PROMISING NON-RETURN POLICIES

POLICY BRIEF

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EXECUTIVE SUMMARY

This Policy Brief presents policy recommendations for EU+ countries hosting significant numbers of irregular migrants to find sustainable and promising responses to prolonged situations of non-return. Three key considerations guided the recommendations' development. First, the proposed recommendations seek mutual benefit – aiming to identify approaches that support the well-being and agency of irregular migrants while also responding to the needs and interests of host societies. Second, the proposed recommendations acknowledge the fluidity of migrants' legal status and the need for more stable, sustainable solutions across countries. Third, attention is given to policy transferability, recognizing the context-depended implementation of different non-return policies and the need for a more harmonized approach across national contexts.

ABOUT THE FAIR PROJECT

The Finding Agreement in Return (FAiR) project aims to strengthen the governance of return migration in the EU, addressing legitimacy issues around return migration policies and alternatives. The project contributes to generating new insights into the factors and processes that either foster or impede the legitimacy and effectiveness of related policies. The initiative places the perspectives of non-EU realities centre stage and brings together multidisciplinary expertise from academic, policy research, governmental, and migrant advocacy organisations across Europe, Africa, and the Middle East. This policy brief is based on data collected by the research team of the University of Milan and the Work Package partners (MPG, University of Rotterdam, ICMPD and PICUM) through desk-research-based policy analysis and focus groups with experts in eleven EU+ countries (Austria, Sweden, France, The Netherlands, Switzerland, Germany, Italy, Greece, Spain, The UK and Poland).

INTRODUCTION

In the fourth quarter of 2024, out of the 124,935 people who were ordered to leave the European Union, 28,630 were returned to a third country, resulting in a return rate of 22.9% (Eurostat, 2025a). While total departures are most likely underestimated as spontaneous departures are not consistently recorded in national statistics (cf. Dumbrava, 2025), these figures underscore a critical and persistent challenge in EU migration governance: the gap between return orders and actual returns. Each year, an estimated 300,000 people remain in the EU despite return decisions – often for prolonged periods of time –, unwilling and/or unable to return due to a variety of legal, humanitarian, and logistical constraints. These include the principle of non-refoulement, the right to family and private life, children's rights, health conditions, statelessness, or the lack of documentation or cooperation from third countries (Galletti, 2025).

Throughout Europe, states have developed various non-return accommodation policies - hereafter also: *non-return policies* - to manage the continued presence of irregular migrants whose return is difficult or impossible to enforce (cf. Leerkes and Van Houte, 2020; Ince-Beqo et al., 2024). Non-return policies refer to all policies that seek to address proven or anticipated prolonged difficulties in enforcing return and can range from relatively inclusionary large-scale amnesties and regularization programs to case-by-case regularization mechanisms and hardship regulations, to considerably more exclusionary measures such as (night) shelters, long term encampment or immigration detention without a real view to deportation (cf. Leerkes and Broeders, 2010; Johanssen, 2013, Vanderbruggen et al., 2014; Leerkes, 2016). However, such non-return policies, especially the relatively inclusionary ones, remain limited, highly selective, fragmented, and politically sensitive, despite the scale and persistence of the 'return gap'. Instead, countries across Europe continue to dedicate substantial efforts and resources to the enforcement of return as a tool to manage 'irregular migration'. This overemphasis on returns, however, ignores the complexities of migration and is likely to lead to an increase in irregularity (Galletti, 2025). Data suggests that strict enforcement does not deter migration, nor does it ensure removals (Leerkes and Van Houte, 2022; Kahmann et al., 2023). On the contrary, individuals who fall within this legal and policy gap often find themselves in precarious, undocumented situations of protracted limbo, excluded from basic rights and services, such as access to housing, work and social support.

At the macro level, restrictive national policies can trigger a "waterbed effect," where migrants shift between EU countries in search of protection or stability, exacerbating tensions between countries. A lack of viable, coordinated non-return policies thus may further displace people, rather than resolve the issue of persistent irregularity. It is therefore imperative to accept non-return as a policy reality and develop legal frameworks that integrate *non-return policies* into broader migration governance. Rather than being seen as a failure of enforcement, non-return policies should be understood as essential tools to manage migrants who cannot be returned humanely, legally, and pragmatically.

