



THE EU RETURN REGULATION: REFORM AND INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

CLOSED POLICY ROUNDTABLE
3 MARCH 2026, BRUSSELS

KEY TAKEAWAYS

With contributions from

Christina Meinecke

Regional Representative, Office of the UN High Commissioner for Human Rights (OHCHR)

Gehad Madi

UN Special Rapporteur on the Human Rights of Migrants

Michele LeVoy

Director, Platform for International Cooperation on Undocumented Migrants (PICUM)

Eve Geddie

Director, Amnesty International European Institutions Office

1. The proposed Return Regulation risks violating the absolute prohibition of non-refoulement. Consistent with international human rights and refugee law, **the Regulation should provide for an obligation to conduct a prior individual assessment** of human rights and refugee protection risks that may constitute grounds of non-return. **Return orders should always specify the country of return** and **procedural safeguards should be strengthened** by ensuring reasonable appeal deadlines and the automatic suspensive effect of appeals.

2. Proposals to expand the grounds and duration of detention under the Regulation would further entrench what is already a routine practice contrary to international human rights law, which has proven ineffective as a tool to address irregularity and is punitive in nature. The Regulation should clearly foresee that **alternative, human rights-based non-custodial measures should be prioritised**, with a view to ensuring fair and human rights-compliant return procedures. Alternatives should only be applied when all the grounds to use detention are met, as a genuine alternative to uphold the presumption of liberty, and not as an additional tool to expand control or after detention time limits have been exceeded. Importantly, **the Regulation should exclude children from detention** – either in families or unaccompanied – in line with international human rights standards and in particular the **authoritative guidance** of the Committee from the UN Convention on the Rights of the Child, ratified EU-wide, pursuant to which immigration detention can never be in the best interests of the child and should be prohibited. The Regulation should fully align with international human rights law, which requires that **immigration detention be applied as a measure of last resort**, subject to individualized assessments as to its necessity and proportionality, strictly time-limited, and subject to prompt, independent judicial review.

3. Proposed ‘investigative’ and ‘detection’ measures risk exacerbating discriminatory racial profiling and policing, further undermine access to rights, essential services and the justice system for racialised and migrant communities, and foster social fragmentation. Immigration enforcement should always be separated from the provision of social services and access to the justice system and comply with human rights obligations and the principle of non-discrimination. **The Regulation should provide for “firewalls”** to ensure that migration enforcement measures do not deter individuals – regardless of immigration status - from seeking shelter and healthcare, accessing education, or reporting crimes or abuse and to ensure social cohesion, building on the **positive impacts** of current governmental practices.

4. Blanket obligations to issue return decisions overlooking situations where human rights, humanitarian and other grounds warrant regular stay will likely lead to an accumulation of non-enforceable removal orders undermining the Regulation's objectives. As research shows, the failure to enforce removal orders occurs for the most part in situations where return is not legally feasible or appropriate including for considerations related to family life and unity, children's best interests, health conditions or risk of irreparable harm upon return. To avoid that people with no reasonable prospects of removal remain trapped in irregularity and legal limbo without being able to fully enjoy their rights and contribute to the societies in which they live, **the Regulation should retain and expand options for states not to issue, to suspend and withdraw return decisions with a view to granting regular stay on their territory** based on human rights, humanitarian and other grounds pursuant to national law.

5. The proposed duties, sanctions and restrictions on rights of people issued return decisions risk violating the principles of legality, necessity and proportionality and the right to an effective remedy. Cooperation obligations envisaged in the proposal should be reviewed to ensure they do not penalise people for circumstances beyond their control and which could affect all undocumented people, including lack of documents, vulnerabilities, or homelessness. **Proposed restrictive measures should be rejected** in this context considering the risk of leading to undue interference with rights and access to basic services, unlawful restrictions on the right to liberty and free movement and disproportionate control and surveillance, as well as the absence of effective remedies to challenge them. Equally, **reliance on "public policy" and "security" related derogations should not be allowed** to prevent an expansion of discretionary punitive measures into domains that criminal law is better placed to address when needed (based on criminal justice reasons, and not on a person's migration status).

