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UN Human Rights (OHCHR) observations on the European Commission proposal for the reform of the EU returns framework – Internal Working Document

Building on its broad human rights mandate, the Office of the UN High Commissioner for Human Rights (UN Human Rights (OHCHR)) works to promote, protect and fulfil the human rights of all people on the move, regardless of their migration status, with a particular focus on migrants in vulnerable situations and at most risk of human rights violations. OHCHR promotes a human rights-based approach to migration, which places the individuals at the centre of migration policies and governance.

As part of its strategic engagement with the European Union (EU), OHCHR offers these observations to contribute to discussions by the European Parliament, the Council of the EU and the European Commission on the reform of the EU returns framework. OHCHR emphasises that such reform represents a key opportunity for introducing more legal certainty and strengthened human rights safeguards applicable to the return process across EU Member States, in line with States' obligations under international human rights law. In this vein, OHCHR invites the European Parliament and the Council of the EU to take into account the observations and recommendations which follow in the context of their discussions on the proposal by the European Commission 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 final](#)).

Building on OHCHR previous recommendations addressed to the European Commission to inform its reflections on the reform of the EU returns framework (see annex), this informal submission addresses some key considerations emerging from the Office's analysis of the proposal as presented by the Commission. The observations and recommendations elaborated here are not to be considered exhaustive of OHCHR position and are offered to be considered alongside existing guidance and recommendations, as outlined notably in:

- OHCHR, [Human rights in the context of return. Key legal standards and policy recommendations](#) (2024)
- OHCHR, [Selected case-law on the human rights of people on the move in the context of return](#) (2024)
- UN Network on Migration, [Position Paper on Ensuring Safe and Dignified Return and Sustainable Reintegration](#) (2021)
- UN Network on Migration, [Guidance Note on Regular Pathways for Admission and Stay for Migrants in Situations of Vulnerability](#) (2021)
- OHCHR, [Technical note on the principle of non-refoulement under international human rights law](#) (2018)
- OHCHR, [Principles and Guidelines on the human rights protection of migrants in vulnerable situations](#) (2018)
- OHCHR, [Recommended Principles and Guidelines on Human Rights at International Borders](#) (2014)
- OHCHR, [Manual on Human Rights Monitoring - Chapter 26: Monitoring and protecting human rights in the context of migration](#) (2022)

Leveraging its broad thematic expertise on migration and border governance, its expert advisory and capacity-building capabilities, and its country-specific expertise and monitoring presence, OHCHR stands ready to further support the EU and its Member States in ensuring both efficient and human rights compliant return procedures and, more broadly, in their efforts to ensure that EU and national laws and policies effectively contribute to the full respect for human rights and the humane treatment of all people on the move, regardless of their status, in line with Member States' international obligations and their commitments under the 2030 Agenda for Sustainable Development, the Global Compact for Safe, Orderly and Regular Migration and the Global Compact for Refugees. In this context, OHCHR encourages the EU and its Member States to further promote, expand and diversify legal migration pathways, options for regular admission and stay and regularization of migrants in an irregular situation.

➤ **Introduce an obligation to carry out a comprehensive assessment of human rights protection grounds *prior* to the issuance of a return decision**

While Article 6 of the Commission's proposal provides for a general human rights clause in the application of the Regulation, the proposal does not integrate the human rights obligation to perform an **individualized assessment of human rights protection grounds *prior* to the issuance of a return decision**, including the principle of non-refoulement, the right to family and private life, the best interests of the child and the person's state of health, and taking into account any situations of vulnerability the person may be facing.

The proposal provides for an obligation upon Member States to assess compliance with the principle of non-refoulement only at a) the removal stage (enforcement of return decision, Article 12(3)) and b) the appeal stage (Article 26(3)). It also makes no explicit mention of other human rights grounds for non-return, and in particular the best interest of the child, family life and the person's state of health – including as possible exceptions to States' obligation to issue a return decision.

