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Beyond enforcement: fairness and legitimacy in implementing the EU Return Regulation

FAiR insights and recommendations for EU Member States

EXECUTIVE SUMMARY

The [new Return Regulation](#) aims to address the persistently low return rate in the EU which hovers around 25% (Eurostat - 2021-2026). It does so by focusing on enhancing the enforcement measures of return authorities: increased compliance obligations for third-country nationals subject to a return decision, expanded investigative powers and sanctions for non-compliance, including financial penalties and criminal sanctions.

FAiR research shows that enforcement alone will not deliver on the Regulation's ambition that migrants are "returned in a humane and sustainable manner and with full respect for fundamental rights as well as international law without undue delay" (Recital 9). Returns depend on the cooperation of third countries and the compliance of migrants, which enforcement alone cannot secure but which are strengthened when return procedures are perceived as fair and legitimate.

Although some of the Regulation applies directly, Member States still decide how key provisions work in practice. Its procedural safeguards on information provision, legal representation and legal remedies (Articles 24–27), as well as its provision on return counselling and reintegration (Article 44), provide opportunities to strengthen the fairness and legitimacy of return procedures. Member States can also go beyond what the Regulation requires through independent monitoring that covers more than removal operations (Article 12). Drawing on insights from across the FAiR research, this brief provides evidence and recommendations on how Member States can enhance fairness, legitimacy and effectiveness beyond the enforcement focus of the new Regulation.



ABOUT THE FAIR PROJECT

The Finding Agreement in Return (FAiR) project aims to strengthen the governance of return migration in the EU, addressing the 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 through semi-structured interviews and desk research in 11 countries.





INTRODUCTION

While the new EU Return Regulation was published on 15 October 2026, most of its provisions are due to apply from 17 October 2027.¹ Replacing the 2008 Return Directive, the Regulation responds to the European Council's call for a more unified and effective return system. It aims to create a framework to reduce fragmentation, strengthen enforcement tools and address challenges such as absconding, unauthorised movements and limited cooperation from third countries.

Attempting to achieve this, the Regulation moves towards a more enforcement driven EU return system, drastically expanding authorities' enforcement powers and placing increased compliance obligations on migrants subject to a return decision. The regulation introduces an explicit obligation to cooperate, including through providing biometric data, remaining available and cooperating with identification procedures (Article 18). Member States have gained sweeping new investigative powers, including the right to search belongings and homes and access electronic devices (Article 21), and authorities can deter non-cooperation by limiting return and reintegration support and even applying criminal sanctions (Article 22). Furthermore, detention has become much easier to apply, can be imposed for longer periods and is no longer understood as a measure of last resort (Articles 19, 22, 29 and 30).

However, Member States will need to consider that enforcement alone cannot deliver the outcomes the legislation seeks. FAiR research shows that an enforcement-driven approach may prove to be counterproductive, particularly for cooperation with third countries and the compliance of migrants. Both are essential for return decisions to translate into effective returns. Without readmission cooperation from third countries, Member States cannot establish identities or obtain travel documents. Without migrants' compliance, identification becomes considerably more difficult and return processes stall.

The Regulation contains provisions on procedural safeguards, namely information provision (Article 24), legal assistance and representation (Article 25) and legal remedies (Articles 26 and 27), as well as return counselling and sustainable reintegration (Article 44). How these provisions are implemented by Member States matters. FAiR research findings suggest that increasing the legitimacy and fairness of return policies has a [positive impact](#) on effectiveness, in particular by increasing cooperation and compliance. Voluntary return and reintegration, and constructive engagement with third countries remain essential, which require coordination within governments and long-term, trust-based [relationships](#), in line with the whole-of-government approach in Recital 54.

This policy brief draws on the Horizon Europe project Finding Agreement in Return (FAiR), which examines how the EU can govern return migration more effectively and legitimately, giving prominence to the perspectives of countries of origin and returnees. It also draws on discussions at the FAiR final stakeholder workshop The Politics of Return: Cooperation Frameworks and Negotiation Dynamics held in Geneva on 8–9 October 2026, where researchers, policymakers and practitioners came together to reflect on the project's results.

¹ Article 1, Article 2(1), (2) and (3), Article 3, point (3), Article 4, Article 5(13) and (15), and Articles 14, 15, 16, 34, 35, 41, 43, 47, 48 and 49 shall apply from 16 October 2026. Concretely, this means return hubs, age assessment and the external dimension will go into force immediately.



KEY INSIGHTS

“Legitimacy” is the core lens in FAiR research and a crucial but often overlooked aspect of return policy and cooperation. Return policies frequently face legitimacy deficits, when partner countries, migrants themselves or the wider public do not perceive them as fair or justified, which limits their effectiveness. FAiR approaches [legitimacy](#) from two angles. The legal angle asks whether return conforms to applicable law, including fundamental rights, procedural safeguards and international obligations. The sociological angle asks whether it resonates with the values and norms of the societies involved, including migrants, countries of origin and the wider public.

Safeguards and reintegration support strengthen third-country cooperation. Cooperation on readmission is influenced by the broader political and institutional relationship between European states and non-European partner countries. Readmission cooperation is likely to be enhanced when comprehensive procedural safeguards are integrated into [return cooperation frameworks](#). Negotiations benefit when human rights are built into them and are upheld throughout the return process. Conversely, where safeguards are weak or inconsistently applied, the credibility of return systems is undermined and cooperation with partner countries becomes more fragile. Return is often politically sensitive in partner countries, making negotiated outcomes uncertain, and stressing the necessity for European governments to integrate commitments that matter most to partner countries.

