BREAKING NEW GROUND: PERSPECTIVES FOR FUNDAMENTAL RIGHTS MONITORING IN RETURN

POLICY BRIEF

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HIGHLIGHTS

Monitoring is essential to ensuring that return procedures uphold Europe's human rights commitments and remain accountable to public scrutiny. The FAiR Policy Brief examines how fundamental rights monitoring operates within the EU's return systems and proposes ways to enhance its action.

Under the EU Return Directive, Member States must monitor forced return operations to safeguard migrants' rights. With the EU Pact on Migration and Asylum and the proposed EU Return Regulation, the scope and role of monitoring are expected to expand significantly — making this an opportune moment to address existing legal and operational gaps.

Key Findings:

- Positive impact of monitoring: Fundamental rights monitoring has improved compliance with human rights standards during forced returns, notably in preventing ill-treatment, protecting vulnerable individuals, and ensuring access to medical care.
- Inconsistent implementation across Member States: National monitoring mechanisms vary widely in prerogatives and resources. Some are housed in Ombudsman institutions, others within government bodies or NGOs — leading to uneven access to information, detention sites, and flight monitoring.
- Limited scope of current monitoring: Monitoring covers only forced return operations, leaving assisted voluntary return and reintegration (AVR(R)) programmes, pre-departure administrative detention, and external border operations relatively unchecked despite rights risks.
- Lack of post-return monitoring: Most national mechanisms do not track migrants' situation after return, weakening compliance with the non-refoulement principle and depriving authorities of valuable country-of-origin data.

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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

Monitoring plays an essential role in advancing human rights in places where the implementation of governmental policy is not subject to public scrutiny. Rooted in international human rights law and practice, monitoring's key objective consists in helping States meet their human rights obligations by preventing potential violations. Responding to normative obligations, but also public pressure, monitoring mandated by States is noticeably gaining prominence in the EU's policy framework on return.

Under the EU Return Directive, fundamental rights monitoring is compulsory for national authorities conducting forced returns. Applied to a sample of conducted operations, this system ensures impartial overseeing of proceedings and measures applying to the removal of third country nationals, improving operations' normative compliance and fostering accountability for actions contravening migrants' rights.

Fundamental rights monitoring in the EU is coming under the spotlight with dedicated mechanisms foreseen under Member States' screening mechanisms and new asylum procedures as part of the new EU Pact on Migration and Asylum. In parallel, European lawmakers are examining a proposal for an EU return regulation which backs strengthened prerogatives for national forced return monitoring mechanisms. These developments suggest enhanced potential for fundamental rights monitoring to shape the implementation of EU and Member States' policy.

This policy brief examines the framework currently applicable to fundamental rights monitoring in the field of return in European countries. Showcasing existing gaps in law and practice, it aims to inform policymakers about how 'mandated' monitoring is currently conducted in European countries and to provide guidance on how it can be further harnessed towards meeting countries' fundamental rights obligations in return. In this regard, the brief gathers perspectives susceptible to shape and standardise monitoring mechanisms amidst sweeping changes in Europe's return framework, particularly with respect to the negotiation and implementation of the EU return regulation.

The brief demonstrates that consistently embedding fundamental rights across areas of return policy is essential to fulfilling monitoring's goals and upgrading fundamental rights compliance in the EU. For this reason, the brief calls for enabling human rights monitoring beyond the scope assigned under the Return Directive – owing to human rights violations not being restricted to forced return operations. This requires concerted action from national authorities, including parliamentary bodies and agencies, as well as the European Union and monitors themselves.