OHCHR notes that the absence of a prohibition to issue a return decision when the return would violate international human rights law will likely continue to lead to an accumulation of non-enforceable return decisions, causing legal uncertainty and human suffering, and further expose non-returnable migrants to situations of vulnerability.

The lack of consideration to the **right of family life and the best interests of the child** is in this context of particular concern given that many migrants have developed family and private ties that may prevent their return under IHRL. This is even more worrying when considering the impact that measures such as prolonged entry bans could have on the right to family life and the best interests of the child.

Similarly concerning is the absence of an obligation to duly consider the person's **state of health**, including as exception to the issuance of the return decision, given that health-related considerations, even when they do not trigger the prohibition of refoulement, may be a relevant ground for admission and stay.

OHCHR **recommends** to integrate in Article 7 of the proposal an **obligation to carry out, prior to the issuance of a return decision, an assessment of human rights protection grounds**, including non-refoulement, the right to family life, the best interests of the child and the person's state of health, which shall take into account any situation of vulnerability affecting the person concerned; and clarify that if such assessment leads to the conclusion that the person may not be returned, no return decision shall be issued – or, if already issued, shall be suspended while considering legal stay arrangements with appropriate safeguards.

➤ **Enhance consideration of situations of vulnerability in the context of decision-making on return**

The Commission's proposal makes limited consideration of **situations of vulnerability** in the context of decision-making on return, apart from some references included in relation to voluntary return, removal and detention. Such limited consideration, and the lack of guidance on a comprehensive definition of vulnerability, may risk leading to unlawful returns or the issuance of non-enforceable return decisions.

As reflected in [OHCHR guidance](#), the concept of vulnerability is a foundational element of the human rights framework. Together with the requirement to uphold human dignity, the need to recognize and address vulnerability underpins the legal obligation of States to respect, protect and fulfil human rights. Migrants may face both situational and personal vulnerabilities arising in their countries of origin, during transit or at destination, regardless of whether the original movement was freely chosen; situations of vulnerability may be caused by a range of factors related to a migrant's identity or circumstances and may intersect or coexist simultaneously, influencing and exacerbating each other and also evolving or changing over time as circumstances change. Such persons will be at increased risk of violations and abuse and, accordingly, are entitled to call on a duty bearer's heightened duty of care which shall permeate decision-making at all stages of the return procedure – including prior to the issuance of a return decision.

OHCHR **recommends** to integrate in Article 4 of the proposal a **comprehensive definition of vulnerability**; and to include in Article 5 of the proposal a reference to Member States' duty to **recognise, duly consider and address at all stages** of the return procedure any vulnerability affecting migrants as part of their obligations to apply the Regulation in full compliance with human rights.

➤ **Strengthen consideration of more favourable provisions in particular as regards the right to stay for compassionate, humanitarian or other reasons**

While the nature of the instrument proposed by the Commission aims at achieving the higher possible degree of harmonisation, OHCHR is concerned that the absence of a more favourable conditions clause carries the risk of lowering existing standards at national level also for aspects not regulated, or not fully regulated, by the reform – and in particular decisions not to return but to grant a right to legal stay for human rights, compassionate, humanitarian or other reasons, based on existing national laws.

In this regard, OHCHR **recommends** that Member States which decide to grant an autonomous residence permit, long-stay visa or other authorisation offering a right to stay for human rights, compassionate, humanitarian and other reasons, shall be allowed **not to issue a return decision** (and not only to withdraw or suspend it, as provided for by Article 7(9) of the proposal).

➤ **Ensure that mutual recognition does not jeopardise access to legal stay in the enforcing Member State based on human rights, compassionate, humanitarian or other grounds**

OHCHR observes that the introduction of the **mutual recognition** of return decisions (Article 9 of the proposal) may, in the absence of relevant safeguards, jeopardize access to national protection statuses, residence permits, long-stay visa or other authorisations offering a right to stay based on human rights, compassionate, humanitarian or other grounds.

