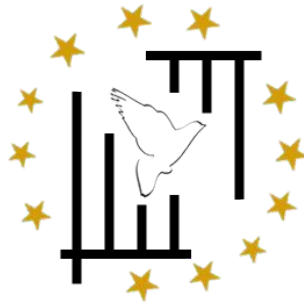


ASSEDEL



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Cutting back on Human Rights: A three-fold analysis of the amendments to the EU Return Regulation

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Cutting back on Human Rights: A threefold analysis of the amendments to the EU Return Regulation

A report by Yanna Moulay-Réthoré and Cecilia Invernizzi

The Return Regulation, approved by the European Parliament in its June 2026 plenary sitting, addresses the return procedures of third-country nationals who do not possess legal rights to stay within Union borders. The point of reference for this framework is the report “Common system for the return of third-country nationals staying illegally in the Union”, which was amended and approved with the endorsement of right and far-right parliamentary groups.

The following report aims to provide a comprehensive analysis of the amended text through a three-fold thematic lens:

- a) The responsibility borne by Member States implementing return procedures.
- b) The responsibility borne by third-country nationals subject to return procedures.
- c) The tradeoff between human rights norms and the claimed security concerns underpinning the Regulation.

Overall, the Regulation implements a governance infrastructure that is without precedents in the history of the European Union. The measures enucleated in the document concern prolonged detention of third-country nationals awaiting repatriation, including minors, as well as enhanced usage of “return hubs”, and reliance on “safe third countries” whose safety levels for incoming individuals are an object of contention. Such an agenda defines a decidedly more rigid stance on the control of migration flows, paving the way for monitoring practices and security measures that are difficult to reconcile with respect for the human rights of individuals subject to these regulations.

Introduction

The landmark vote that took place in Strasbourg on June 17, 2026 profoundly reshapes EU asylum and migration governance. The approved text is the “Return Regulation” (full title: “Common system for the return of third-country nationals staying illegally in the Union”), an array of measures aimed at implementing an efficient system of return of migrants with no legal right to remain in the EU¹. The framework was outlined by rapporteur Malik Azmani, a Dutch MEP belonging to the Renew Europe parliamentary group.

The report provides insights aimed at improving the effectiveness of screenings and returns, addressing issues such as:

- a) Expansion of the network of possible countries of return and possibility to establish “return hubs” in third countries.
- b) General obligation to issue return decisions and mutual recognition between Member States.
- c) Third-country nationals’ procedures for voluntary return and obligations to co-operate.
- d) Entry bans and enhanced enforcement measures.
- e) Enhanced powers to locate people who are subject to return procedures.
- f) Detention up to 30 months and deprivation of liberty.
- g) Emphasis on the external dimension of migration policy and strengthening of Frontex powers.

The principles outlined in the document denote a distinctively conservative turn in European migration policies, after decades of growing dissatisfaction with flows management². In fact, the new regulation overhauls the return system based on the “European Parliament and Council Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third Country Nationals” (2008)³. Moreover, its provisions furtherly sharpen the already restrictive measures that were included in a proposal issued by the European Commission in 2025.

Overall, the shortcomings of previous policies and the discontent that followed produced a growing emphasis on accelerating returns and strengthening migration control measures⁴.

¹ European Parliament, “New EU system for return of illegally staying third country nationals”, (2026).
<https://www.europarl.europa.eu/news/en/press-room/20260611IPR45214/new-eu-system-for-return-of-illegally-staying-third-country-nationals>

² Euronews, “‘The era of deportations has begun,’ right-wing MEP tells Euronews”, (2026).
<https://www.euronews.com/my-europe/2026/06/02/the-era-of-deportations-has-begun-right-wing-mep-tells-euronews>

³ European Council on Refugees and Exiles, “European Parliament approval of the Return Regulation”, (2026).
<https://ecre.org/european-parliament-approval-of-the-return-regulation/>

⁴ Ibidem.

