COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME
COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Observations on the new EU returns framework

Introduction

The Council of Europe Commissioner for Human Rights fosters the effective observance of human rights, assists Council of Europe member states in the implementation of Council of Europe human rights instruments, in particular the European Convention on Human Rights (ECHR), identifies possible shortcomings in law and practice concerning human rights and provides advice and information regarding the protection of human rights across the region.[1]

The Commissioner presents his observations in the context of the impending adoption of an EU Regulation establishing a common system for the return of third-country nationals staying illegally in the European Union,[2] which will replace the current Returns Directive.

These observations should be seen in the light of the impact the Regulation, if approved, would have on the protection of the human rights of rejected asylum seekers and irregular migrants across a large part of the Council of Europe. In this regard, he notes that all EU states, as well as the four non-EU states to which the Regulation will also be directly applicable,[3] are members of the Council of Europe. Furthermore, several other Council of Europe member states are expected to align their domestic laws with EU frameworks as part of their accession processes. In this context, the Regulation should not impose on such states any requirements that would put them in conflict with their obligations under the ECHR[4] or other Council of Europe or international instruments, including as regards the prohibition of torture or inhuman or degrading treatment or punishment, the prohibition of arbitrary deprivation of liberty, and the right to effective remedies.[5]

In addition to fostering compliance with member states' obligations, the observations presented in this document also seek to contribute to the ongoing discussion about the effectiveness of return policies. As already noted by the Commissioner, compliance with human rights standards creates legitimacy and acceptance of return proceedings, allows the building of trust with partners across society, and provides a strong foundation for international co-operation on the basis of legal certainty – all of which contributes to the overall effectiveness of member states' return policies.[6]

These observations are not exhaustive. They focus on several elements of particular focus for the Commissioner but should be seen in complementarity with the positions of other international bodies already published in connection with the proposed Regulation.[7]

Non-refoulement

Adherence to the principle of non-refoulement is the bedrock of any human rights compliant return legislation. This should be reflected in the Regulation, keeping in mind that this covers both the situation of persons whose asylum request has been rejected or deemed inadmissible and that of persons who have never claimed asylum. In either case, refoulement issues may arise. Indeed, the Commissioner observes an increasing risk that even those who claim asylum may never have their personal circumstances and risks upon return assessed on the merits, or only in more superficial procedures, including through the expansion of the use of "safe country of origin" and "safe third country" concepts. Furthermore, several member states to which the Regulation will apply have adopted national laws or practices that prevent certain groups of people from applying for asylum at all. It is essential that the Regulation, which deals with the last period of a person's stay in a member state, ensures comprehensive protection against refoulement.

Proposals to weaken possibilities to appeal against return decisions should be rejected. The Commissioner notes that member states are under an obligation, under the case-law of the European Court of Human Rights, to ensure automatic suspensive effect is accorded to any remedy in relation to an arguable claim that return would pose a risk in relation to Article 2 (the right to life) and Article 3 (prohibition of torture or inhuman or degrading treatment or punishment) of the ECHR. Consistently with this core principle, the final text of the Regulation should prevent a situation from arising in which return might be carried out before the suspension of removal. Furthermore, the absence of a mandatory minimum timeframe for appeals might make it very difficult for individuals to effectively challenge deportation orders, contrary to the established jurisprudence of European courts. Member states should not enforce a return decision issued by another member state on the basis of mutual recognition if this could lead to refoulement.

The Commissioner is also concerned about proposals for return decisions to indicate multiple return destinations without a thorough assessment of personal circumstances and potential risks upon removal to each of these destinations, and for return decisions with no return destination even cited. This again may raise the risk of refoulement, as well as potentially undermining the possibility of persons to submit reasons against return to a specific country, which could render the expulsion collective within the sense of Article 4 of Protocol 4 ECHR.

Return hubs

Detailed considerations of the human rights risks involved in setting up "return hubs" and other externalised return procedures, as well as the human rights safeguards that should be in place, are set out in the Commissioner's report 'Externalised asylum and migration policies and human rights law', published in September 2025.[8]

Engagement on return hubs should be done with precaution, and only following clear evidence that they can be implemented in full compliance with states' obligations, including following mandatory and comprehensive human rights risk assessments, the development of risk mitigation strategies, and the establishment of effective transparency, monitoring and accountability mechanisms. Furthermore, if return hubs are implemented, these should honour specific, non-negotiable principles, especially as regards the prohibition of refoulement and the prevention of other human rights violations.

