

Dealing with (non-)deportability

**A comparative policy analysis of the post-entry migration enforcement
regimes of Western European countries**

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1. Introduction and Research questions

The return and non-return of rejected asylum seekers is an issue that is high on the agenda of the European Union and its member states. (EMN 2016, 2017): Across the EU, the ‘efficacy gap’ between those ordered to leave and those who actually return via assisted voluntary return programmes or forced removal is consistently between 60 and 65 per cent in the past ten years (Eurostat 2018). The persistence of the efficacy gap is remarkable as since the beginning of the 1990s, a global ‘deportation turn’ (Gibney 2008) has led to increasingly proactive policy to coerce or force irregular migrants to return. This gradual shift has accelerated since the increased influx of asylum seekers in 2015-2016 (EMN 2018).

This report was drafted at the request of the ‘Van Zwol committee’¹. It aims to provide an overview of the policy approaches in selected EU and Schengen associated countries (Hereafter: ‘EU+ countries’) regarding the return and presence of rejected asylum seekers. It comparatively investigates the policy factors that contribute to the return and non-return of rejected asylum seekers who are legally required to leave the territory. It also looks into the public concerns and acceptances of these policy measures, including measures to accommodate the presence of rejected asylum seekers who cannot easily be returned to their country of citizenship, especially (families with) minor children. The main research question is:

How do different states of EU+ countries deal with the deportability and effective non-deportability of rejected asylum seekers, and what can be said about (a) the outcomes of their policies in terms of the rate of voluntary and forced return and (b) the public acceptance of these policies and their outcomes, especially when it concerns (families with) minor children?

This report will answer the following sub-questions:

1. What is the rate of rejected asylum seekers that returned via (1) Assisted Voluntary Return and (2) Forced Return from different EU+ countries?
2. What explains the ‘efficacy gap’ (the difference between the number of rejected asylum seekers and those who return to their country of citizenship) according to the literature?
3. What policies have European countries developed to promote voluntary and forced return for rejected asylum seekers?

¹ A full report will be published separately.

4. What policies have European countries developed to mitigate the negative consequences of the presence of rejected asylum seekers who are (1) unwilling or (2) unable to return to their country of citizenship?
5. What is known about the public acceptance of or controversy around these policies and their outcomes?

The report is based on literature review, analysis of Eurostat asylum and migration enforcement data, document analysis and interviews with experts from selected EU+ countries and with an internationally comparative perspective at the EU-level. A description of the precise methodology, and an explanation of the selection of the 12 EU+ countries and the 6 countries of origin is given in Annex 1.

2. Brief literature review of determinants of (non-)return

Some of the key comparative studies of the past 15 years on decision-making of rejected asylum seekers and irregular migrants from Europe include studies by Black et al (2004), Koser and Kuschminder (2015), Leerkes (2016), Leerkes and Kox (2016), and Leerkes et al. (2017). Other studies focus on the policy effectiveness (EMN 2017, Ellermann 2008, Noll 1999).

The outcomes of deportation regimes (or: migration enforcement regimes) in terms of the rate and type of migrant return can be understood in light of **policy determinants**, including the type of policy instruments and their implementation, on one hand, and **non-policy determinants** such as structural drivers for migration and individual and social factors on the other. Last, pressure by the public discourse and the media also play a role in policy enforcement.

Policy determinants

Return requires compliance by two different actors: the government of the country of origin, and the migrant in question. Policy instruments therefore need to be considered on both the diplomatic level and on the individual migrant level.

Interstate level

The main reasons why so many irregularly staying migrants cannot be returned relate to practical problems in the identification of returnees and in obtaining the necessary documentation from non-EU authorities. Therefore, diplomatic agreements and mutually beneficial international cooperation with the country of origin are crucial (Ellerman, 2008; Leerkes, 2016; Leerkes & Kox, 2016).

Migrant level

- **Increased enforcement.** In the Netherlands, Immigration detention capacity was increased and in 2007, the “Repatriation and Departure Service” (DT&V) was founded, which became responsible for coordinating the departure of rejected asylum seekers and (other) deportable migrants. Deportation rates have indeed gone up after 2007 (Leerkes, van Os, and Boersema 2017). Koser and Kuschminder (2015) found that one reason why migrants comply with return programmes is because the alternative (to be deported) is unacceptable, mainly because the main concern of migrants is to abide by the law. However, the level of

enforcement is shaped (i.e. limited) by the state's political ideology/system and political interests on the local, national, and international level.

- **Financial compensation** – in the period 2001–2004, reintegration assistance for (rejected) asylum seekers was raised through the “Return and Reintegration Regulation”, leading to an increase in AVR (Leerkes, van Os, and Boersema 2017). Leerkes et al. suspect that this increase was caused by people who would otherwise have left on their own but now decided to take the money. This is confirmed by research by Black et al (2004), who found that assistance programmes, however configured, were not a decisive factor in return motivations for any respondents— although most respondents welcomed assistance once they had decided to return, in particular assistance with employment, training and money. The study also showed an information gap about the assistance programmes - almost half the respondents had never heard of them, and the majority of those who had, heard about them by word of mouth and many did not have an accurate impression of the programmes.
- **Social exclusion.** The effects of deterrence resulting from the exclusion of unauthorized migrants from labour markets and social provisions (Leerkes, van Os, and Boersema 2017) can be observed in various studies. This was by far the most important reason mentioned in the Koser and Kuschminder (2015) study: more specifically, people mentioned the difficulty of finding employment/no right to work; tired of living as an undocumented migrant, and lack of financial resources. Based on interviews with IOM employees and an assessment of their client files, Van Wijk (2008) concludes that it is not unusual for returnees to feel pressured into AVR due to financial problems, unemployment, labor inspections, and a desire to evade immigration detention.
- **Carrot and stick.** Koser and Kuschminder (2015) conclude from their findings that return policy may be most effective when it combines ‘sticks’ with ‘carrots’: The respondents weighed almost equally the lack of any other option other than to return (a ‘stick’) with the prospect of return assistance (a ‘carrot’).
- **A ‘fair’ amount of time** spent to assess the asylum claim makes a difference: A study shows that the percentage of asylum seekers appealing a negative decision was about 20% points lower among those rejected between 2 weeks and 3 months than among those rejected within 2 weeks, or after more than 3 months (Leerkes et al. 2014).
- **A relationship with case workers.** In 2005, the UK government began allocating case-workers to asylum seekers who follow the asylum case from beginning to end and are to build up a relationship with them. Gibney (2008: 166) hypothesizes that such relationships

potentially “generate[s] in the asylum seeker a feeling of obligation to return home if his or her claim is deemed unfounded.” Also in the Netherlands, a relationship with the DT&V case workers being systematically assigned to rejected asylum seekers after 2007 is suspected (Leerkes, van Os, and Boersema 2017).