This policy brief presents the strengths and shortcomings of selected *promising* non-return policies across five EU+ states and formulates key policy recommendations. The selected non-return policies under scrutiny comprise two labor- and integration-related regularization mechanisms in Germany, regularization programs in Italy, the *LVV* provision (National Facilities for Irregular Migrants) in the Netherlands, permission for humanitarian stay and 'conventions-related' residence permits in Poland, and the hardship regulation in Switzerland. The policies were selected as they appear promising due to their capability of promoting human rights, their potential benefit for host countries, and political feasibility. While policies vary significantly in

scope and design, they share common objectives: to uphold minimum human rights, reduce irregularity, and respond to the long-term presence of people who cannot be removed. Due to their double-objective of responding to labor market demands in an aging Europe (EMN, 2015, Schammann, 2019) and offering irregularly staying migrants the opportunity to obtain legal security as well as social, economic and political rights (Bauer & Schreyer, 2019; Kraler, 2019; Landolt & Goldring, 2015; Rosenberger & Küffner, 2016), regularizations appear as particularly preferable long-term solution to protracted situations on non-return.

METHODOLOGY

The recommendations presented in this policy brief are grounded in a comparative analysis of six non-return policies across five EU+ countries: Germany, Italy, the Netherlands, Poland, and Switzerland. These countries were selected for their varied legal, political and geographic contexts regarding return and regularization. The selected countries represent different post-arrival enforcement regimes as they differ in their interest and/or capacity to enforce migrant returns (cf. Leerkes and Van Houte, 2020). Primary data collection took place between September 2024 and June 2025 and included 60 semi-structured interviews with migrants, employers, policymakers, and civil society actors, alongside four multi-stakeholder roundtables. In Switzerland, policy insights were primarily drawn from document analysis. The policy recommendations were developed through a mapping of the research's key findings, followed by discussions that assessed the relevance and practical feasibility of each proposal.

KEY FINDINGS

We find that countries have adopted **different approaches** to respond to situations of persistent irregularity and protracted situations of non-return. The analyzed non-return policies range in terms of their scope, durability, human rights-orientation, reach and explicit or implicit nature. For instance, while some countries have adopted explicit regularization mechanisms (Germany) or programs (Italy) that eventually allow individuals to gain a legal status, others have opted for provisions that may also lead to return or regular onward migration, or at least contribute to controlled irregular stay by providing basic shelter (the Netherlands). Arguably, the diversity of approaches across countries creates legal uncertainty within the Schengen zone. Migrants regularized in one state may move to another where their status is not recognized, causing friction and governance gaps.

The table below presents an overview of the analyzed policies:

Vocational toleration - *Ausbildungsduldung* (Germany)
> Step toward regularization through following and completing a vocational training (*Ausbildung*) (the vocational toleration is granted to individuals following a vocational training; a regular status is granted upon completion of the training and subsequent qualified employment)
+ Links legal status to labor market needs and integration; provides structured pathway to regularization and long-term stay
- Strict eligibility criteria; delays and legal limbo during transition periods

Opportunity Residence Act – *Chancenaufenthalt* (Germany)
> Regularization through tolerated presence in Germany and integration achievements

+ Provides a temporary path to legal status for long-term tolerated individuals, fewer eligibility requirements

- Temporary permit with often insecure outcome

2020 Regularization Program (Italy)
> Sector-based regularization of undocumented workers during the COVID-19 pandemic; employer-dependent application process
+ Legalized over 200,000 people; targeted essential sectors
- Excluded many sectors; relied on employer initiative; slow processing led to prolonged legal limbo

LVV - *Landelijke Vreemdelingenvoorziening* **(Netherlands)**
> Sheltered, case-managed accommodation for certain migrants without legal status who cannot return
+ Offers stability, avoids homelessness, supports individualized case resolution
- Covers only a small subset of irregular migrants, limited access and geographic disparities

Hardship regulation - *Härtefallregelung* **(Switzerland)**
> Allows cantonal authorities to recommend regularization of well-integrated, long-term residents on hardship grounds
+ Recognizes local integration and humanitarian concerns; provides stable legal status
- Highly selective; fragmented implementation across cantons; low transparency

Humanitarian and 'conventions-related' Permits (Poland)
> Issued during return procedures when deportation is not possible for legal, humanitarian, or technical reasons.
+ Provides legal stay and work rights; recognizes family life and child rights in some cases
- Cannot be applied for proactively; rights vary by permit type; highly conditional and revocable

