States. This includes return and reintegration counselling for rejected asylum seekers in Denmark.

[DRC’s counselling for rejected asylum seekers in Denmark](#) aims to ensure that each person's dignity is respected throughout the return process. DRC applies a specialized return counselling methodology to empower rejected asylum seekers to make informed decisions about their future, such as exploring pathways for legal stay or working towards sustainable reintegration in their country of return.

Based on this work, [DRC in January 2025 presented our position on safe and dignified return procedures for rejected asylum seekers](#) outlining the importance of:

1. Fair and efficient asylum procedures
2. Accepted return
3. Impartial counselling
4. Dignified standards of living
5. Meaningful reintegration support



Founded in 1956, the Danish Refugee Council (DRC) is Denmark's largest international NGO, with a specific expertise in forced displacement. DRC is present in close to 40 countries and employs 8,000 staff globally.

DRC advocates for the rights of and solutions for displacement-affected communities, and provides assistance during all stages of displacement: In acute crisis, in exile, when settling and integrating in a new place, or upon return. DRC supports displaced persons in becoming self-reliant and included into hosting societies. DRC works with civil society and responsible authorities to promote protection of rights and inclusion.

Our 6,000 volunteers in Denmark make an invaluable difference in integration activities throughout the country.

DRC's code of conduct sits at the core of our organizational mission, and DRC aims at the highest ethical and professional standards. DRC has been certified as meeting the highest quality standards according to the Core Humanitarian Standard on Quality and Accountability.

HRH Queen Mary of Denmark is DRC's patron.

To read more about what we do, see: www.drc.ngo

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