Non-policy determinants;

Structural conditions in the origin country

- **Socio-economic conditions.** Dustmann and Weiss (2007), for example, show that return rates are lower among migrants originating from poorer countries than among those originating from richer countries. For asylum migrants, economic factors are assumed to be less important than political factors (Black et al. 2004, King 2000, van Wijk 2008), but asylum migrants certainly also have socio-economic reintegration concerns (Klinthall 2007, Zimmermann 2011). Return is associated with more prosperous countries (Leerkes, van Os, and Boersema 2017).
- **Security** is cited as the most important factor determining return motivations among rejected asylum seekers, although its meaning varied between respondents from overall security in the country of origin to individual security on return (Black et al. 2004).
- **Information.** Although some policy initiatives are oriented to providing information about the country of origin, Black et al. (2004) show that there was no information gap about conditions in the country of origin.

Socio-economic and cultural attachments

To origin country

- **Formal education** in the source country, is generally associated with higher return rates (Constant and Massey 2002, Dustmann and Weiss 2007, Jensen 2011, Klinthall 2007).
- Similarly, previous **employment** in their country of origin is associated with higher return rates (Constant and Massey 2002).

To host country

- **Sociocultural integration** is generally found to have a negative effect on return intentions (de Haas and Fokkema 2011, de Vroome and van Tubergen 2014). Those who have acculturated to the immigration country may experience return as particularly stressful

(Tannenbaum 2007), and immigrants who identify strongly with the immigration country, and feel at home there, are less inclined to return (Constant and Massey 2002).

- **Economic integration** has a more ambiguous and sometimes positive effect on return (de Haas and Fokkema 2011, de Vroome and van Tubergen 2014). Conversely, unemployment in the country of destination might encourage people to consider return (Black et al. 2004).

Social and family networks

- **Family in origin country.** Asylum seekers who left their families behind, especially if they are married, are expected to be more likely to return than people who came with their families, or whose families joined them later (Leerkes, van Os, and Boersema 2017). Black et al (2004) found that people without partners in the UK were more willing to consider return, while people with children in the UK were less willing to do so. Koser and Kuschminder (2015) found that a desire to reunify with family at home was an important reason to return. Moreover, they found that respondents named family members back at home as the most important influence in decision-making, only 15 per cent of the respondents in this study had made the decision to migrate alone. As they argue, these findings illustrate the importance of policy interventions being considered not just at the individual migrant level, but also in the wider family context.
- **Immigrant networks.** Ethnic incorporation is especially relevant for individuals lacking legal residence, as it increases the “opportunity structure of illegal residence” (Engbersen, van San, and Leerkes 2006, Leerkes, Engbersen, and van San 2007): opportunities to find accommodation, informal work, financial support, and potential future spouses able to sponsor family reunification applications. It also reduces apprehension risks (Leerkes, Varsanyi, and Engbersen 2012).

Individual characteristics

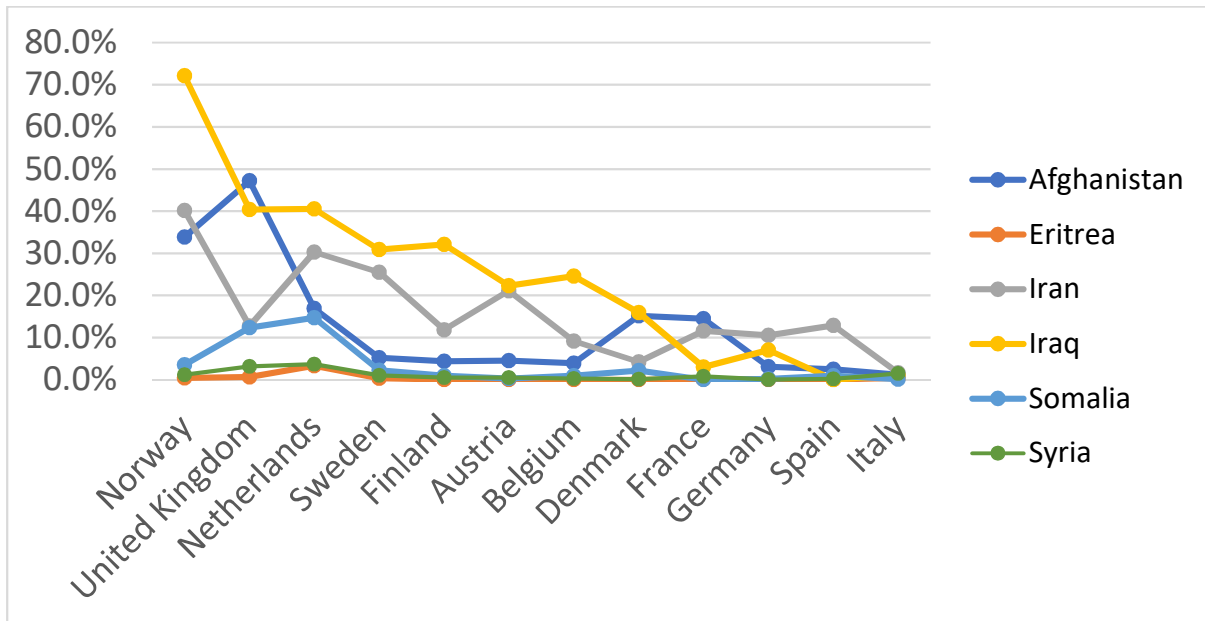
- **Age** - Younger respondents were more willing to consider return than older respondents in the UK (Black et al 2004). Age at migration—indicating source country attachments—has a curvilinear effect on AVR, with rates peaking around the age of 60 (Leerkes, van Os, and Boersema 2017).
- **Gender.** There is some evidence that women tend to be more reluctant to return to a place where there is more gender-inequality than in the destination country.
- **Inability to meet aspirations.** (Koser and Kuschminder 2015).