While Article 9(4) of the proposal foresees that the enforcing Member State may decide not to recognise or enforce a return decision of the issuing Member State where the enforcement is “manifestly contrary to public policy”, the scope and interpretation of this exception remains unclear. As noted above, the proposal lacks adequate safeguards to ensure that the issuance of a return decision is preceded by a comprehensive individual assessment of human rights protection grounds. In this context, the system of mutual recognition may result in unlawful returns and undermine national rules and practices allowing legal stay based on human rights, compassionate, humanitarian or other grounds.

OHCHR **recommends** that a new provision is introduced in Article 9 of the proposal to clarify that the obligation to enforce a return decision issued by another Member State **may not prevent** the enforcing Member State to assess human rights protection grounds of non-return and to grant pursuant to national law an autonomous residence permit, long-stay visa or other authorisation offering a right to stay for human rights, compassionate, humanitarian and other grounds.

➤ **Reinforce the protection of persons with no prospects of removal**

When the return would violate the principle of non-refoulement, the proposal **solely** demands the postponement of the enforcement of the return decision (removal). The decision to postpone removal shall be regularly reviewed, and at least every 6 months, during which alternatives to detention may be applied when the conditions are fulfilled (Article 14(7)). While the new proposal introduces some **guarantees** for individuals whose return has been postponed (Article 14(6)), OHCHR is concerned that, in the absence of a secure **legal status**, affected individuals may continue to face a heightened risk of human rights violations and socio-economic hardship.

OHCHR **recommends** that provisions be integrated in Article 14 of the proposal and elsewhere as appropriate to enhance the protection of persons with no prospects of removal, including as regards their **legal stay**.

➤ Countries of return: strengthen safeguards and prioritise sustainable return and reintegration

The proposal foresees **return to third countries other than the returnee's country of origin**, including countries of mere transit, the first country of asylum, safe third countries, and any third country based on a bilateral or EU-level "return hub" agreements. In this regard, OHCHR emphasises that returns to countries with no genuine connection to the returnee risk undermining prospects of sustainable return and reintegration, may expose migrants to situations of increased vulnerability and present risks to human rights protection, including from refoulement and chain refoulement.

OHCHR therefore **recommends** that Article 4(3) of the proposal is amended to include a reference to the existence of a genuine connection between the returnee and the country of return as a precondition of return to any of the countries listed therein, and a requirement to take into account the highest degree of connection when choosing the country of return.

As regards in particular the so-called "**return hub**" **agreements**, more specifically, OHCHR is concerned that the proposal provides for a legal basis for Member States to conclude such agreements without providing for adequate safeguards, including:

- indications as to the subsidiary nature of transfers pursuant to such agreements, which shall take place only where return to the country of origin is not feasible;
- indications as regards the legal form of such agreements in order to ensure full and effective judicial review, including by the Court of Justice of the EU;
- an obligation to conduct a thorough human rights risk assessment and the provision of a mechanism of independent oversight prior to the conclusion of any such agreement;
- beyond the a general assessment of the designated country's respect for international human rights standards, an obligation to undertake an individual assessment of human rights protection needs prior to transfer pursuant to such agreements, and to ensure that individuals are informed and able to effectively challenge their transfer;
- indications as regards mitigation measures such as suspension clauses to address human rights concerns or violations, beyond a general obligation to envisage "consequences for the violation of the agreement";
- the absence of a human rights monitoring mechanism, monitoring being explicitly required by the proposal only to ensure the "effective application" of the agreement.

OHCHR therefore **recommends** that provisions be integrated in Article 17 of the proposal to **strengthen safeguards** to ensure the full compliance of such agreements with international human rights law, including as regards their legal form, human rights risk assessments and independent oversight prior to conclusion, individual assessment of protection needs prior to transfer, mitigation measures to address human rights concerns, and an independent human rights monitoring mechanism.

➤ Ban detention of children and avoid over-reliance on deprivation of liberty more generally

OHCHR notes that the proposal overall envisages an increased reliance on detention, by expanding the use and duration of detention in the context of return.