6. Voluntary departure should always be prioritised over forced removal. The broad grounds on which forced returns would be mandatory and the removal of the minimum seven-day period for voluntary departure as foreseen by the proposal undermine EU member states' commitments under the Global Compact on Migration to prioritise voluntary over forced return. Voluntary returns should be enabled by meaningful opportunities for people to make informed decisions, including by **retaining a minimum period for voluntary departure**, ensuring **free access to genuine and professional return and reintegration counselling** and a non-coercive environment conducive to **free, prior and informed consent**.

7. Safeguards for children and persons in vulnerable situations must be urgently strengthened, to avoid subjecting them to harmful and coercive measures exposing them to further human rights violations, trauma and abuse. The proposal should be revised to ensure that **due consideration is taken of situations of vulnerability at all stages of the return process** – from the issuance of decisions, to the application of possible restrictive measures including deprivation of liberty and free movement and removals. **An enhanced duty of care should be integrated for children**, to ensure that all procedures are child sensitive, enable the prompt and accurate identification of children and the application of related protective measures, including the appointment of guardians, fully comply with the child's right to be heard and allow for return only when an individualised determination confirms that is the outcome aligned with the child's best interests.

8. Provisions enabling return to countries the returnee has no genuine connection with and the establishment of 'return hubs' carry grave human rights risks and should therefore be rejected. As documented in relation to existing arrangements and past experiences of this kind, returns to countries other than a person's country of nationality based on agreements between states risk exposing individuals to harm and human rights violations, including arbitrary detention, torture and other inhuman and degrading treatment, and direct and indirect refoulement. Such inherent risks are exacerbated in the Regulation by the possible reliance on non-legally binding arrangements and the lack of due diligence provisions and safeguards, including human rights risk assessment obligations and meaningful oversight prior to the conclusion of agreements, individualized assessments of human rights and refugee protection needs prior to transfer, effective remedies to challenge the transfer, mitigation measures including suspension clauses if violations are reported, effective independent human rights monitoring and complaint mechanisms after return, and clear criteria on reception conditions in the third country concerned. The risks would be further heightened if the scope of return hubs is expansive, including asylum seekers whose claims have been rejected on admissibility grounds rather than on merits, children and other groups with specific vulnerabilities. Co-legislators are urged to **take a cautionary approach and refrain from establishing a legal framework whose practical application would predictably lead to rights violations** for which the EU and its member states would be legally accountable.

9. Effective and independent human rights monitoring should be in place throughout the return procedure. In order to ensure accountability and prompt follow-up to possible human rights violations, as required by international human rights law, the Regulation should foresee an **independent monitoring mechanism over the respect of human rights across all stages of the return process**, from the pre-return phase and proceedings, to the removal and the final handover to the return country's authorities, up to a reasonable stage of the readmission and reintegration process. Criteria of appointment and safeguards should be included to ensure the effectiveness and independence of such monitoring mechanisms, as well as provisions to clarify powers of investigation, complaint procedures, and the obligation on states to act on its recommendations.

10. Return policies carry significant social impacts and risks for those affected; as such, their development must be based on evidence and careful consideration of their practical, social and human rights implications. The proposed Regulation, which was presented without a human rights impact assessment or formal consultations, risks being negotiated at an accelerated pace, without due attention to the available evidence on returns or consideration to the reform's impacts in practice. The co-legislators are urged to resist the pressure to reach a quick agreement and **take the time for comprehensive scrutiny of the proposal** - including consideration of the concerns and recommendations raised by a **broad group of UN human rights mechanisms, over 250 civil society organisations, and regional human rights bodies such as the EU Agency for Fundamental Rights and the Council of Europe Commissioner for Human Rights** - to ensure that the reform fully aligns with international law obligations, including under international human rights and refugee law and standards, as reaffirmed by the EU Charter. **Particular attention should also be paid to risks linked to the proposal's externalisation approach**, which might deepen the EU's structural dependency on third countries for migration governance while detracting from investments into addressing the root causes of compelled migration, supporting sustainable development in countries of origin and transit and strengthening effective migration and asylum systems within the EU.