- Psychological problems / stress. (Koser and Kuschminder 2015).
- **Attitudes / Belief system.** A direction for future research on policy effects would be to better understand such mechanisms, and to examine whether cultural developments under the influence of globalization, including the possible rise of an aspired “global citizenship” in countries outside of the Global North, attenuate such normative influences on migration patterns (Leerkes 2016).

3. Return rates from selected EU and Schengen associated countries (EU+) countries

Figure 1 shows the percentages of rejected asylum seekers between 2013-2017 who returned to a third country via Assisted Voluntary Return (AVR) and forced return in the period 2013-2017², specified for six nationalities of origin in 12 EU+ countries. The absolute numbers for the selected countries and nationalities of origin are shown in Table 1 on page 12.

Figure 1. Return rates (proxies) for 6 nationalities from 12 EU+ countries, 2013-2017



What are these figures?

The presented return rates are the number of demonstrable returns to a country outside the EU in the five-year period 2013-2017, divided by the number of rejected asylum seekers in that same period who were required to leave the territory.

The number of rejected asylum seekers who were required to leave the territory is defined as the number of negative ‘first instance decisions’ in the period 2013-2017 minus the number of positive ‘final decisions’ in this period and minus the number of persons who have been returned to another European country in this period under the Dublin regulation. Demonstrable return is the sum of registered forced return and Assisted Voluntary Return to a third country.

² The order in which the countries are presented is determined by the (unweighted) average return rate for each EU+ country for the six migration nationalities (also see Table 2).

These figures give the best possible comparative overview of the return rates per country and nationality of origin, based on actual return rates that are comparable across countries based on the standardized Eurostat statistical guidelines. The data is not biased by Dublin cases or (other) returns in relation to stops at country borders³.

As the selected nationalities of origin are countries in conflict or under political repression, return rates are lower than average, as migration enforcement will be lower.

What are these figures not?

These figures are not cohort data. This means that the persons who returned in the period 2013-2017 are not necessarily the same people as the persons who were rejected asylum seekers in that period. We have reduced biases because of temporal mismatches in the numerator (returnees) and the denominator (population required to leave the territory) by taking a relatively long, five-year period.

Nevertheless, biases are still possible: the high return rate for Norway concerning Iraqi citizens, which strongly diverges from the other countries, may be explained by a peak in rejected asylum claims of Iraqis *before* the selected period. However, by comparing six countries of origin we can still identify general patterns per host country.

The data also do not give information on the number of persons who return to their country of origin without any assistance or force from European governments. Based on the available literature (Leerkes, Galloway, and Kromhout 2010), we think that this number will be very limited for the six case studies, considering the overall low return intentions among rejected asylum seekers from these countries.

See Annex I for a more thorough explanation of the methodological choices and its limitations.

³ We excluded countries with land border with non-EU+ countries from the analysis with the exception of Finland (there seems to be limited irregular migration between Russia and Finland) involving nationals from the six countries selected. Possibly, the rates for Finland are somewhat inflated because of the land borders (see Annex I).

Table 1. Persons returned to a third country and rejected asylum seekers for six nationalities and % voluntary returns, 2013-2017

	Syria		Afghanistan		Iraq		Eritrea		Somalia		Iran	
	Returned	Rejected asylum seekers	Returned	Rejected asylum seekers	Returned	Rejected asylum seekers	Returned	Rejected asylum seekers	Returned	Rejected asylum seekers	Returned	Rejected asylum seekers
Norway	155	13390	2090	6170	1165	1615	35	9675	120	3415	440	1095
UK	220	7010	2155	4565	1615	3995	45	6105	185	1495	1480	11645
Netherlands	1145	31160	980	5800	2090	5160	460	13855	345	2350	1160	3835
Sweden	1020	96595	1935	37345	5255	17030	80	22080	230	10365	1165	4565
Finland	10	2090	250	5740	5365	16700	0	530	25	2585	100	845
Austria	195	39860	995	22190	2090	9380	0	15	10	3750	760	3600
Belgium	45	17025	520	13385	2795	11365	0	1825	35	3775	190	2080
Denmark	15	17445	405	2675	165	1035	0	4025	45	2095	125	2990
France	125	15535	1755	12125	245	8115	5	3940	0	3190	130	1120
Germany	80	479095	5165	169275	9875	140830	10	47305	50	22915	4305	40790
Spain	25	11460	5	205	0	230	0	165	5	530	20	155
Italy	60	4150	165	13760	40	4375	20	4460	10	8325	25	1520

Patterns of return

Figure 1 and Table 1 together show highly variegated patterns of return. First, the average return rates for the six nationalities selected vary from 25.1% (Norway) to 1.2% (Italy). Norway, the United Kingdom and the Netherlands have the highest rates of demonstrable return. This finding is in line with the (qualitative) international literature (Leerkes, van Os, and Boersema 2017, Gibney 2008, Weber et al. 2019).

Second, even in the countries with the highest return rates, the large majority of the rejected asylum seekers from the selected countries have *not* demonstrably left these countries. This finding is also in line with previous research: Many studies indicate the limited effect of policy interventions compared to the structural international inequality—both in living standard, safety and freedom—between origin and host country, as well as individual and social factors: Koser and Kuschminder found that only 18.4 per cent of their respondents mentioned policy incentives or disincentive as a decision-making factor. Leerkes, Van Os and Boersema (2017) found that less than 50% of each cohort of rejected asylum seekers left the Netherlands “demonstrably”, suggesting that many individuals still preferred the curtailed life chances as unauthorized migrants to a return to the source country conditions that they fled.