OHCHR emphasises that detention may be imposed for adults only as a **measure of last resort**, based on an individual assessment of each case and following consideration of less coercive alternatives, in accordance with the principles of necessity and proportionality.

In addition, OHCHR stresses that **detention of children**, including children with families, for reasons related to their, or their parents' immigration status, contravenes the fundamental principle of the best interests of the child and constitutes a violation of the rights of the child, as [recognized](#) by the UN Human Rights Mechanisms, including the Committee on the Rights of the Child, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Special Rapporteur on the Human Rights of Migrants. OHCHR therefore **recommends** that a **prohibition of detention of children** is foreseen in Article 29 and other provisions of the proposal are adapted as appropriate.

OHCHR also encourages to make better consideration of **situations of vulnerability** which shall exclude detention, besides being taken into account in the context of detention (Article 29(6)).

While detention is foreseen for the purpose of preparing the return/carrying out the removal, OHCHR encourages to pay adequate consideration to the existence of **reasonable prospects of return** as regards the proportionality assessment – for example, by introducing a specific requirement in Article 29 to end detention upon recognition of the absence of removal prospects after a reasonable time limit.

As regards **grounds for detention**, OHCHR notes the following:

- automatic presumptions and codified indicators on the **risk of absconding** justifying detention, unless otherwise proven, may undermine the requirement for individualized assessments on the necessity and proportionality of detention. OHCHR therefore **recommends** that an **individual assessment** be required also in the consideration of the circumstances referred to in Article 30(1); and that Article 30(2) is reformulated to clarify that the list of criteria therein shall solely be regarded as possible circumstances to be taken into account in the overall assessment of the risk of absconding;
- the existence of “clear indications of intention to commit a serious offence” (Article 16(1)(c)) appears a vague criterion for determining whether a person represents a **security risk**. OHCHR **recommends** this criterion to be **deleted**, also to avoid risks of arbitrary detention.

OHCHR also **recommends** that adequate safeguards including an individualised assessment, compliance with the principles of necessity and proportionality and measures to ensure the right to an effective remedy, apply to all other provisions in the proposal affecting the right to liberty and restricting the **right to free movement** (in particular Article 23, including Article 23(1)(a)).

Finally, while it is welcome that the proposal includes an explicit requirement to provide for **alternatives to detention** (Article 31), OHCHR **recommends** that the consideration of alternatives to detention be requested in priority. As regards the type of measures considered, OHCHR notes that some of the measures envisaged appear overly coercive and could disproportionately undermine personal liberty in the absence of appropriate safeguards. OHCHR therefore **recommends** clarifying that **alternatives to detention may not be criminal in nature** (e.g. electronic monitoring through wrist or ankle bracelets); to include additional **safeguards** in particular as regards maximum duration, automatic periodical judicial review and right to free legal assistance and representation for the exercise of the right to an effective remedy. OHCHR is also concerned that alternatives to detention may continue to be applied even when detention ceases to be lawful (Article 32(2)) and **recommends** deleting this provision.

➤ **Provide for the automatic suspensive effect of appeals against return decisions**

OHCHR underlines that the lack of **automatic suspensive effect** of appeals against return decisions (Article 28(2) and (3)), including but not limited to cases at risk of refoulement, is at odds with the right to an effective remedy, as it increases the risk that individuals may be deported before their appeal is heard, potentially resulting in irreparable harm, including violations of the prohibition of refoulement or other human rights violations, such as family separation. In addition, a system by which courts shall rule not only on appeals against return decisions but also on requests for suspensive effect may overburden the Member States’ justice systems. OHCHR therefore **recommends** reformulating Article 28(2) and (3) to ensure automatic suspensive effect of all appeals against a return decision pending the outcome of the remedy.