The takeaways and recommendations outlined here arise from the EU horizon project "Finding Agreement in Return (FAiR)", which has gathered considerable insights pertaining to fundamental rights monitoring in Europe. Three publications are specifically devoted to this theme:

- Working Paper: Legal Review of Fundamental Rights in Return Processes
- Improved Return Monitoring Guidelines
- Policy Brief: Introducing Human Rights Monitoring

In complement to the above, the brief reflects perspectives from various stakeholders involved in conducting, supporting or assessing fundamental rights monitoring in the context of migration. These include international bodies (Office of the United Nations High Commissioner for Human Rights, Council of Europe's Committee for the Prevention of Torture), EU agencies (Fundamental Rights Agency, European Border and Coast Guard Agency's Fundamental Rights Officer), and the various entities operating as and under national mechanisms for monitoring fundamental rights.

BACKGROUND

Applicable Human Rights frameworks

EU Member States have human rights obligations towards third county nationals without authorisation to stay. These obligations are articulated in international, EU and domestic law. At the level of the European Union, the protection of human rights is enshrined in the Charter of Fundamental Rights of the European Union (CFR), which transposes into EU law the European Convention on Human Rights (ECHR).

The CFR applies without exception to the full range of EU instruments governing the mobility of third country nationals in the EU, including the EU Return Directive, and the entire set of legislative reforms encompassed under the EU Pact on Migration and Asylum, including the Screening Regulation (SR), Asylum Procedure Regulation (APR) and the Return Border Procedure Regulation (RBPR).

Human rights frameworks afford migrants, including returnees, key protections and basic freedoms, such as the prohibition of inhumane or degrading treatment, the respect for family life or the right to effective remedy. Balancing the operational realities of return with these normative aspects, and minimising the potential for conflict between them, is the responsibility of Member States' implementing agencies.

Mechanisms of Fundamental Rights Monitoring

State-mandated Fundamental rights monitoring is predominantly found in the context of international and regional human rights treaty implementation. In this respect, the most prominent mechanisms are the Subcommittee on the Prevention of Torture (SPT) and the Committee on the Prevention of Torture (CPT), which assess state parties' compliance with, respectively, the Optional Protocol to the Convention Against Torture (OPCAT) and the European Convention for the Prevention of Torture and Inhuman Treatment. Those mechanisms, which are mandated to inspect all places of deprivation of liberty, primarily psychiatric institutions, police stations and prisons, also operate in the field of migration.

In the EU, competencies for fundamental rights monitoring are intertwined and currently evolving. EU-level mechanisms for monitoring include the European Border and Coast Guard Agency's (Frontex) Fundamental Rights Office (FRO), which is responsible for the implementation of the Agency's fundamental rights obligations, as well as the Schengen Evaluation and Monitoring mechanism, which reviews Member States' implementation of the Schengen Acquis, including in light of fundamental rights protection.

At the national level, monitoring is primarily conducted on a thematic basis. EU Member States on the external border run multi-stakeholder monitoring mechanisms dedicated to overseeing border management. These mechanisms may involve national border agencies, international organisations and civil society organisations.

Returns are subject to a specific monitoring obligation in the European Union. By virtue of the EU Return Directive's article 8(6), all Member States are required to provide for "an effective forced return monitoring system". Although differing in nature and prerogatives, national monitoring mechanisms apply to different Member State return operations, including removals conducted by air, land and sea. Without prejudice to national operations monitored by national monitors, Frontex's FRO conducts monitoring of return operations that are implemented or supported by the agency.

The above instruments will soon be complemented by the national independent monitoring mechanisms introduced under the EU Pact on Migration and Asylum. As outlined in the screening regulation article 10, these instruments will apply to 'all activities' under the new screening mechanism as well as the new asylum

procedure and receive special attributes to do so: In addition to being granted 'adequate safeguards' towards maintaining their independence and be equipped with financial means, monitors will also have the power to trigger investigations. The provision also specifies monitors will assess compliance with regards to the principle of non-refoulement as well as the 'relevant rules' pertaining to detention.

EVIDENCE AND ANALYSIS

Forced return monitoring contributes to improving fundamental rights compliance in forced return. Based on interviews with forced return monitors and return stakeholders in 11 EU countries and Switzerland, the FAiR monitoring guidelines finds that monitoring, as conducted in the context of forced return, strengthens fundamental rights protection for migrants in return procedures.