Returning migrants have specific needs that readmitting states have to address, and return can further burden already strained conditions, which shapes these states’ interest in cooperating. Targeted assistance for housing, employment or social reintegration can [offset the economic and social costs](#) of return for these countries, making cooperation more likely and post-return outcomes more sustainable.

Procedural legitimacy shapes individual decisions on return. How legitimate policies and procedures are perceived shapes how those affected respond to them. Procedural factors, such as being heard and receiving a timely decision, shape perceptions and affect willingness to comply with return orders. [FAiR’s analysis of Dutch administrative data](#) finds that a balanced asylum decision time and access to trusted counsellors are associated with higher uptake of assisted voluntary return. This suggests that how procedures are implemented and experienced in practice matters, alongside formal rules and safeguards governing them.

Voluntary return, counselling and reintegration make post-return outcomes more sustainable. Voluntary returns offer [better prospects for reintegration](#), owing to better preparation and stronger social support networks. Forced returns, by contrast, are often associated with [stigma](#), inadequate preparation, and psychological distress, with [far-reaching consequences](#) for individuals and families, particularly for children.

Limited prospects in countries of return, inhibit compliance and readiness to return voluntarily. Reintegration policies and programmes often [fail to reflect returnees’ needs](#) and programmes are not [inclusively designed](#). By contrast, policies in countries of return that address job opportunities, financial support or access to housing help create more favourable conditions for return. In this regard, [return counselling](#) can play a crucial role in the success of reintegration. Returnees usually rely on family members and personal networks for information about conditions in the country of return. Systematic independent counselling and orientation in EU+



countries before return that provides additional information about available options and resources, helps returnees make informed decisions and develop realistic plans for their future.

Monitoring underpins legitimacy. Comprehensive and independent [monitoring](#) across the entire return continuum- covering adherence to procedural safeguards, forced and assisted voluntary return, as well as the situation after return– can help uphold human rights standards and contribute to systematic improvements in Member States’ return systems. Furthermore, [transparency](#) through monitoring is an integral part of ensuring the legitimacy of return and readmission frameworks, strengthening accountability and making it possible to improve practice.

POLICY RECOMMENDATIONS

To meet the Regulation’s own ambition, FAiR research points to the following recommendations, which aim to make return procedures fairer, more legitimate and thus more effective:

1. **Strengthen procedural safeguards.** Articles 24–27 provide for information, legal assistance and remedies. Making these safeguards effective in practice is not a constraint on return policy but [a core condition](#) for lawful return governance, and it also strengthens the legitimacy and thereby effectiveness of return and cooperation. Member States should therefore ensure that [information](#) about procedures, decisions, rights and reintegration support is clear, timely and accessible, that legal assistance is adequate and accessible in practice, and that remedies are effective, including through independent complaint mechanism. [Vulnerability assessments](#) that take account of gender, age, families and children should be part of the procedure. Coherence between the Return Regulation and the Asylum Procedures Regulation should be ensured, so that no return takes place while an application for international protection is pending.
2. **Make counselling and reintegration support inclusive and long-term.** Article 44 provides for return counselling and reintegration support. As reintegration is more successful when returnees are well prepared and support reflects their needs, Member States should offer [comprehensive and independent counselling](#) early in the procedure and base support on needs rather than on the type of return. Return and reintegration should be treated as a [continuum](#) rather than a one-off event. [Returnees should be meaningfully involved](#) in shaping programmes through regular consultations and feedback loops that show how their input is used, and Member States should support reintegration systems, co-designed with [local actors](#) such as municipalities, civil society organisations and returnee networks, which makes programmes fairer and more legitimate.
3. **Engage constructively and transparently with third countries.** The Regulations relies on third countries' cooperation on return and readmission, which it recognises may prove challenging in practice (Recitals 53 and 55). As return is [politically sensitive](#) in partner countries, Member States should set realistic public expectations and ensure constructive engagement by taking a whole-of-government approach in line with Recital 54. Human rights compliance should be prioritised in negotiations, as it is a legal obligation and an important parameter for intergovernmental trust. Arrangements should also reflect partner countries’ priorities to balance the interests of both sides and be transparent and independently monitored to ensure accountability and that human rights are upheld in practice.
4. **Extend independent monitoring to all types of return and the entire return process.** Monitoring is integral to the legitimacy of return but critical segments in Member States’ return procedures remain



uncovered. The Regulation's article 12 which requires monitoring of removal procedures does not address these gaps. Member States should entrust national return monitoring to Ombudsmen or national human rights institutions who have full access, independence and adequate funding, and extend it to assisted voluntary return and reintegration, to the return border procedure and the situation after return, alongside developing complaint mechanisms and reporting on monitoring results. The European Commission should develop [harmonised standards](#) for monitoring fundamental rights, supported by coordination platforms and stable funding for national monitoring bodies.

CONCLUSIONS

In some areas, the Regulation's provisions are not fully aligned with the findings of FAIR research on the effectiveness of return policies. Its emphasis on enforcement, including detention no longer being a measure of last resort, risks reducing third countries' willingness to cooperate. It may also lead migrants to disengage from return procedures, resulting in more absconding and less cooperation. This could widen the gap between political expectations of the Regulation and what it can deliver in practice.

The outcomes of the new rules will therefore depend on more than their enforcement provisions. Member States that invest in fair procedures, counselling and reintegration, genuine partnerships with third countries and independent monitoring are more likely to see returns that are both effective and fair. By taking these recommendations into account, the EU and its Member States are more likely to achieve, in a legitimate manner, the ambition that migrants are "returned in a humane and sustainable manner and with full respect for fundamental rights as well as international law without undue delay".