➤ **Favour voluntary departures and avoid disproportionate sanctions**

OHCHR observes that the proposal reduces **options for voluntary departure** which are no longer as a rule provided in return decisions – with forced removal becoming mandatory instead, and the proposal now referring to “voluntary returns” which may be envisaged when the person is not subject to removal. OHCHR emphasizes that voluntary departure shall continue to be regarded as the more human, dignified and cost-effective solution in the context of return and recommends revising the proposal to make sure that the new rules envisage voluntary departure as the preferred option. Rules on voluntary departure should also recall that a return is voluntary only if a person gives their **free, prior and informed consent to return**, and should

foresee **adequate time limits**, including a minimum period, to maximize the practical feasibility and effectiveness of the voluntary return option.

OHCHR also **recommends**, in this context, revising the proposal's **punitive approach** in particular as regards consequences for non-compliance with the obligation to cooperate (Article 22), which may result in excessively coercive measures and disproportionate interferences with the rights of returnees, and further frustrate voluntary departures.

➤ **Ensure independent monitoring of human rights at all stages of the return process**

OHCHR notes that the proposal provides for an obligation to ensure independent monitoring of respect of human rights only during removal operations (Article 15). OHCHR believes that independent monitoring is a key human rights safeguard and **recommends expanding its scope** to all stages of the return process. OHCHR also encourages to include further provisions as regards the monitoring mechanism's **independence and effectiveness**, including further indications as to its powers of investigation and complaint procedures.

OHCHR also encourages to include in the scope of **statistics** to be collected and provided for by the Member States (Article 48) an overview of key human rights issues arising in the context of the application of the new rules, based on a set of human rights indicators and drawing on the findings of the independent monitoring mechanisms.

Annex

Summary of OHCHR recommendations on the reform of the EU Returns Framework

Comprehensive individual assessments of human rights protection grounds
<ul style="list-style-type: none">• Revise the current formulation (Article 5 of the 2008 Directive) to include a more general and explicit reference to international human rights law obligations that limit the ability of States to return individuals, including:<ul style="list-style-type: none">- the prohibition of refoulement under international human rights law;- undue interferences with human rights, including the right to respect for family life and private life;- the best interests of the child.• Make explicit reference to the prohibition of collective expulsions, which obliges States to carry out, with due diligence and in good faith, a reasonable and objective individual assessment of the specific circumstances of each person prior to return.• Request States to conduct comprehensive individual assessments of human rights protection grounds prior to any return or non-entry decisions. This assessment complements the assessment of applications for international protection.• Clarify that the individual assessment should also consider situations of vulnerability that can make return not sustainable, practically impossible or not desirable.• Provide for a comprehensive definition of vulnerability as a dynamic and evolving condition, beyond the group-based approach (Article 3(9) of the 2008 Directive). Among other situations of vulnerability, maintain explicit reference to the state of health of the individual concerned (currently in Article 5 of the 2008 Directive).• Include a provision encouraging States to ensure that non-return obligations under international human rights law identified on the basis of such assessment not only lead to the suspension/postponement of return but also translate into regular admission and stay. In this context, maintain the provision that clarifies that the Directive is without prejudice to States' discretionary powers to grant admission and stay, including for compassionate, humanitarian or other reasons (Article 6(4) of the 2008 Directive). Clarify in this context that this also means that individuals should be able to apply for national protection statuses and other residence permits prior to a return decision.
Procedural safeguards
<ul style="list-style-type: none">• Clarify that returns from all areas where the State exercises jurisdiction or effective control, are only to be carried out in accordance with international law, the EU Charter of Fundamental Rights and with due procedural guarantees.• Maintain and strengthen existing procedural safeguards on the right to an effective remedy (Article 13 of the Return Directive), in particular by reference to:<ul style="list-style-type: none">- access to information;- the translation of return decisions;- the need to ensure sufficient time to file an appeal- the need to ensure suspensive effect of appeals to avoid irreparable harm;- free legal assistance and representation;- the right to be heard and interpretation.