The approval of the Regulation was obtained after two (failed) plenary voting rounds, about a proposal for rejection and a proposal to vote on amendments, respectively. Finally, a majority was achieved on a provisional agreement, with:

- 418 votes in favour
- 218 votes against
- 30 abstentions⁵

The success of the voting depended strongly on right-wing groups such as ECR (European Conservatives and Reformists) and ESN (Europe of Sovereign Nations), which expressed their consensus unanimously⁶. Following the vote, rapporteur Azmani stated: “Today Europe delivered. People rightly expect that those with no right to stay return to their countries of origin. That's why I have one clear priority: effective, realistic return measures. And after almost 20 years of standstill, Europe finally has them. Return is the final piece in Europe's migration system, and I'm hugely proud it's now in place.”⁷

After the positive response from the EP, the next steps before the regulation enters into force are official adoption by the Council and publication in the Official Journal. However, implementation will not be immediate for all provisions: some that require preparatory steps apply 12 months after the entry into force of the legislation.⁸

The report analyzes the amended regulation that was favourably voted through three complementary perspectives: the responsibility of Member States (I), the burden of responsibility falling onto third-country nationals (II), and the criminalization and security concerns that motivate the line of action embodied by the policy (III).

I/ The responsibility of States: more power for less safeguards

The EU Return Regulation touches on the responsibility of States in two distinctive ways: the lessening of the Member States' responsibilities towards third-country nationals, and the

⁵ European Parliament, “Minutes - Results of roll-call votes”, (2026).

https://www.europarl.europa.eu/doceo/document/PV-10-2026-06-17-RCV_EN.html#194134#992855

⁶ Ibidem.

⁷ European Parliament, “New EU system for return of illegally staying third country nationals”, (2026).

<https://www.europarl.europa.eu/news/en/press-room/20260611IPR45214/new-eu-system-for-return-of-illegally-staying-third-country-nationals>

⁸ Ibidem.

enlargement of the Member States' margin of appreciation regarding the execution of their responsibilities.

From the very first articles of the regulation, it is evident how Member States are now bound by looser standards and have more margin of movement in handling third-country nationals. In Article 3.1 ("Derogations"), circumstances where member states can deviate from the path set by the Regulation have been extended concerning specific categories, among which "third-country nationals who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, as defined in national law, or who are subject to an extradition procedure (PfE 558, ECR 543, EPP 544)" and "third-country nationals who posing security risks (EPP 544, PfE 560, ECR 543, ESN 559)". The latter is a poignant addition to the text, as it uses a very broad label and does not provide examples of what such "security risks" may be. The identification of a security risk is therefore left to the discretion of the individual Member States.

Moreover, Article 3.2.a reiterates the ability of Member States to resort to other methods to handle the issue, thus leaving even more room for individual initiative: "This Regulation does not affect the competences of the Member States to adopt other measures in accordance with Article 4(2) of the Treaty on European Union and Articles 72 and 347 of the Treaty on the Functioning of the European Union".

Firstly, the regulation transforms what could have been strict protective obligations into actions based on the "good will" of the member states. In chapter III "Obligations of the third-country national", the amendment of Article 21.4. adds subjectivity by introducing the notion of "appropriate proof of retention", the competent state authorities have more options (even though we wonder what else, besides photocopies, could constitute an appropriate proof of retention) while simultaneously deleting the possibility of choice for third-country nationals.

In Article 22 ("Consequences in case of non-compliance with the obligation to cooperate"), the amendment adds that "Member States may provide for other dissuasive measures or sanctions in national law where it is necessary, proportionate and duly justified for the purpose of return or removal. (EPP 1488, PfE 1487, ECR 1483)". This endows Member States with the possibility to add other measures and sanctions in national law, leaving the path open for countries with a harsher immigration policy. The EPP alternative is a "compromise" made in favor of strict national immigration policies. Member States have a bigger control and responsibility over the "dissuasive measures or sanctions", but this is not to provide better protection to third-country nationals, the heightening of responsibility goes in the opposite direction.