Key progress is reported by monitors in the prevention of ill-treatment and protection of migrants' dignity during forced return operations, in their access to medical support and health checks prior to embarkation and during transportation as well as in the responsiveness of authorities to families' and children's needs.

Crucially, the FAiR guidelines establish that the public' awareness of monitoring and the characteristics of reporting are critical to enhance monitoring's impact on return practices. Monitoring carries most weight if the mechanism's activities, findings and recommendations are published regularly and publicly, and where possibilities exist for the mechanism to address the parliament and public opinion.

Monitoring of forced return is applied inconsistently across the EU. The guidelines demonstrate that national monitors follow similar principles and methodologies in the planning and the conduct of visits. Almost all national monitoring mechanisms are present during controls and embarkation in airport terminals, and most of them carry out in-flight inspections. However, the cross-country research identifies fundamental differences between national mechanisms:

- Categories of monitoring mechanisms: Depending on the context, monitoring is entrusted either to national human rights institutions like the National Ombudsman[1], non-governmental organisations[2], or dedicated units within the executive branch[3]. These distinctions lead to uneven standards in terms of independence, access to locations and information, and resource availability.
- Access to location and information: Prior to embarkation, only Ombudsman monitors tend to have the possibility to consult returnees and their information and assess their treatment and wellbeing up to departure point. Other monitors tend to be constrained in their access to places or information pertaining to returnees. In Sweden or Austria, monitors are instructed to focus exclusively on the activities and procedures of police units responsible for removals.
- Access to resources: National monitoring mechanisms require governmental support to conduct monitoring missions. In certain national contexts like in Germany, monitoring mechanisms experience limited resources, which restricts the number of operations monitored or prevents the mechanism from accessing critical operation phases, such as the in-flight phase for example. Deficiencies in financial support are addressed in the EU return regulation, which calls to equip mechanisms 'with appropriate means'[4].

[1] In Bulgaria, Italy, Greece, Spain and Czechia.
[2] In Luxembourg, Poland, Romania and Germany.
[3] in Austria and Sweden.
[4] COM(2025) 101 final 2025/0059(COD)

- Transmission of operational information: Efficient communication between agencies is essential to the deployment of monitors. In Poland the national mechanism reports delays and omissions in the transmission of operational information, making spot checks very difficult. Some national mechanisms, like in Switzerland, have established modus operandi with authorities, which include setting deadlines for sharing informing about upcoming operation plans. Picking up the issue, the European Commission proposal explicitly request authorities to 'inform the monitoring body in advance about upcoming operations'.
- Characteristics of reporting: National monitoring mechanisms in Europe are not uniform in the way they report, including in the content, recipient, and accessibility of monitoring reports. Reports prepared by the Austrian monitoring mechanisms are shared exclusively with the line ministry in charge of conducting forced returns. In Greece, the Ombudsman reports are submitted to the national parliament and are subsequently subject to public dissemination.

Assisted voluntary return (and reintegration) programmes fall outside the scope of fundamental rights monitoring: As per the Return Directive, fundamental rights monitoring is prescribed for 'forced return' only. Despite their more humane framing, policies governing 'voluntary' return and reintegration programmes may in certain circumstances infringe on migrants' fundamental rights.

For this reason, FAiR policy brief "Implementing a Human Rights Approach in Assisted Voluntary Return (and Reintegration) (AVR(R))" argues in favour of extending the scope of fundamental rights monitoring to assisted voluntary return (and reintegration) programmes. Although monitoring in the context of AVRR is relatively common[5], the collected evidence shows that existing approaches to monitoring fundamental rights "fall short of exhaustively assessing human rights compliance in AVR(R)".