Third, return rates vary per nationality of origin, in which return rates to Iran, Iraq and Afghanistan are higher yet more diversified per receiving country than to Eritrea, Somalia and Syria. The low return rates to these latter three countries can be explained by the fact that even if people are not granted asylum, they will often not be sent back to these countries based on humanitarian grounds. Conversely, while Afghanistan faces similar conditions of unsafety, the country is, after the extensive international interventions, declared a safe country. The relatively high return numbers to Afghanistan should furthermore be seen in light of the country’s aid (and military (see Leerkes, and Kox, 2016)) dependency: In 2016, Afghanistan agreed with unlimited numbers of deportees from the EU in exchange for aid. A notable detail about Iraq is that most returnees are Kurds who returned to Iraqi Kurdistan through Assisted Voluntary Return (possibly also because of an economic boom, and greater autonomy, in Kurdish Iraq (see Leerkes et al, 2014). In a comparative study on return motivations, Iraq was one of the few countries where the threat of deportation from a destination country was cited as a key reason for choosing Assisted Voluntary Return: A key reason for this is that the Kurdish Regional Government does not cooperate with forced return and accordingly, for a number of years, forced return was to Baghdad, which was considered an unsafe option for

Iraqi Kurds (Koser and Kuschminder 2015). An explanation for the relatively higher overall return rates to Iran would require more investigation.

Next, Table 2 presents the (estimated) average rate of voluntary and forced return for eight EU+ countries with separate Eurostat data on the number of voluntary and forced returns. The percentage is the (unweighted) average of the rates for Syria, Eritrea, Afghanistan, Iraq, Somalia and Iran⁴. The differences in the estimated rate of Assisted Voluntary Return versus forced return represent another remarkable difference between the countries under study, including the six case countries, ranging from 0,8% for Denmark (13% of all demonstrable return) to 9,3% for Sweden (85% of all demonstrable returns).

Unfortunately, the UK, the Netherlands, Finland and Germany do not provide separate data on AVR and forced returns to Eurostat. Annual reports by the Dutch Ministry of Justice and Security, the *Rapportage Vreemdelingenketen*, indicate that the Assisted Voluntary Return among all nationalities (not just the six asylum nationalities selected) represented 46% of the demonstrable returns in the period 2013-2017 (Ministerie van Justitie en Veiligheid, 2015, 2018).⁵

Table 2 Estimated average return rates by type of return for the six nationalities selected

	Total average return rate	Estimated forced return rate	Estimated voluntary return rate
Norway	25.2%	15.4%	9.8%
UK	19.4%	-	-
Netherlands	18.2%	-	-
Sweden	10.9%	1.6%	9.3%
Finland	8.3%	-	-
Austria	8.1%	0.3%	7.8%
Belgium	6.5%	0.7%	5.8%
Denmark	6.2%	5.4%	0.8%
France	5.0%	2.5%	2.5%
Germany	3.5%	-	-
Spain	2.8%	2.7%	0.1%
Italy	1.1%	1.0%	0.1%

⁴ Unweighted means that each observation has the same weight regardless of the number of rejected asylum seekers originating from these countries.

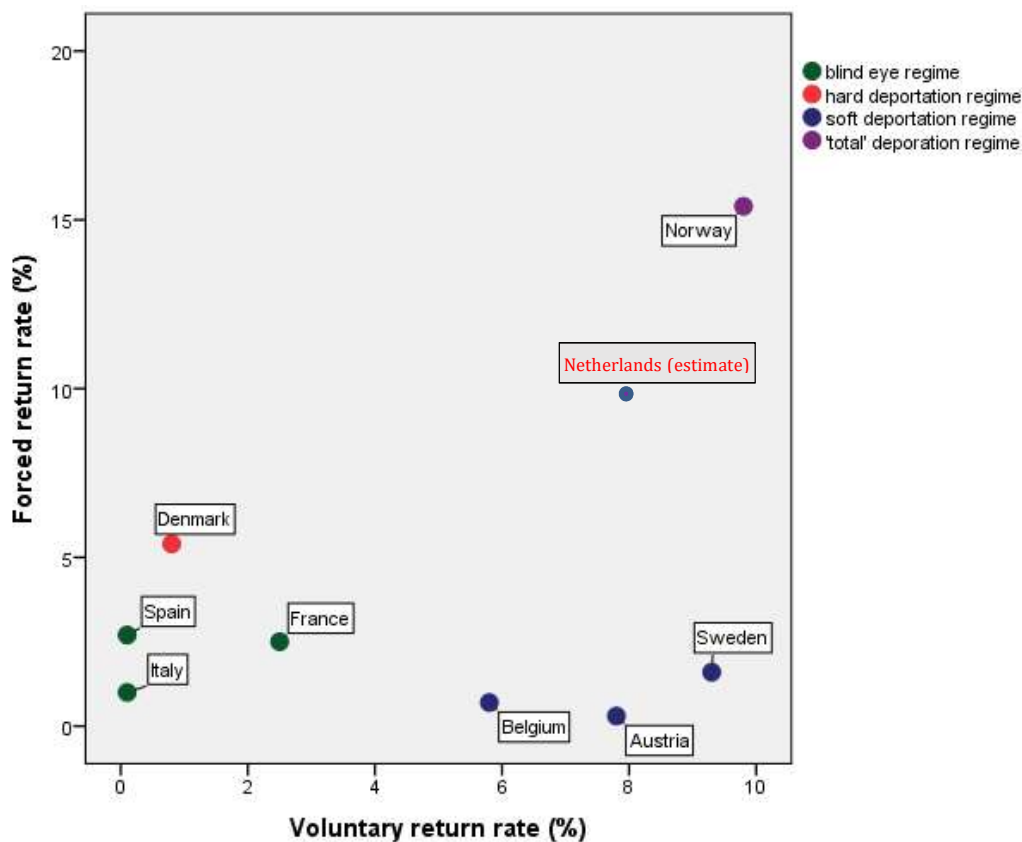
⁵ <https://www.rijksoverheid.nl/documenten/publicaties/2018/01/01/rapportages-vreemdelingenketen>. There were 21,1140 forced return in the 2013-2017 period (4400 + 4340 + 6410 + 5990) and 17,950 assisted returns (4110 + 4510 + 6510 + 2820).

