CM2513

MEIJERS COMMITTEE COMMENT ON MUTUAL RECOGNITION OF RETURN DECISIONS IN THE PROPOSED RETURN REGULATION

SEPTEMBER 2025

The European Commission's proposed Return Regulation (COM/2025/101 final) introduces mutual recognition of return decisions and a standardized European Return Order (ERO) to streamline enforcement across EU Member States. The Meijers Committee assesses this mechanism in light of the EU migration Pact and fundamental rights, and draws on experiences with the failed mutual recognition instrument (Directive 2001/40/EC). The key concerns in our comment include:

- lack of prior impact assessment;
- few lessons learned from earlier failed attempts (based on Directive 2001/40/EC);
- no good alignment with some instruments of the Migration and Asylum Pact ; and
- lack of effective remedies against the enforcing Member State, which risks fundamental rights violations.

Hence, we recommend not to adopt the mutual recognition mechanism and ERO in the current form. But if the legislators decide to adopt the mutual recognition mechanism and ERO, the Meijers Committee advises to make several amendments, which include:

- a clarification on how the enforcement of return decisions interacts with subsequent asylum applications in the enforcing Member State;
- the guarantee that individuals subject to a return decision have access to effective remedies, in accordance with Article 47 of the Charter of Fundamental Rights of the European Union (Charter) in the enforcing Member State, especially when the appeal period in the issuing State has expired or circumstances have changed;
- the requirement that the enforcing Member State conducts an individualized, current and thorough reassessment of non-refoulement risks before executing a return decision; and
- the requirement that the enforcing Member State conducts a proportionality assessment before executing a return decision, considering factors such as family ties, duration of stay, and the best interests of children.

Meijers Committee

Standing committee of experts on international immigration, refugee and criminal law

1. Introduction

On 11 March 2025, the European Commission proposed a Return Regulation, which introduces mutual recognition of return decisions among EU Member States and a standardized European Return Order (ERO) containing key elements of national decisions.[1] The aim is to streamline and harmonize the enforcement of return decisions for third-country nationals irregularly staying in the EU. This Meijers Committee comment focuses on the mutual recognition mechanism, complementing earlier input on the return framework.[2] It evaluates the mechanism in relation to existing EU migration and asylum legislation and fundamental rights, drawing lessons from other mutual recognition instruments.[3] It also considers practical implications for return procedures and concludes with key recommendations for EU lawmakers.

2. Lack of prior impact assessment, including on fundamental rights

The European Commission expects its proposal will improve return efficiency through clear, simplified, and harmonized rules.[4] However, the Meijers Committee questions the necessity and added value of the mutual recognition mechanism in light of existing EU tools that govern return decisions and entry bans. First, the proposal assumes that individuals abscond and cause a duplication of return orders in other Member States, yet reliable data to support this is lacking. The Commission itself acknowledges this.[5] Without such data, it is difficult to assess the mechanism's impact on absconding or secondary movements. Second, while the Commission cites shortcomings in current rules, it offers limited explanation of how the new mechanism and the European Return Order (ERO) would resolve these issues. Key factors – such as suspension of enforcement,[6] or annulment and withdrawal of return decisions[7] – are not adequately addressed, despite their relevance given the high number of non-removable migrants.

Third, even if an evaluation reveals gaps in the return system, the proposed mutual recognition mechanism may face similar challenges as Directive 2001/40/EC: (i) limited transposition/application; (ii) administrative burdens; (iii) lack of harmonized standards. Directive 2001/40/EC was poorly transposed and rarely applied.[8] By 2007, only 18 Member States had implemented this instrument, often incompletely, while others relied on national procedures and readmission agreements.[9] Administrative burdens and limited use of the compensation mechanism[10] further hindered its effectiveness.[11] The current proposal makes mutual recognition optional until July 2027, after which it becomes mandatory.[12] Member States have already raised concerns,[13] which may lead to limited implementation and prevent a positive effectiveness assessment – which repeats the shortcomings of the 2001 Directive. The 2007 synthesis report also highlighted a lack of harmonized standards.[14] Mutual recognition assumes trust in other Member States' decisions, but differences in expulsion

[1] COM/2025/101 final.
[2] CM2409; CM2501; CM2505.
[3] In particular Council Directive 2001/41.
[4] COM/2025/101 final; SWD(2025) 250 final.
[5] SWD(2025) 250 final, p. 18.
[6] Article 9(6) proposal.
[7] Article 9(7) proposal.
[8] Synthesis report on implementation Directive 2001/40.
[9] Ibid, p. 14 ff.
[10] Decision 2004/191/EC.
[11] Synthesis report on implementation Directive 2001/40, p. 45 ff.
[12] Article 9(1-3) proposal.
[13] See concern Dutch government about alleged increased administrative burden. BNC fiche (in Dutch).
[14] See political debate in the Swedish Riksdag, Groenendijk in Synthesis Report, p 184; Groenendijk.

grounds and protection standards undermine this. Despite progress in harmonizing EU return and asylum law,[15] fragmentation persists.

