

Return Migration

Policies & Practices in Europe



IOM International Organization for Migration

Return Migration: Policies and Practices in Europe

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INTRODUCTION

This report is an extensive compendium of information on migrant return policy, legislation and practice by the European Union (EU) Member States, the ten acceding states due for EU membership in May 2004, and Norway and Switzerland. It has been prepared by the International Organization for Migration (IOM) and draws on a variety of sources, including governments, IOM, IGC and ICMPD. The data derives mainly from government records and IOM's programmes and research.

The report was commissioned by the Netherlands' Advisory Committee on Aliens Affairs, and is intended to put the return issue in the wider context of the Netherlands' Presidency of the EU from July to December 2004. The addition of Norway and Switzerland helps complete the comparison across wider Europe.

Return¹ migration has in the past decades emerged as a critical element of many governments' migration policy – an integral part of effective migration management, alongside strong border management and timely and fair asylum processes. It is seen by many as the cornerstone of any successful strategy to prevent or deter irregular migration and residence in EU States.

Return of migrants unable or unwilling to remain in a host country² – such as rejected asylum seekers, stranded migrants or persons in irregular situations – can help maintain the integrity of asylum systems and regular immigration programmes. As such, it supports states' sovereign right under international law to determine who should enter and remain on their territory, and under what conditions.

Effective migrant return can also be important for maintaining productive bilateral relations between countries of origin, transit and destination. Experience has shown that involuntary³ and voluntary returns are interlinked and have a mutually reinforcing effect. A number of European states have found that voluntary return has been most successful where involuntary return is also resorted to.

Assisted voluntary return (AVR) is increasingly seen by most governments cited in the study as the preferred return option, proving to be more cost effective, humane, and conducive to good relations among all players, also at other levels such as trade and cultural exchange. In the last decade, the number of states in Europe implementing assisted voluntary return programmes has increased substantially. Today, there are more than **20 AVR programmes** operating out of 18 countries in Europe compared with only four programmes ten years ago. The earliest AVR programme was the German REAG programme, commenced with IOM in 1979. The Dutch, Belgian, Swiss and other programmes followed thereafter, in various manifestations. The Finnish Government even includes AVR in its MOI guidelines on expulsion and forced return orders, to ensure its availability as an alternative to the enforcement processes.

Experience has also shown that additional “investment” by returning states in reintegration support in countries of origin is likely to render the return most sustainable with flow-on benefits

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such as encouraging other irregular migrants to return home voluntarily and incentivizing returnees to stay home. This in turn encourages destination countries to expand their approaches and address root causes of irregular migration, working in partnership with countries of origin to find mutually beneficial solutions.

Despite similarities of experience between states, there is no harmonized EU approach to either involuntary or voluntary return, although there are a number of EU instruments related to return, admittedly not legally binding. These include the obligation under the 1990 Dublin Convention to readmit rejected asylum seekers who have entered the territory of another Member State – which in itself would call for a more consistent expulsion strategy across countries. The Schengen *Acquis* also obliges Member States to expel foreigners without permission to remain. The EC's 1994 Communication on Immigration and Asylum Policies also identified the return of those in irregular situations as one of the key elements in combating irregular migration. There is generally a consistent effort by the EC to establish norms for ensuring cooperation of countries of origin of irregular migrants. Readmission Agreements feature as one key strategy, both as a component of EU framework agreements and in bilateral arrangements; as do carrier agreements, for which the European Council Directive offers some standard provisions.

Common cross-border arrangements under the Schengen Agreement and the Dublin Convention are also compelling governments in the region to adjust any new approaches to return migration in the direction of greater standardization. The Schengen Information System (SIS), for example, is relevant for monitoring attempted re-returns of persons expelled or deported.

Among the biggest obstacles to a more harmonized approach are the widely varying definitions used by governments in the field of migration; a feature which is reflected also in this study. Other obstacles include differing approaches to the amount and type of incentive for returnees to reintegrate and stay home, or the preparedness of host governments to open avenues of legal migration to counter the lucrative business of smugglers.