Despite differences in policy design, the selected non-return policies reveal several **shared benefits** across countries, for both individuals and host societies. Though to varying degrees, most of these policies contribute significantly to improving the **individual circumstances** of irregular migrants by ensuring access to shelter, healthcare, and social support—and, in some cases, also to education, employment, and legal status. In doing so, they promote access to fundamental rights and essential services, improve mental health outcomes, and offer more stable, long-term prospects for staying. Individual regularizations appear to be most promising as granting legal status often goes hand in hand with access to employment, education, and long-term security (including naturalization opportunities). **Economically**, these policies may help to reduce exploitation, improve tax compliance, and address labor shortages, for instance by providing legal pathways to irregularly employed migrants. Examples such as Switzerland's Operation Papyrus, Italy's targeted regularization programs, and Germany's *Ausbildungsduldung* illustrate how such approaches can benefit both individuals and national economies. From a **public order perspective**, providing shelter and support (such as in the LVV in the Netherlands) reduces homelessness and its associated risks, promoting social stability at the local level. **Politically**, while often debated, the continued existence of these policies across Europe suggests a degree of acceptance, especially when framed in terms of economic – and societal – utility, and designed on a right-based, individual approach (compared to large-scale programs).

Yet, despite these shared benefits, the analysis also revealed various costs and challenges: First, existing non-return policies often are highly **selective and conditional** and have a **limited reach**. In all five countries, eligibility criteria are narrow, procedures are cumbersome, and implementation varies widely. Narrow eligibility criteria may include, but are not limited to, (sector-bound or qualified) employment, language skills, a verified identity, a clean criminal record, willingness to cooperate with the authorities or 'commitment' to national values, often impeding access to existing regulations. The implementation of policies is often hampered by administrative backlog, a lack of political will, and procedural complexity, limiting their effective implementation and accessibility to those in need. Procedural complexity is, for instance, reflected in or related to frequent legal changes and ambiguities in policy goals, untransparent eligibility requirements (also due to lack of information), or administrative discretion, making outcomes uncertain.

Second, accessing existing regulations, such as the LVV or regularization pathways, involves certain **risks for individuals**, as these typically require collaboration with authorities and the provision of identity documents. The fear of deportation before and during regularization procedures, along with the continued uncertainty due to temporary residence permits, featured clearly as perceived risks or concerns related to the accessibility of non-return regulations. Some permits, such as the Opportunity Residence Act in Germany, are given only for 18 months, posing the risk of falling back into irregularity. Other provisional measures, such as granting access to the LVV or to a toleration 'status', do not imply the removal of the actual return order, but rather the temporary suspension or deferral of return.

Third, at the implementation level, civil society organizations, employers, and local governments play an indispensable role in bridging the gap between policy and access. The initiation, support, and success of regularization efforts often depend on the involvement of municipalities, NGOs, and other civil society actors—though **outcomes** can be **uneven** due to discretionary power. While the reliance on informal actors can potentially promote the reach of promising non-return policies, it can also contribute to **unequal access,** underscoring the need for more structured partnerships, improved funding, and clearer institutional roles for non-state stakeholders.

Finally, despite having various non-return policies in place, public and political discourses continue to focus on enforcement and removal, revealing a **lack of open political recognition and discussion of non-return as a long-term phenomenon**. Policymakers appear hesitant to admit the limited feasibility of returns due to perceived political costs, and as a result, pragmatic alternatives often remain under-discussed and under-regulated. Presumably, underlying many of the constraints on policy design as well as the lack of open political dialogue on the issue are **assumptions about public opinion and concerns** including pull factors, misuse, or political backlash. Such fears shape restrictive criteria and narrow targeting of programs to "deserving" categories. However, large-scale evidence to substantiate concerns about pull effects or incentives for irregular migration remains lacking. In some cases, (Netherlands' LVV or Switzerland's hardship procedures) anecdotal claims exist, but these are not systematically studied and also pertain to migration *within* rather than *to* the Schengen area.

POLICY RECOMMENDATIONS

1. Discuss Non-Return More Openly on a Political Level

For: *National governments, EU institutions*

European governments should recognize and openly acknowledge non-return as a structural reality, not a policy failure. Continued failure to recognize non-return as part of broader migration policy undermines credibility and hampers effective policymaking. Open and evidence-based discussions at the political level would allow for more coherent integration of non-return policies into migration governance and increase public transparency. Such discussions should also involve conversations on the financial and human costs of continued efforts of enforced return. Framing these policies not only as humanitarian responses but also as tools for legal clarity, social stability, and economic benefit can moreover build broader political support. Given significant existing and forecasted labor market shortages across Europe (EURES, 2023), non-return policies such as regularizations require more attention. Finally, clear political commitment and communication may also help reduce (policy) ambiguity and insecurity on the side of individuals, support organizations and employers.