The limitations identified are three-fold: First, monitoring instruments employed by organisations involved in the implementation of assisted voluntary return (and reintegration) programmes in EU+ countries predominantly feature programme-related 'performance' indicators, including total applications for voluntary returns and number of effective returns. Second, these instruments are characterised by informality and fragmentation, failing to meet international standards for human rights monitoring. Finally, the fact that monitoring in assisted voluntary return (and reintegration) is often conducted by implementers themselves leads to questioning these instruments' impartiality and independence.

External borders and detention are a monitoring blind spot. Despite substantial evidence that external borders and administrative detention are flashpoints for human rights violations, the EU lacks credible monitoring mechanisms to access these specific locations and systematically assess their fundamental rights compliance[6].

Among all national mechanisms analysed, only the Ombudsmen conduct visits in places of detention, and have the capacity to report about detention conditions for individuals held under migration measures. While remaining mechanisms may, under certain circumstances, access detention facilities in order to supervise contact talks between the returnee and the escorting team, irregularities related to detention are not within their purview[7]. The imposition by some States of de facto detention, such as within border premises or

[5] For example, Frontex's FRO monitoring mandate extends to the agency's AVR activities.
[6] Monitoring in the context of detention is conducted in the framework of broader supranational or national instruments, including the OPCAT.
[7] This is broadly consistent with the principles set out in the Return Handbook. See Commission Recommendation (EU) 2017/2338, article 8.

reception centres, poses a particular monitoring challenge as those locations are not typically recognised by authorities as places of immigration detention[8].

Strikingly, while Member States' screening and asylum procedures will be subject to monitoring, this is not the case for the return border procedure, which organises the return of those migrants found inadmissible under these procedures. In these circumstances, return monitoring under the new border procedure risks to be largely left to Member States' discretion.[9]

Furthermore, monitoring is largely missing in activities related to border management. Except for the monitoring performed by Frontex's FRO, no dedicated monitoring mechanism for external borders is stipulated in EU legislation. The monitoring mechanisms included in the screening and asylum regulations do not address this gap. Country-level mechanisms do exist, particularly on the EU's external border, but these face important operational constraints owing to the expansive geographical coverage of border management.

Mindful of states' obligations pertaining to migrants at external borders, EU agencies and international organisations recommend having fundamental rights monitors' oversee all activities performed by officers at borders, including procedures related to border surveillance, checks, and apprehensions.

Post-return monitoring is vital to upholding the non-refoulement principle. In most European countries, national mechanisms for forced return refrain from collecting information about returnees in the post-return stage, citing either a lack of jurisdiction or practical challenges linked to monitoring returnees once they've left the national territory[10].

FAiR's legal review of fundamental rights in return points out two reasons why this absence is damaging: First, post-return monitoring reinforces states' compliance with non-refoulment as it helps authorities to ground return procedures in an assessment of "real conditions faced by those subject to deportation". Second post-return monitoring offers states the possibility to gain access to targeted, up-to-date data on conditions in countries of origin and transit, which can be leveraged in a range of processes, including asylum decisions and programmes for assisted voluntary return.

POLICY RECOMMENDATIONS

Target stakeholders: Relevant national authorities (e.g. Ministries of the Interior/Home Affairs in European countries)

Recommendation 1: Strengthen the mandates of national mechanisms monitoring forced returns

Enduring restrictions on monitors' access to key locations and information lead to monitoring 'blind spots', undermining monitoring's purpose and eroding prospects for human rights compliance in the long run. To strengthen their mandate, all forced return monitoring mechanisms in EU Member States should be established on equal footing with existing National Human Rights Institutions (NHRI) and meet international

[8] De facto detention is defined as 'a measure which in practice amounts to deprivation of liberty but which states do not formally qualify as such'. The new border procedure is considered to pose a risk of de facto detention, as it requires to keep applicants "in proximity to the external border or transit zones".

[9] Under the return border procedure, Member States will have maximum 12 weeks to facilitate the return of third country nationals not admissible to their territory. The return directive's provision on monitoring will apply in respect to the removal operation only.