Past EC deliberations in the context of the EC Green Paper (2002), the hearing on a Community Return Policy, and the resultant EU Communication on *A Community Return Policy on Illegal Residents* (COM 2002: 564), based themselves on a wealth of experience and commentary by governments, NGOs and international organizations, but took a more narrow approach to return by limiting the policy to “illegal migrants”. In reality, a very high proportion of persons participating in voluntary return programmes in Europe over the last decade have been refugees and persons with temporary protected status following crises/conflicts in their home regions (notably Bosnia and Herzegovina, Kosovo, Afghanistan and now increasingly Iraq).

Return is increasingly also an important issue for the acceding states, given their role in securing the outer borders of the EU, and the fact that all of them have become recipients, even destinations, for irregular migrants. Alongside strengthened migration legislation and management capacities along their borders, expulsion of irregular migrants, and enhanced asylum systems, these states have also opened up AVR programmes in recent years to cope with the increasing numbers of asylum seekers and other migrants in irregular situations, either stranded en route to Western Europe, or returned by neighbouring countries under bilateral agreements.

EU-funded capacity building programmes like PHARE are consolidating partnership approaches between the current EU Members and the future Members. All states studied are tightening their migration controls, both at borders and within their territories, but at the same time increasing their voluntary return capacities.

Despite the vast amount of material available, there remain large gaps in information and a paucity of evaluative material to enable full conclusions to be drawn across countries about generic best practices. Differing definitions from state to state, e.g. relating to “expulsion”, “detention”, “irregular migrant”, “voluntary” or reintegration, or even on costing of return activities, hamper any serious effort to compare practices across states. A number of definitions are offered in the endnotes to this introduction, as derived from IOM’s working glossary (and substantially reproduced in the *Migration Acquis Handbook* edited by P.J. van Krieken, 2001).

There is also an urgent need for more systematic comparative research to both capture the lessons learned and gauge the cost-benefit outcomes of tried return programmes. These data would be critical for any serious efforts at harmonizing return policies across Europe.

For these reasons, the report is not as complete as the authors would have wished, but at the same time it can serve as a highly informed guide on how and where to fill these gaps through future research.

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NOTES

- Return** refers broadly to the act of going back from a country of presence (either transit or destination) to the country of previous transit, or origin. There are numerous sub-categories of return which can describe the way it takes place, e.g. voluntary, forced, assisted or spontaneous return; as well as sub-categories which can describe who is participating in the return, e.g. repatriation (for refugees).

Voluntary return is based on an informed decision freely taken by the individual

Assisted voluntary return includes organizational and financial assistance for the return and where possible, reintegration measures offered to the individual.

Involuntary, or non-voluntary, or forced return: Return that is not undertaken by the individual voluntarily. These terms, together with “deportation”, are used interchangeably throughout the text. IOM is prevented by its Constitution from engaging in, or facilitating, the forced return of migrants, or any escorting, or transit assistance services related thereto.
- It may be useful to describe the types of migrant return now occurring in Europe, and locate the narrower debate on return of irregular immigrants more precisely on that palette. Returns from Europe broadly occur in three different ways (regardless of status in the country of destination):

Voluntarily without compulsion (migrants deciding at any time during their sojourn to return home on their own volition and cost);

Voluntarily under compulsion (persons at the end of their temporary protected status, or rejected for asylum, unable to stay and choosing to return on their own volition; also within government and other programmes providing assistance);

Involuntarily, as a result of, or anticipating, no legal status in the country (the authorities deciding, usually by law, on forcing, frequently also escorting, the migrant home).

The first category of returns usually occurs spontaneously, without the organized assistance of governments or other concerned agencies such as IOM; and eludes the government statisticians. It can also occur within an organized return programme providing return and sometimes reintegration assistance. The second and the third, usually involve the intervention of governments or their implementing partners. The second has proven in many ways to be the more acceptable and durable solution, particularly when it takes place within an assisted voluntary return programme – largely for all the reasons outlined in the above first paragraph in this section.