Protection of persons with no prospects of removal
<ul style="list-style-type: none"> • Clarify that deprivation of liberty shall not be justified in cases where removal is not foreseeable • Promote the recognition of the absence of removal prospects after a reasonable time limit, ensuring individuals are not detained indefinitely in situations where removal is not feasible • Require Member States to establish and apply under national law clear pathways for regular stay when the absence of prospect of removal has been acknowledged
Return enforcement in respect of human rights
<ul style="list-style-type: none"> • Maintain and strengthen provisions ensuring that individuals who are required by law to leave a country are by default offered the possibility to comply with the return decision, by choosing when and how they return, without force and in dignity (Article 7 of the 2008 Directive). In this context, avoid qualifying compliance with the return decision as voluntary return, recalling that under international human rights law, a return is voluntary only if a person gives their free, prior and informed consent to return. Avoid linking non-cooperation on return to any kind of sanctions or the restriction of rights • Avoid expanding or further codifying the list of behaviors or situations that qualify as a risk of absconding • Include a provision requesting Member States to priorities alternatives to detention and clarify in this context that such alternatives shall be non-custodial and not criminal in nature • Maintain existing safeguards to ensure detention is used only as a last resort measure, determined in each individual case to be necessary and proportionate to a legitimate purpose defined by law (Article 15 of the 2008 Directive) • Include a prohibition of detention for children both unaccompanied and with families (replacing Article 17 of the 2008 Directive) and for persons in vulnerable situations • Include an explicit provision to clarify that the best interests of the child shall be a primary consideration in the enforcement of return decisions, both for unaccompanied children and children with their families, supported by a formal best interests determination procedure • Maintain existing safeguards pending return (Article 14 of the 2008 Directive)
Mutual recognition of return decisions
<ul style="list-style-type: none"> • Refrain from incorporating a mutual recognition principle, including to preserve access to national protection statuses and other residence permits. • In case provisions are included to promote or enable mutual recognition: <ul style="list-style-type: none"> - ensure that mutual recognition is conditional upon comprehensive individual assessments of human rights protection grounds by the authorities of the executing State; - Clarify that mutual recognition shall be without prejudice to States' discretionary powers to grant admission and stay, including for compassionate, humanitarian or other reasons and to the possibility to apply for national protection statuses or other residence permits in the executing State.
Return to countries other than the individual's country of origin
<ul style="list-style-type: none"> • Refrain from making it possible to return persons to countries other than their country of origin unless the individual has a genuine and reasonable connection to the designated country • Rest as relevant on the application of the "safe third country" concept and related EU and national lists of safe third countries only as long as this concept is defined in line with international human rights

<p>standards and clarifying that an individual assessment shall in all cases be undertaken not to expose returnees to situations where their rights may be at risk</p> <ul style="list-style-type: none"> • Refrain from any presumption of safety solely on the basis of an agreement with a third country
<p>Cooperation with third countries for enforcing returns</p>
<ul style="list-style-type: none"> • Include provisions or, as appropriate, recitals, to the effect that any agreement with third countries on returns, including the establishment of “return hubs”, concluded at EU or national level, shall be conditional upon prior human rights impact assessments and to the inclusion of appropriate safeguards and independent monitoring • Include provisions or, as appropriate, recitals, to the effect that any agreement with third countries on returns, including the establishment of “return hubs”, concluded at EU or national level, does not preclude States from conducting a comprehensive individual assessment of human rights protection grounds that may prevent return • Include provisions or, as appropriate, recitals, establishing appropriate safeguards which shall be applied in the context of the establishment of potential “return hubs” in third countries
<p>Human rights monitoring in return</p>
<ul style="list-style-type: none"> • Include an obligation upon Member States to ensure effective and independent monitoring in pre-removal and return procedures and after return • Include provisions or, as appropriate, recitals, to the effect that the implementation of any agreement with third countries on returns, including for the establishment of “return hubs”, is subject to regular and independent field-level monitoring • Clarify that the obligation upon the European Commission to regularly report on the implementation of the new legislation (Article 19 of the 2008 Directive), shall entail a specific focus on the impact and implications of the legislation’s application on human rights of returnees both in the Member States and in countries of return