The proportion of AVR and forced return per receiving country is also plotted in Figure 2. This visualization, which also includes an estimate for the Netherlands based on national data, shows a pattern in which, based on their outputs, four tentative categories of migration enforcement regimes can be distinguished:

- (1) *Total regimes* score high on both AVR and Forced Return, which reflects in high overall return rates (Norway);
- (2) *Non-enforcement regimes* score low on both AVR and Forced return, which reflects in low overall return rates (Spain, Italy).
- (3) *Hard deportation regimes* score high on Forced return and low on AVR (Denmark)
- (4) *Soft deportation regimes* score high on AVR and low on Forced Return (Belgium, Austria, Sweden). The latter two categories represent in-between rates of return.

Based on the aforementioned national information on the number of assisted voluntary returns and forced returns from the Netherlands, we suspect that the Netherlands belongs to the ‘total deportation’ cluster, but is located a bit more towards Sweden.

Figure 2. Voluntary and forced return rate for eight EU+ countries



4. Case studies: Dealing with (non-)deportability

This section focuses on policy measures put in place after an asylum application has been rejected⁶. The range of policy practices can be categorized in somewhat chronological logic (although the chronological order of policy measures will differ per country), as (1) international and bilateral agreements with origin countries to create the legal and practical conditions for return; (2) incentives to encourage (voluntary) return, starting with fair and humane treatment to enhance legitimacy and, further down the line, AVR infrastructure. This is complemented by (3) disincentives to stay (e.g. removing rights to accommodation, social benefits etc.). If this does not lead to return, states may turn to (4) domestic measures to increase forced return, such as identification obligations and apprehension targets, also using the agreements mentioned under (1). Finally, considering the overall low return rates, states also define (5) measures to accommodate those who cannot be deported, including specific cases such as families and minors.

These policy measures in the different countries under study, and any public debates on these issues, are summarized in Table 2⁷. Despite the strongly diverging return patterns, there are, at least on paper, strongly *converging* policy approaches. This has both to do with national and local policy interests that are typical for liberal democratic states, and adherence to international agreements, notably the EU Return Directive, which is a binding legal instrument containing a set of common rules on return agreed by EU states except UK and Ireland, plus the 4 Schengen associated countries. Furthermore, the similarities are related to the selection of EU+ countries: in consultation with the Van Zwol committee it was decided to only compare Western-European and Northern European countries.

⁶ For a comprehensive overview of asylum procedures (before rejection), please refer to the AIDA country reports, which can be found on the ECRE website: <https://www.ecre.org/ecre-publications/publications/>.

⁷ Explanation to the table: Return: *Average return* rate indicates the average of (proxy) return rates of the 6 main nationalities of rejected asylum seekers included in this study between 2013-2017. *Bilateral agreements*: Year and type of signed agreement. Codes refer to: Standard Bilateral readmission agreements which may be signed ('S') or have entered into force ('V'); Non-standard agreements, namely: Memoranda of understanding ('ME'); Administrative arrangements ('AA'); Finally, agreements can be under negotiation (N = Negotiation). Source: Inventory of readmission agreements, Jeanpierrecassarino.com. *Fair and humane treatment, Institutional exclusion, enforcement infrastructure, Non-return policies*: Sources EMN 2016, 2017, <https://www.globaldetentionproject.org/>.

The key features of the Return Directive include: (1) the requirement for a fair and transparent procedure for return decisions; (2) an obligation on EU States to either return irregular migrants or to grant them legal status, avoiding situations of “legal limbo”; (3) promotion of the principle of voluntary departure; (4) provision for persons residing irregularly of a minimum set of basic rights pending their removal, including access to basic health care and education for children; (5) a limit on the use of coercive measures in connection with the removal of persons, and ensuring that such measures are not excessive or disproportionate; (6) providing for an entry ban valid throughout the EU for migrants returned by an EU State; (7) limiting the use of detention, binding it to the principle of proportionality and establishing minimum safeguards for detainees (EMN 2017) .

Table 2. Summary of case studies

	Return	Bilateral agreements with the six countries of origin selected	Fair and humane treatment	AVR infrastructure	Institutional exclusion	Enforcement infrastructure	Non-return policies
NL	18.2 %	Afghanistan ME S 2003, Somalia ME S 2009	Continued stay in reception centres during AVR period, appeal & after final rejection (limited, conditional), for people with special needs. Healthcare, Social benefits in cash & adult education during AVR period.	Counselling, information about entry bans as a deterrence measure.	Exclusion from the formal labour and housing market, welfare arrangements and (most) health care through 'linkage act'.	Maximum detention of 18 months; coordination through DT&V; identification measures.	Grant residence permits on special grounds; accommodation; Legalisation; bed-bath-bread accommodations
NO	25.2 %	Afghanistan V 2005 & 2011, Eritrea N, Iraq V 2009		Early group counselling and motivational meetings; After rejection, police informs of opportunity to return via IOM. Financial assistance decreases as time passes.	Exclusion from formal society through Personal Identification Number including labour market, welfare, medical treatment.	Maximum detention of 18 months, but in practice a few days to weeks; Return targets set to police force; Identification on entry; surprise raids.	Indefinite access to reception centres, including living allowance, until deportation is arranged (or not). No legalisations or amnesties.
SE	10.9 %	Afghanistan S 2016 (stalled), Iraq S ME 2008	Continued stay in reception centres during AVR period, appeal & after final rejection (limited, conditional), for people with special needs. Social benefits in cash & employment during AVR period.	Early counselling, 'motivational interviewing' techniques; information about entry bans as a deterrence measure.	Elaborate exclusion from formal society through personal identification number including labour market, welfare medical treatment, sports.	Maximum detention of 2 months; surprise raids; identification measures.	Grant residence permits on special grounds; accommodation; Track switching system for rejected asylum seekers who have found employment.
DK	6.2 %	Afghanistan S ME 2004, Somaliland AA S 1997, Iraq S ME 2009	'Tolerated stay' in departure centre.	AVR option mainly/only directly after return decision.	No access to labour market, education, health care and leisure activities.	Maximum detention of 18 months.	Indefinite and compulsory stay in 'departure centres'.
BE	6.5 %	None	Transferred to 'open return places' during AVR period, appeal & after final rejection (limited, conditional), for people with special needs. Health care & adult education during AVR period.	Early counselling, differentiated return packages to (rejected) asylum seekers.	No right to accommodation (although the provision of material aid can be extended in certain cases). No official access to the labour market, social welfare and only urgent medical assistance.	Maximum detention of 5 to 8 months; Information exchange; surprise raids; identification measures.	Grant residence permits on special grounds; Special accommodation arrangements for families.
DE	3.5 %	Afghanistan S 2016, Syria V 2009	Continued stay in reception centres after final rejection (unlimited, not conditional). Social benefits in cash & employment during AVR period.	information about entry bans as a deterrence measure.	Unlimited access to reception centres and services.	Maximum detention of 18 months. Information exchange; identification meas.	Grant residence permits on special grounds; Temporary non-enforcement with access to services, employment and accommodation (Duldung).