To achieve this, policy conferences should be organized, for instance in collaboration with EMN or EUAA, and key topics proactively placed on the agenda of EU and national parliamentary debates to ensure broad, evidence-based and future-oriented dialogue.

2. Improve accessibility of promising Non-Return Policies such as regularization

For: *National governments, EU institutions, NGOs*

Existing non-return policies often remain under-implemented or narrowly targeted. Governments and NGOs should scale up access to existing programs, define clear and fixed eligibility criteria, and ensure that legal pathways, such as regularizations based on labor or integration and hardship provisions, are accessible and applied consistently. Risks and uncertainty for individuals could be reduced by introducing accessible and transparent pathways to permanent residency that could either be based on humanitarian, economic or integration-related grounds to reach individuals with different capacities, resources and needs. Greater investment in administrative capacity, legal clarity, and public information campaigns can improve uptake and reduce reliance on informal workarounds or civil society-led patchwork solutions. Simplifying bureaucratic procedures and legal complexity can contribute to the more efficient use of resources and facilitate the work of local and national authorities. Finally, information on existing regulations should be provided – with the help of non-governmental organizations – in an accessible manner.

3. Involve NGOs and Local Governments More in Design and Implementation

For: *National governments, municipalities, civil society*

Civil society organizations and local governments already play key roles in sheltering, advising, and supporting irregular migrants. These actors should be formally integrated into policy design and implementation, alongside other stakeholders such as employers. Their involvement increases reach, enhances trust, and ensures that programs are responsive to on-the-ground realities. Structured partnerships, institutional funding mechanisms, and shared governance models play a key role here.

A dedicated platform including governments, civil society, and affected communities could help facilitate regular consultations and exchanges between different actors. Existing networks such as Eurocities, PICUM, and ECRE, and their local and national counterparts, could be actively involved to ensure broad participation, knowledge-sharing, and practical input improving the design and implementation of policies. NGOs could reduce selective access to the programs by partnering more with migrant organizations that are less well-

connected to the policy field so as to increase the links with potential beneficiaries who are less publicly visible (e.g. irregular migrants who have not applied for asylum).

4. Develop Minimum European Standards

For: *EU institutions, national migration ministries, civil society*

While asylum systems and return procedures are regulated at the EU level through instruments like the Common European Asylum System (CEAS) and the Return Directive, non-return policies remain the prerogative of individual Member States. The lack of EU-level regulation on non-return creates fragmentation, legal uncertainty, and a waterbed effect across Member States. The EU should establish minimum standards for shelter, healthcare, legal aid, and time-bound pathways to regularization, while allowing space for national adaptation. A more harmonized framework would protect basic rights, promote fairer burden-sharing, and reduce tensions between states. EU institutions should lead consultations to draft these standards in collaboration with Member States and stakeholders.

Policy conferences and expert workshops could help foster dialogue on promising and feasible non-return policies across Europe. In parallel, targeted research should be supported to identify and define minimum standards for such policies under European law, ensuring consistency, legal clarity, and rights protection across Member States.

5. Provide more evidence on Feared Consequences and Outcomes of Non-Return Policies

For: *Research institutions, EU agencies, policymakers, civil society*

Underlying many constraints on policy design and the lack of open dialogue about non-return is a fear of unintended consequences and outcomes including pull factors, fraudulent claims, and public backlash. Yet these concerns are often assumed rather than empirically substantiated. To support more effective and confident policymaking, EU and national authorities should commission independent research into the real-world effects of non-return policies, including their impact on migration flows (*the pull effect*), labor markets (*assessing benefits for host country need*s), and integration outcomes. Engaging academic institutions, think tanks, and civil society in this work will help develop evidence-based, publicly accountable, and politically viable and accessible alternatives to return. Migration is primarily driven by factors such as conflict, war, international inequalities as well as social networks and labor market needs in host societies (see for example Hatton, 2020). We therefore expect that the pull effects of relatively inclusionary non-return policies will be limited. If that indeed turns out to be the case, this would be a good reason to expand the reach of inclusionary non-return policies.

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