Fourth, Regulation (EU) 2018/1860 in connection with the Return Directive 2008/115 already obliges Member States to use the Schengen Information System (SIS) for entering alerts on return decisions issued in respect of illegally staying third-country nationals. The purpose of this Regulation 2018/1860 is to increase the effectiveness of the Union system to return illegally staying third country nationals and supporting Member States in fulfilling their obligations to enforce return decisions.[16] The proposal and the staff working document lack information about why these existing obligations for the Member States[17] are insufficient for an effective return policy.

Fifth, the Meijers Committee is concerned that enforcing an ERO without an individualized assessment may violate fundamental rights (see also section 4). Disparities in asylum recognition rates – e.g. 10% in Bulgaria vs. 88% in Italy – could lead to unjust expulsions, as individuals eligible for protection in one Member State may be returned from another.[18] Varying protection statuses also creates legal uncertainty and litigation risks. This raises a legal tension between mandatory enforcement of return decisions and Member States' obligations under fundamental rights law. Similar concerns were noted in the 2007 synthesis report on Directive 2001/40/EC, where some Member States introduced safeguards to ensure compliance with national and international law.[19] While the current proposal includes a general clause which requires compliance with fundamental rights,[20] it lacks an explicit derogation mechanism. Currently, refusal to enforce is only allowed for public policy reasons[21]—not for risks of inhuman treatment or other rights violations. These gaps reinforce the Meijers Committee's call for a thorough human rights impact assessment.

3. Problematic relationship with Migration and Asylum Pact

The Meijers Committee notes that coordination between the Asylum Migration Management Regulation (AMMR), Asylum Procedures Regulation (APR), and Return Regulation may prove problematic for subsequent asylum applications in the context of mutual recognition. For example, when an applicant (X) is rejected in Member State A and issued a return decision (under Article 37 APR/Article 7 Return Regulation). Without appealing, X travels to Member State B and reapplies. EURODAC and SIS register the case; under Article 55 APR (on subsequent applications), Member State A remains responsible. Article 56 APR (on exception from right to remain in subsequent applications) allows X to stay in Member State A unless the new application is solely to delay removal. This raises questions about the enforceability of return decisions. Article 9 Return Regulation proposal states only enforceable decisions are recognized by other Member States. If Article 56 APR applies, enforceability may be suspended. For further subsequent applications, Article 56(b) APR removes the right to stay, allowing enforcement of return decisions. In contrast, Regulation (EU) 2024/1356 (Screening Regulation) clearly outlines the process: screening, then asylum application or return, which affirms that applicants are asylum seekers.[22]

4. Lack of effective judicial protection: no right of appeal in the enforcing Member State and risk of fundamental rights violations

[15] Note e.g., Return Directive, current proposal for Return Regulation, Asylum Procedures Regulation, Qualification Regulation.

[16] See recitals 3 and 15 of Regulation 2018/1860 which also refer to the Return Directive 2008/115.

[17] Regulation 2018/1860 and Directive 2008/115.

[18] See ECRE Comments Paper: Proposal for a Return Regulation, referring to the latest asylum trends in the annual analysis by EUAA; See similarly Majcher.

[19] E.g., Denmark, Finland, Austria: Groenendijk in Synthesis Report, p 186.

[20] Article 5 proposal.

[21] Article 9(4) proposal.

[22] Recital 15, Article 18 Regulation (EU) 2024/1356.

General

The Meijers Committee welcomes the inclusion of the right to an effective remedy and the guarantee of a full and up-to-date review of facts and law, including *ex officio* checks on non-refoulement.[23] However, the proposal lacks effective judicial protection for individuals situated in the enforcing Member State after they have moved from another Member State that issued a return decision. On the basis of the current proposal, a third-country national has only the right to appeal in the issuing Member State.[24] The proposed Article 26 (1) provides for a right to an effective remedy with regard to return decisions and entry bans against the issuing state[25] and only with regard to removal orders, if the enforcing state decided to 'issue a separate administrative or judicial decision in writing ordering the removal'.[26] The issuing of an administrative or judicial decision is not mandatory in the current proposal. This means that without such a decision of the enforcing state, the deportee has no access to effective remedies against his or her expulsion. This lack of effective remedies in the enforcing Member State is in violation of the right to effective judicial protection in Article 47 of the Charter, particularly in the situation where a longer time has elapsed between the return decision in the issuing Member State and the detection in the enforcing Member State. The time limit for appeal has likely expired and the personal situation or the situation in the country of return might have changed.

Therefore, to guarantee a full and *ex nunc* judicial review which is necessary based on Article 47 of the Charter and is included in the proposed Article 26(2), a right to effective remedies in the enforcing Member State should be included as well in the proposal. It would also be in line with CJEU case law addressing Article 47 of the Charter. The CJEU emphasized that judicial review entails that courts of the refusing Member State must review the formal legality of the refusal and ensure that procedural guarantees are respected. This means that the court with jurisdiction should have the power "to require the authority concerned to provide that information, so as to make it possible for him or her to defend his or her rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in applying to the court with jurisdiction".[27] These guarantees need to be provided for, mutatis mutandis, in the Return Regulation if the mutual recognition mechanism were to be established.