In the article 23 "Availability for the return process", there are numerous amendments to extend the power of choice that the Member States' authorities have regarding the third-country nationals. This is done with stricter and more authoritative vocabulary such as the addition of

"obligation" and the possibility for the competent authority to design a place where the third-country national is obliged to reside at. All throughout the regulation, the paradox remains: why adopt a regulation intended to further harmonise national laws if the regulation allows such a margin for Member States?

In Article 23.3, a fundamental safeguard was amended: the transparency of the decision to not grant permission to "temporarily leave the geographical area", "reside temporarily outside the place designated", "temporarily not comply with the reporting obligation". The regulation provides that these decisions should be taken "objectively and impartially on the merits of the individual case", but for these criteria to be truly respected, there must be one sort of control. By deleting the option for third-country nationals to be aware of the reasons for which the permission was not granted, the contestation of this decision is much more difficult.

Remaining on the same theme of the suppression of key protective safeguards for third-country nationals, Article 24.1 ("Right to information") was amended with the deletion of "without undue delay", condition that heavily affects the effectiveness of the right to information.

Chapter IV is supposed to be composed of safeguards and remedies for third-country nationals. However, the right to information cannot be by itself to be truly effective, it needs additional measures, such as a timely delay to receive the information. The right to information is key, but if the information is not timely, it loses its purpose. Furthermore, an amendment deleted "the third-country national shall be given the opportunity to confirm that he or she has received the information", this weakens the effectiveness of the right to information as the State does not need to be assured that the person has received the information needed.

Regarding the right to legal assistance and representation (article 25), it does not come out unscathed of the EPP-alternative. In points 7 and 9, the amendments deleted "nor undermine the exercise of the right of defence" and the possibility of the applicant to "request free legal assistance and representation". These modifications negatively affect the right to legal assistance and representation by weakening the weight of State responsibilities.

The amendment of Article 26.3. deletes the following responsibility of Member States: "Member States shall ensure that compliance with the requirements arising from the principle of non-refoulement is verified by the competent judicial authority, at the request of the third-country national or ex officio. (Rapp 128, EPP 1710, 1713 partially, ECR 1706, ESN 1709)". The principle of non-refoulement is protected internationally as a fundamental principle of international law and under Article 3 of the European Convention on Human Rights. Non-refoulement should guide every legal framework regulating the return of third-country nationals: despite the importance of this principle, the EU Return Regulation deletes the responsibility that States should have in regard to it.

In Article 30.2., the amendment deleted the requirement of an “explicit” expression of intent of non-compliance. The interpretation of an expression of intent is largely subjective, the amendment allows for a broader manipulation of the intent of the third-country national without the necessity of the intent being clear and “explicit” which could have avoided miscommunications.

Member States benefit from lesser responsibilities at the expense of the protection of third-country nationals. With the amended version of Article 31.1., the States do not need to take into account “any vulnerabilities and be proportionate”: this raises concerns regarding compliance with human rights obligations.

For what concerns the alternatives to detention, the decisions taken in accordance to the second paragraph of Article 31 (the obligation to regularly report to competent authorities with a frequency of up to 3 days, the obligation to surrender identity or travel documents to the competent authorities; the obligation to reside in a place designated by competent authorities; deposit of an adequate financial guarantee; the use of electronic monitoring) do not need to be regularly checked by a judicial authority. The amendment deleted the deadline of two months for the review of these decisions, which signifies a larger risk of a longer duration of a violation of human rights.

The responsibilities of Member States concerning the detention conditions (article 34) are frail. The amendments, on the pretense of other considerations such as “security” or “administrative management”, minimize the rights that detained third-country nationals dispose of.

II/ The burden of responsibility: an unbearable weight for third-country nationals

The EU return regulation has another key aspect: it encumbers third-country nationals with a heavy burden of responsibility in diverse ways.