5. Comparative analysis of the case studies

In this section we will comparatively analyse how the converging policy measures, the way they are being implemented and the public debate about them may explain the divergence in return patterns.

Policy measures

Bilateral agreements with origin countries

Several key informants claim that return policy stands or falls with bilateral agreements with the country of origin that are embedded in good international relations. This is not only about signing formal readmission agreements that are recent enough to apply to the current situation and are acknowledged by the current government, but also about wider diplomatic relations. It is argued that the high return rates of **Norway** are partly due to its investment in comprehensive diplomatic and interpersonal relations, where, next to the formal and general agreement, immigration police officers are stationed in the embassy of the country of origin to make arrangements for individual cases. This seems particularly important in less bureaucratic countries of origin. If not complemented with diplomacy, readmission agreements can arguably also have less practical and more symbolic value, which may serve to appease the public opinion without leading to more enforcement (**France** is mentioned as an example of this, which has a high number of readmission agreements, but a low level of enforcement of return decisions). **Belgium** and **the Netherlands** use positive incentives such as aid packages to persuade third-country authorities to cooperate in return procedures. **All countries** also apply political pressure on third countries' authorities so that these accept returns, in which **Germany** indicates that only measures at the highest political level seemed to be effective in increasing the willingness of origin countries to cooperate (EMN 2016)⁸.

⁸ There is no information on this for Norway and Denmark as they are not included in the EMN reports.

Incentives to encourage assisted return

Legitimacy through fair and humane treatment

The Return Directive requires a fair and transparent procedure for decisions on the return of irregular migrants, and a minimum set of basic rights pending their removal, including access to basic health care and education for children. While all countries adhere to this, **Sweden** has made this a policy priority, which may partly explain their high rates of Assisted Voluntary Return (DeBono, Ronnqvist, and Magnusson 2015, Weber et al. 2019). Moreover, the Swedish focus on legitimacy seems to be necessary for retaining public support on migration enforcement policies (see below).

AVR infrastructure

The Return Directive prescribes the promotion of the principle of voluntary departure by establishing a general rule that a "period for voluntary departure" should normally be granted. In **all of the case studies**, this period lies between 7-30 days as prescribed by the Return Directive (EMN 2016), and all of these countries focus on counselling and provision of information about AVR and the consequences of refusal to return independently (entry ban). In **Denmark**, the option for Assisted Voluntary Return seems to be open mainly directly after the return decision. It remains unclear if and under which conditions AVR is possible after this moment.

The amount of financial assistance available when complying with Assisted Voluntary Return seems to matter: **Norwegian** high premiums also seem to lead to higher return rates. The relatively higher premiums for **Iraqis** in Belgium may partly explain their comparatively higher return rates. (also see Leerkes et al. (2014) for indications that increases in financial assistance in the Netherlands increased AVR rates, although they may also lead to some degree of substitution from unassisted return to assisted return).

Measures to facilitate forced return

The Return Directive requires a limit on the use of coercive measures in connection with the removal of persons, and stipulates that such measures may not be excessive or disproportionate. This includes limiting the use of detention, binding it to the principle of proportionality and establishing minimum safeguards for detainees. Detention is only allowed to administratively detain migrants in immigration detention centres for a maximum of 18 months if there is a view

to expulsion, and, in case of rejected asylum seekers, only after migrants have had the opportunity to return independently (see above). It is allowed, however, to repeatedly detain migrants in immigration detention (leading to more than 18 months detention time in total) as long as the government can demonstrate that there is a view to deportation. In **the Netherlands**, for example, this is generally assumed to be the case if the previous detention period has ended at least 12 months earlier.

All countries under study use detention, although there is some diversity on the grounds on which people can be detained, and the length of detention. Interestingly, **Norway** and **Sweden**, two of the countries with the highest return rates, make very limited use of detention, with shorter detention periods, even if the legal maximum detention period is relatively long.

As an alternative to locate and apprehend irregular migrants, **Norway**, **Sweden** and also **Germany** allow surprise raids (for example once deportation is arranged), which is being restricted in other countries. In **Belgium** it is possible to carry out address controls but not surprise raids (EMN 2016). Another measure to facilitate forced return is tracking and identification of irregular migrants who have gone into hiding. **Germany** and **Belgium** allow the exchange of information between authorities, although this does not seem to lead to more return rates.

While detention is meant to physically facilitate forced return, one of the key administrative measures, as well as the key challenge to facilitate forced return, is identifying rejected asylum seekers' nationality and obtaining travel documents. Several measures are in place in the different countries under study. **Germany** and the **Netherlands** invest in fingerprint capture attempts, including by using special software to read damaged fingerprints. **Germany** and the **Netherlands** as well as **Belgium** also use language experts to detect nationality. **The Netherlands** and **Sweden** involve the authorities of the country of origin to confirm their nationality and to issue travel documents (EMN 2016).

Disincentives to stay: institutional exclusion

The Netherlands, **Sweden** and **Norway** all have a comprehensive system to exclude rejected asylum seekers past the voluntary return period from formal society, such as access to employment or benefits, education and health care, and in the case of **Sweden** even associations such as sports clubs, by linking these 'services' to a personal identification number. In this way, irregular migrants are marginalized and excluded from society with the hope that it will

disincentivize them to stay. Denmark has a similar system, in which rejected asylum seekers are moved to remote camps without access to employment, education, and benefits, although it is unclear whether this is linked to a personal identification number. In **Belgium**, although rejected asylum seekers are officially also excluded from formal aspects of life, this is less systematically enforced and therefore easier to bypass. Conversely, in **Germany**, irregular migrants continue to have access to accommodation, benefits, education and employment until their departure, with the rationale that migrants will stay ‘above ground’ and traceable once the deportation is made possible (EMN 2016).