[10] A few exceptions exist: the Italian Ombudsman has concluded agreements to exchange information on returnees with its Georgian and Albanian counterparts.

standards for functional independence in line with the UN's Paris Principles. This notably requires setting in law mechanisms' operational and financial independence and promoting public access to the information generated by monitors.

The target stakeholder is advised to:

- Entrust forced return monitoring mandates to national Ombudsmen or NHRIs or empower already-endorsed mechanisms to access all locations, files and information related to forced return in line with conclusions from the Annual Report of the UN's High Commissioner for Human Rights.
- Strengthen financial support to forced return monitoring mechanisms to adequately match the mechanisms' envisaged scope of responsibilities and operational or geographical coverage, consistently with the forced return monitoring provision under the EU return regulation proposal.
- Commission and publicly release annual report pertaining to the activities of the forced return monitoring mechanisms, including physical visits to locations and desk-based activities. The report should outline the nature of recommendations and corrective actions taken in response.

Recommendation 2: Embed Fundamental Rights monitoring in AVR(R).

Current AVR(R) monitoring mechanisms tend to solely reflect performance metrics and are therefore inadequate to assess and promote fundamental rights' compliance. Introducing new mechanisms or revamping existing ones to reflect human rights indicators is essential to bridging that gap and fostering a culture of oversight in AVR(R).

The target stakeholder is advised to:

- Entrust monitoring of fundamental rights in the context of voluntary return and reintegration to well-established institutions in the field of human rights protection, such as Ombudsmen offices or NHRI.
- Set up national complaint mechanisms for returned migrants to report human rights violations in AVR(R)

Recommendation 3: Bridge monitoring gaps in relation to the principle of non-refoulement

When implementing return procedures, authorities are required to abide by the principle of non-refoulement. In practice, oversight is limited, resulting in recurrent violations and prosecutions. To ensure all migrants are subject to an individual assessment of their protection needs, and prevent infringements, authorities are encouraged to mainstream fundamental rights monitoring across the range of immigration and return procedures.

The target stakeholder is advised to:

- Commission, and publicly release, a regular assessment of returned migrants' circumstances from a fundamental rights' perspective following return (post-return monitoring).
- Set up and empower multi-stakeholder mechanisms dedicated to monitor fundamental rights in the context of border management, drawing on pre-existing mechanisms in Croatia and Bulgaria.
- In line with FRA's recommendation, explicitly give national monitoring mechanisms linked to the EU Pact the mandate to cover activities pertaining to the return border procedure, thereby bringing under one unified umbrella all phases under the border procedure.

Target stakeholder: European Commission

Recommendation 1: Set up harmonised mechanisms for monitoring fundamental rights in AVR(R).

The diversity of European AVR(R) programmes is a challenge for the design and implementation of responsive AVR(R) monitoring mechanisms. Taking note of the prevailing characteristics in existing monitoring mechanisms for AVR(R), the European Commission should develop mechanisms which cover all phases of the process, including pre-return, and are calibrated to address the range of rights at risk under these procedures.

The target stakeholder is advised to:

- Set up and promote flexible and harmonised mechanisms for the monitoring of fundamental rights of returnees in the context of AVR(R).

Recommendation 2: Pool available expertise and funding related to monitoring in return

Inconsistent monitoring across Member States leads to uneven levels of protection for migrants subject to return procedures. The European Commission is encouraged to actively uphold fundamental rights monitoring standards across the European Union. This can be achieved through creating financial incentives contingent on fulfilling monitoring obligations or through supporting synergies between national, EU and international monitoring mechanisms.

The target stakeholder is advised to:

- Set up or consolidate coordination platforms fostering exchange, mutual learning and cooperation for monitoring professionals across EU Member States. This may involve forced return monitoring mechanisms, monitoring mechanisms under the border procedure, national preventive mechanisms, and other human rights institutions.
- Establish stable funding streams dedicated to national monitoring mechanisms in return and tied to quality criteria which may include mechanisms' independence and operational coverage.