Chapter III titled “Obligations of the third-country national” is the epitome of this burden. Article 21 “Obligation to cooperate” adds as many forbidden behaviors as possible while simultaneously preserving vague concepts such as “relevant information” to expand the responsibility of the third-country national as much as possible. This is done with the constant use of authoritative language to provide a certain impression of submission and harsh power dynamic, for example using the term “comply” instead of “remaining available”.

The regulation is quite demanding regarding the many documents needed and does not necessarily take into account how complicated it can be for a third-country national to obtain these documents, for example: article 21.2.e “provide information on [...] the travel routes used, or other third countries with which he or she may have a connection or through which he or she may have transited (EPP 1357, ECR 1360)”.

III/ Criminalization and security concerns: instrumentalization of third-country nationals

The EU return regulation paints a particular image of third-country nationals to be able to utilize the concern of preserving security in Member States’ territories. Third-country nationals are seen as assumingly uncooperative with a sort of vicious intent. The presence of this perception remains throughout many amendments.

In Article 21.2.c., by adding “mislead the authorities (Rapp 105) or withhold relevant information (PfE 1347, ESN 1346), provide forged documents (EPP 1348)”, the amendment portrays third-country nationals as people who will not be cooperative with state authorities. Furthermore, the amendment to Article 21.2.l.a represents an addition made to include as many restrictions as possible through national law.

The EPP alternative introduced the possibility of conducting searches and seizures without the consent of the third-country national (Article 21.6). This subjects third-country nationals to coercive measures more commonly associated with the criminal justice system, despite the fact that return procedures are administrative rather than criminal in nature. Although the provision reiterates that such measures must respect human dignity and fundamental rights, the limited emphasis placed on these safeguards risks making them appear secondary to the objective of enforcement.

Where we notice an evident criminalization of third-country nationals is in the amendment of Article 22 (6a) which precises that non-compliance could lead to “criminal sanctions, including imprisonment, in accordance with national law (EPP 1483, PfE 1490, ECR 1475)”.

In chapter V, titled “Prevention of absconding and detention”, there is an apparent use of the pretense of national security and efficiency of return to justify treatment such as strict prolonged detention and enlargement of possible motives for the qualification of “absconding risk”. Article 29.3.e.a. states that “any other relevant factor indicating that detention is necessary to ensure a timely and effective return, as determined by the Member States and in accordance with national

law. (EPP 1818, PflE 1822, ECR 1819, ESN 1821)”. This provokes a lack of legal certainty that a regulation could ensure to the benefit of reassuring Member States regarding their preserved sovereignty.

Article 31 touches on the alternatives to detention, although it does so by the creation of an “open-air” prison treatment and leaves the doors open to any national desires.

One of the most problematic elements of this chapter is the article addressing the detention period (article 32). The maximum detention period seems to be 24 months (2 years), but this can be extended for third-country nationals posing a security risk. This is inseparable from two key issues: how does one qualify “security risk”? Furthermore, is there no maximum period in case of an alleged “security risk”? It infers that these legal vacuums represent uncertainty and risks of human rights violations.

Conclusion

To conclude, the European Parliament, to the sounds of “Send them back!” adopted a regulation depicting the human rights backslide the world is currently facing when the topic is migration. An organization priding itself on its Charter of Fundamental Rights cannot be satisfied with itself after such a text, and human rights shall not be defeated by measures of this sort.

The European Union was built on the promise that human dignity, the rule of law and fundamental rights would remain at the heart of every policy. Yet, the Return Regulation marks a dangerous departure from these principles. By reducing safeguards, expanding detention, increasing coercive powers and treating third-country nationals primarily as security concerns rather than rights-holders, it risks normalizing practices that would have been unthinkable only a few years ago.

Migration management cannot become a justification for weakening the very rights the European Union was created to protect. A return policy that sacrifices human dignity for the sake of efficiency ultimately undermines the values on which the Union claims to stand.

ASSEDEL therefore calls on European institutions, Member States and civil society to remain vigilant throughout the implementation of the Regulation. Europe's credibility as a community founded on human rights will ultimately be measured not by the efficiency of its return policy, but by the humanity with which it treats those who are the most vulnerable.