In this context, clear and effective human rights safeguards should be put in place, which the Commissioner suggests should be reflected in the text of the Regulation to ensure consistency and compliance, especially as the current proposal foresees member states themselves, bilaterally

or together, setting up return hubs with third countries. These safeguards, listed below, correspond significantly with those already recommended by other bodies, including the EU Fundamental Rights Agency (FRA),[9] UNHCR,[10] and the UN Special Rapporteur on the human rights of migrants.[11]

First, the Commissioner considers that informal arrangements provide too little legal certainty and accountability. The Regulation should make explicit that only agreements which are binding under international law can be the basis for return hubs.

Second, all transfers, both from a member state to a country where a return hub is located, and onwards from the return hub, should have clear legal grounds and be based on an individualised decision. Furthermore, such decisions should always be subject to effective remedies meeting all requirements set out by the European Court of Human Rights, especially in relation to non-refoulement.

Third, clear rules should be established for vulnerable persons. Children – both unaccompanied and with families – should be excluded from transfers to return hubs, in line with the European Commission's initial proposal.

Fourth, as a further prevention of refoulement, return hubs should not be used for asylum seekers whose applications for protection have not yet been finally decided on the merits.

Fifth, the Regulation itself should go beyond mentioning that member states' agreements with third countries should set out conditions of stay. Instead, it would benefit from setting out clear and enforceable standards on both reception conditions and the possible use of detention, with the latter being avoided as much as possible, and only imposed as a last resort, based on individual circumstances and following the consideration of alternatives.

Sixth, the Regulation would benefit from much more explicit provisions to prevent people transferred to return hubs being left in protracted legal uncertainty. This would include limiting such transfers only to persons for whom there are objective reasons to believe that staying in a return hub will increase opportunities to effectively implement the onward return to their country of origin. There should also be clear deadlines for the length of stay in a return hub and for the re-transfer of persons to the member state following this deadline. In case of longer stays, at the very least there should be provisions on the long-term status of persons who remain in the state where the return hub is located.

Finally, any agreements related to return hubs require independent and effective monitoring. In this respect, the mention of monitoring in the Commission proposal is welcome, but guarantees would need to be in place to ensure that this encompasses all human rights issues at all stages of implementation. Furthermore, additional transparency and accountability measures, including effective complaints procedures, clear mechanisms for investigations in case of allegations of human rights violations, and strong judicial and parliamentary oversight, should be provided for. In this respect, the Commissioner also notes that there is a parallel discussion about the use of EU funding to facilitate the implementation of return hubs, which should give rise to further consideration of appropriate human rights safeguards to avoid such funds being used, directly or indirectly, to enable practices that violate human rights.

Voluntary return

Giving preference to voluntary return over forced removals is widely recognised as a key principle in human rights compliant return procedures.[12] It honours the principles of necessity and proportionality in regard of any interference with human rights. Furthermore, voluntary returns decrease burdens, including financial costs, on states' return systems and have accounted for a significant proportion of overall effective returns across Europe.

Attention should not only be paid to appropriate sequencing of voluntary return and removal, but also to make sure that specific exceptions to providing an opportunity to comply voluntarily with a return decision, such as in relation to the risk of absconding or other factors, are not such that these would de facto undermine the priority of voluntary return. Similarly, setting extremely short or even zero-day deadlines for compliance should be rejected, as this would deprive individuals of a genuine and realistic possibility to return voluntarily.

Detention

The negative impact of immigration detention on the health and well-being of individuals is well documented. It is crucial that provisions on detention reflect its use as a measure of last resort, after a careful and individual examination of each case. It has become well-established that the development of effective alternatives to detention is an integral part of a human rights compliant returns system.[13] The Regulation should therefore clearly set out that, if the question of detention might arise, consideration should first be given to the use of alternatives. Even alternatives to detention may entail interferences with human rights and safeguards should be in place to ensure that they are used only in cases in which authorities would otherwise need to resort to detention. They should not amount to general restrictive measures applied in cases where there is no substantive reason to limit the enjoyment of a person's right to liberty.