Measures to accommodate the presence of effectively undeportable asylum seekers

The Return Directive provides for an obligation on EU States to either return irregular migrants or to grant them legal status, thus avoiding situations of “legal limbo”. Considering the fact that a large proportion or even the majority of rejected asylum seekers do not return, the question is how European countries deal with effective non-deportability, in particular individual cases that are identified as particularly poignant, such as (families with) minors who have been living in the country for an extended period of time.

Legalisation

Most countries in the case study, **Germany, Belgium, the Netherlands, Sweden and Denmark** have had regularisation *programmes* in the past twenty years, targeting specific categories of people for a limited amount of time (Brick 2011). While these countries considered regularisations as incidental, the largest and most frequent regularisations have taken place in Southern European (Italy and Spain). On the contrary, there is little support of regularization programmes in Norway (UDI 2011).

In addition, **Sweden, Germany, Belgium and Norway** have put in place individual-level regularisation *mechanisms*, in which legalization is ‘earned’ based on long-term residence or humanitarian considerations (Brick 2011). **Sweden** has a track switching system involving labour market requirements: rejected asylum seekers may be given a year to seek regular employment⁹. If they find such employment, they will receive a regular residence permit. In **Germany**, rejected asylum seekers who cannot be deported and who have received a

⁹ <http://asyluminfo.se/uncategorized/change-of-tracks-spa%CC%8Arbyte-6-1-for-employers-applying-for-a-work-permit/>.

‘Duldung’ status, may in specific cases apply for a residence permit after one year on the grounds of being well-integrated. In **Belgium** and **Norway**, regularisation can be applied for on humanitarian grounds or on medical grounds. **The Netherlands** only has a more limited *buiten schuld* procedure for foreigners who can demonstrate that they cannot return to their country of origin (EMN 2016).

Regularisations based on individual cases at the discretion of a minister or state secretary happen in **most countries**, except for **Norway**, which makes no exceptions in their attempts to enforce a return decision. In **the Netherlands**, the discretionary power to decide over asylum cases was removed in May 2019¹⁰.

Last, we expect that in **all countries** rejected asylum seekers may obtain family reunification residence permits through spouses who are citizens of the country of stay or have a residence permit that gives a right to family reunification.

Tolerated or temporary status

All countries in the case study have a form of ‘tolerated stay’ or temporary status for people who cannot be deported, but with very different meanings. **Germany** is most well-known for its Duldung system, under which non-deportable rejected asylum seekers are entitled to accommodation, employment, benefits, education and health care (EMN 2016).

In other countries such as **Denmark**, the **Netherlands** and **Norway**, tolerated status takes the shape of a poor house construction. **Denmark**’s tolerated status means that rejected asylum seekers are accommodated in remotely located centres, where they are not detained but have to report on a regular basis, without access to employment, benefits, education or other activities, and limited healthcare (Suárez-Krabbe, Arce, and Lindberg 2018). **Norway** hosts rejected asylum seekers in reception centres with a living allowance that is below the Norwegian minimum of unemployment benefits, and without the right to work, alternative housing, or benefits. In the **Netherlands**, families now receive relief from the national government in *family locations* (gezinslocaties). For single persons, local level bed bath and bread arrangement are available (EMN 2016).

¹⁰ <https://ind.nl/nieuws/Paginas/Discretionaire-bevoegdheid-per-1-mei-afgeschaft.aspx>

The relatively formalized tolerated status in our North-West European case studies are still different from practices in Southern Europe, especially Italy and Spain, which are known to for their de facto toleration policies: authorities are aware that a large number of unauthorized migrants work in certain sectors (eg agricultural sector, construction, sewing factories) but largely turn a blind eye to their presence.

Throughout Europe and especially in places where there are no formal provisions for undocumented migrants, there is substantial involvement of NGOs (eg Caritas) and civil society organization in the provision of basic services to unauthorized migrants (Ambrosini 2018).

Encampment / detention

(Repeated) detention, described above as a measure to support forced return, is also often used as a way to deal with non-deportability. **The Netherlands** has high rates of long (more than 6 months) and repeated immigration detention (Van Alphen et al 2013, Leerkes and Kox (2017). In addition, the above described departure camps in remote places in **Denmark** for rejected asylum seekers who are difficult to deport are not only meant to ‘tolerate their stay’. It is also hoped that, over time, migrants will develop a willingness to leave (Suárez-Krabbe, Arce, and Lindberg 2018).

Policy implementation

Budgets/capacity

Several key informants in different countries note that, more than the specificities of policy, a significant factor in explaining the difference in return rates is the budgets that are spent on making return happen. It is very difficult to calculate the real cost of an individual successful return, since it is a combination of costs, with on one hand the costs directly spent on the individual, such as accommodation in reception centres, detention and surveillance, AVR funds, a police escorted flight, and on the other hand the costs at large, including the financial and human resources spent on bilateral agreements and the costs of the return infrastructure. However, the Gross Domestic Product (GDP) of a country could count as an indicator for enforcement capacity: **Norway**, which stands out in return rates, also has the highest GDP per capita rate of all selected countries (about 25% higher than **the Netherlands**).

Priority

In addition to spending capacity, the question whether it is rational to spend high amounts on deportation of rejected asylum seekers depends on the level of priority that is assigned to deportation. **Norway** is known not only to have the means, but also to give high priority to return. Increased policy priority due to recent influxes and the need to maintain public support for the asylum system was expressed mainly in **Sweden** and **Germany** (EMN 2016). The Nordic countries in general, which are not only wealthier but until recently also relatively culturally homogenous societies built on solidarity and a large welfare state, are argued to have developed a form of ‘welfare nationalism (Brochmann and Hagelund 2012), granting more priority to excluding ‘those who are not members of these close-knit democracies’ (Weber 2015, Barker 2013, Ugelvik and Ugelvik 2013). These Nordic welfare states seem more inclined to spend these budgets, while less wealthy states with a more modest welfare state and more familiarity with foreign-born populations make different calculations.