These safeguards are all the more crucial in light of the ambiguous criteria for excluding access to free legal assistance and representation, such as when an appeal is deemed to have 'no tangible prospect of success' or is considered 'abusive'.[28] Such vague grounds risk significantly undermining individuals' access to an effective remedy.[29]

Furthermore, the Meijers Committee recommends the inclusion of safeguards for individuals who are located in the enforcing Member State (possibly in detention) while their return decision is under legal review in the issuing Member State. These safeguards should include amongst others, the possibility for attending the hearing in person or remotely, or for submitting new information from the enforcing Member State.[30]

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[23] Article 26 proposal.
[24] Recital 18 and Article 26 (1) proposal.
[25] Articles 7 and 10 proposal.
[26] See Article 26 (1) and 12 (2) proposal.
[27] CJEU, 18 July 2013, C-584/10 P, C-593/10 P and C-595/10 P (Commission and Others v Kadi), para. 100 and the case-law cited.
[28] Article 25(5) proposal.
[29] See also CM2505.
[30] See ECRE Comments Paper: Proposal for a Return Regulation.

The Meijers Committee underlines the necessity of access to effective judicial protection in the light of the enforcement of ERO's in particular for the protection of the fundamental rights of non-refoulement[31] and the right to private and family life.[32]

Non-refoulement

To prevent refoulement, Member States must conduct a current and thorough assessment of whether an individual faces a real risk of torture or inhuman treatment upon return.[33] A judicial authority shall review compliance with the principle of non-refoulement at the request of the foreign national or does so ex officio.[34] States cannot rely solely on the issuing Member State's assessment, especially given wide disparities in protection standards and asylum recognition rates. A reassessment is essential before each expulsion, particularly if circumstances have changed. The proposal lacks clarity on this duty to reassess, including in cases where the enforcing Member State plans to return the individual to a different country than the one specified in the original decision.[35] This omission raises concerns about compliance with the principle of non-refoulement. The Meijers Committee advises against adopting the mutual recognition mechanism until protection standards are harmonized.[36] Return decisions often follow rejected asylum claims, but automatic recognition is problematic when asylum rejections are not mutually recognized. Fragmented protection systems and differing recognition rates undermine trust and risk protection gaps. Although EU law aims for a uniform asylum status,[37] this has not been achieved. Member States are not required to recognize refugee status granted elsewhere and must conduct a full, up-to-date reassessment, and exchange information with other Member States.[38] The proposal does not adequately address this requirement.

Private and family life

Beyond non-refoulement, Member States must protect the right to private and family life.[39] The expulsion of a third-country national, which is based on the automatic enforcement of a return order, may interfere with this right. It should therefore be guaranteed, that such measures of expulsion are preceded by a proportionality test, in which the enforcing Member State considers factors such as length of stay, family ties, criminal record, and the best interests of children of the third-country national who is staying illegally in the EU.[40] This assessment must be conducted by the enforcing Member State—not the issuing one—and it should be assured that the enforcing Member State has sufficient and up-to-date information to assess the proportionality of the expulsion. As the current proposal does not provide these safeguards, the Meijers Committee recommends amendment of this proposal (see below).

5. Recommendations

[31] Article 3 ECHR and Article 4 EU Charter.
[32] Article 8 ECHR and Article 7 EU Charter.
[33] Article 3 ECHR and Article 4 EU Charter; CJEU, 17 October 2024, C-156/23 (Ararat), para. 38
[34] Ibid.
[35] Article 9(4) proposal.
[36] See similarly CM2505.
[37] Note the goal stipulated in Article 78(2)(a) TFEU to achieve 'a uniform status of asylum for nationals of third countries, valid throughout the Union'.
[38] CJEU, 18 June 2024, C753/22,(QY), para. 72.
[39] Article 8 ECHR and Article 7 EU Charter.
[40] ECtHR (GC), 18 October 2006, 46410/99 (Üner v. the Netherlands), paras. 54-60; regarding best interest of the child, note recent AG opinion in CJEU, C-147/24 (Safi) about the right not to move Union citizen; note also CJEU, 10 April 2025, C-607/21 (X.X.X.) concerning dependent family member of a Union citizen must be given the opportunity to demonstrate legal residence and cannot be removed in the meantime.

Given the concerns outlined above, the Meijers Committee advises against adopting the mutual recognition mechanism and the ERO in their current form. However, should the legislators choose to proceed with their adoption, we recommend the following steps and subsequently amendments of the current proposal:

- conduct a proper assessment of the necessity, proportionality and fundamental rights impacts of the mutual recognition mechanism;
- clarify how EROs will be integrated with SIS alerts and deletion rules;
- amend the proposed Article 9 of the Return Regulation to explicitly address how enforceability is affected when the right to remain is granted under Article 56 APR;
- include a right for individuals subject to a return decision to have access to effective remedies in the enforcing Member State;
- include a provision an obligation for the enforcing Member State to conduct an individualized, current and thorough reassessment of non-refoulement risks before executing a return decision, especially if the destination country differs from the original decision;
- provide for a requirement that the enforcing Member State conducts a proportionality assessment before executing a return decision, considering factors such as family ties, duration of stay, and the best interests of children.