When detention is believed necessary, this must be undertaken in conditions that are appropriate, and which avoid prison-like circumstances or even the use of facilities where persons faced with return are held together with ordinary prisoners. It must be guaranteed that each person concerned maintains the necessary contact with the outside world at all times. The current Returns Directive already provides for considerable periods of detention, of up to 18 months, whereas there is no evidence that further lengthening detention periods will result in more returns. Attempts to impose even longer detention periods should be rejected. The same is true for the significant broadening of situations in which detention can be resorted to, including in view of excessive invocation of the risk of absconding.

In view of the even more profound effects of immigration detention on vulnerable persons, their situation needs to be addressed and the prevention of their detention explicitly regulated. The Regulation should align with the recognition by the European Court of Human Rights of the extreme vulnerability of children as a decisive factor in relation to the protection of their rights, taking precedence over considerations relating to the child's migration status, including in expulsions.[14] In particular, it should reflect obligations under the UN Convention on the Rights of the Child (UNCRC), which all Council of Europe member states have ratified. The UN Committee on the Rights of the Child has indicated that the detention of any child because of their or their parents' migration status constitutes a child rights violation and contravenes the principle of the best interests of the child. The Committee has thus called on states to expeditiously and completely cease or eradicate the immigration detention of children.[15]

Other issues

The Commission proposal, as well as suggestions arising out of deliberations in different EU institutions, raise numerous other issues, which should be dealt with by employing a human rights based approach. For instance, the proportionality of sanctions imposed against persons deemed not to co-operate with the authorities in return proceedings, and of law enforcement powers to detect persons staying irregularly, require close attention.

Furthermore, the situation of those who are unable to return merits consideration, including in ensuring that their treatment in the member states fully aligns with international obligations, including under the ECHR, the (Revised) European Social Charter, the UNCRC and the International Covenant on Economic, Social and Cultural Rights. Return is only one of multiple paths out of irregular stay, and other options should also be given due consideration. Member states can respond to irregularity by issuing residence permits or other authorisations to stay, including for humanitarian reasons, and any attempts to constrain such solutions should be rejected. This would only serve to push more people into situations where their human rights would be put at risk, including in situations of indefinite legal uncertainty, whilst having the counterproductive effect of enlarging the pool of persons who are very unlikely to be returned and who are instead pushed to the margins of society.

Endnotes

1. Committee of Ministers of the Council of Europe, Resolution (99)50, adopted 7 May 1999.
2. COM(2025) 101 final, 11 March 2025.
3. Iceland, Liechtenstein, Norway and Switzerland.
4. Also noting that the ECHR acts as a minimum standard for the interpretation of equivalent rights under Article 52(30 of the Charter of Fundamental Rights when states implement EU law.
5. The European Commission's explanatory memorandum to the proposed Regulation also specifically reiterates its observance of obligations stemming from international law.
6. See Commissioner for Human Rights, Efficiency through dignity: why Europe's return policies need human rights, 28 January 2026.
7. See, for example, the letter of UN experts on the Regulation, OTH 166/2025, 26 January 2026; UNHCR, Observations on the European Commission's Proposal for a Returns Regulation, May 2025.
8. See Chapter 2 on externalised return procedures, as well as Chapter 3 on overarching issues related to the transfer of people from member states to externalised procedures. The report is also available in French, and summaries of the recommendations in German, Italian, Spanish and Albanian.
9. FRA, Planned return hubs in third countries: EU fundamental rights law issues, 6 February 2025.
10. UNHCR, Note on the 'Externalization' of International Protection, 28 May 2021; UNHCR, The Need for Effective Returns Systems and the Potential Role of Return Hubs, March 2025
11. UN Special Rapporteur on the human rights of migrants, Externalisation of migration governance and its effect on the human rights of migrants, report, A/80/302, 4 August 2025.
12. Council of Europe, Twenty Guidelines on Forced Return, September 2005, principle 1; UN International Law Commission, Draft Articles on the Expulsion of Aliens, with commentaries, Yearbook of the International Law Commission, 2011, vol. II, Part Two. Also see, CJEU, C-554/13, Zh. And O., judgment (OJ), 31 July 2015.
13. See, for example, Steering Committee on Human Rights (CDDH) of the Council of Europe, Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results, 2019.
14. For an overview of relevant case law, see European Court of Human Rights, Guide on the case-law of the European Convention on Human Rights: Immigration, updated on 31 August 2025.
15. Joint General Comment No. 4 of the Committee on Migrant Workers and No. 23 of the Committee on the Rights of the Child (2017) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/CG/4-CRC/C/GC/23, 16 November 2017.