Effective bureaucracy / coordination of return procedures

In addition to the means and the will to prioritise deportation, a more effective bureaucracy contributes to its effective implementation. On the macro level, **Norway** and **Sweden**, despite having very different ways of working, share that they are working according to a highly systematic and bureaucratised procedure.

Furthermore, there is reason to believe that more centralized coordination of the return procedure affects its efficacy, as it is a very complex multilevel governance issue, involving the EU level, the national level and the local level. **The Netherlands** saw its return rates increase with the arrival of a designated Return and Repatriation Service (DT&V) in 2007, which coordinates the return process and chairs local return consultations with relevant stakeholders (EMN 2016).

On the other hand, the complex and overall polemic governmental landscape in **Belgium** and more particularly in Brussels, trickles down to a reluctance of local law enforcers. The lower return rates in **Germany** might also be related to the complexities of their federal governance system.

On the micro-level, an effective bureaucracy is about getting the ‘street-level bureaucrats’ to work optimally: public employees who interact directly with citizens or clients (DeBono, Ronnqvist, and Magnusson 2015). This is not merely about controlling their outputs, such as

giving deportation targets (with consequences) to the police, as is happening in **Norway**. In a study on police officers implementing deportation of unaccompanied minors in **Sweden**, Hansson finds that a level of discretionary space is important as a coping mechanism and to combine efficiency and dignity (Hansson 2017). The discretionary space is the power that these bureaucrats have ‘in determining the nature, amount, and quality of benefits and sanctions provided by their agencies’ (Lipsky 1980: 13 in DeBono, Ronnqvist, and Magnusson 2015). According to DeBono et al., the main reasons why these bureaucrats need discretionary space are because they have to make decisions based on a limited amount of information, and because their interactions with citizens (or, in this case, non-citizens) are too complex to be guided in detail by rules and regulations (DeBono, Ronnqvist, and Magnusson 2015). Conversely, the Norwegian system leaves no room for discretionary space and Norwegian street-level bureaucrats are known for their stoicism in aiming for their targets. In **the Netherlands**, there have been various attempts to define apprehension quota for police, but these measures always met resistance by police and (other) local actors, especially when they were required to apprehend migrants who are not involved in crime and do not cause public order issues (Leerkes, Varsanyi, and Engbersen 2012). The coping mechanisms and efficacy of street-level bureaucrats therefore show a mixed picture, in which further studies need to be undertaken (Hansson 2017).

Public acceptance and legitimacy of return policy

Last, a lot of policy measures are shaped to retain public support for migration enforcement, which is essential as it forms its political basis. A distinction can be made between general public support for the migration enforcement approach taken, and controversy about individual cases.

All countries in the case study, being liberal democracies, search for public support when shaping their migration enforcement strategies. But ‘what the people want’ is the most complex and least tangible factor of all, as it is embedded in the culture and history of a country. For example, both the **Swedish** focus on voluntary return *and* the turn towards increased enforcement can arguably be seen in light of public calls for ensuring the human rights in the deportation process on one hand, and calls to reduce costs on the other, which are in turn embedded in the humanitarian principles underpinning law and policy development in migration in Sweden *and* the tradition of keeping to the rule of law (DeBono, Ronnqvist, and

Magnusson 2015). Conversely, the more-strict deportation measures in **Norway** are generally supported by the Norwegian public, but since there is much more controversy about the use of detention, detention is kept to a minimum. The hard approach to deportation in **Denmark** should be seen in light of the long-term popularity and influence of the anti-immigrant Danish People's Party (Siim and Meret 2019). Our unconfirmed presumption is that the reluctance to enforce deportation by **Germany**, despite being an otherwise highly organized and bureaucratic state, may be related to the sense of collective guilt from the holocaust, making deportation of rejected asylum seekers a politically sensitive and unpopular issue. The practice of regularization of well-integrated individuals could also be related to the relatively high demand for cheap labour in Germany. A general distrust towards the federal government in **Belgium** is argued to hamper enforcement.

On the other hand, **all countries** also deal with public controversy when it comes to individual cases that are reported in the media, especially when it concerns minors, although with different outcomes. In **Norway** and **Denmark**, the controversy does not seem to have a lot of political effect. Germany, Belgium and the Netherlands (see Leerkes, Varsanyi and Engbersen, 2012) seem to be more susceptible to such public pressure, yet this needs to be investigated further.

While we have given some suggestions on how the search for public discourse affects policy making and implementation (see also Czaika and De Haas 2013), these examples merely scratch the surface of a highly complex issue. Truly and comparatively understanding the public support and controversy around deportation would require a more in-depth study in which the culture and political history of each country are taken into consideration.

6. Conclusions

In this report we compared 12 EU and Schengen associated countries, of which six in more detail, and six nationalities of origin in order to investigate the policy factors that contribute to the return and non-return of rejected asylum seekers who are obliged to leave the territory, and the public concerns and acceptances of these policy measures.

The outcomes of deportation regimes (or: migration enforcement regimes) in terms of the rate and type of migrant return can be understood in light of policy determinants, including the type of policy instruments and their implementation, on one hand, and non-policy determinants such as structural drivers for migration and individual and social factors on the other. Last, pressure by the public discourse and the media also play a role in policy enforcement. We investigated policy measures and implementation and public discourses in the host countries, while acknowledging that the often-large differences between return rates of different nationalities of origin within a country could often also be ascribed to structural conditions in those countries.

We first looked at the rate of migrants from these countries that returned, and the rate of Forced versus Assisted Voluntary Return. We found that return rates were highly divergent between host countries. The Netherlands is among the countries (after Norway and UK) with the highest rates of demonstrable return.

There are also differences in the type of demonstrable returns ('Assisted Voluntary Return vs forced), leading to four types of migration enforcement regimes. The Netherlands has both relatively high voluntary and forced return rates, therefore tending, together with Norway, toward a 'total regime'.

The statistics furthermore show that the large majority of the rejected asylum seekers from the selected countries had *not* demonstrably left these countries, and that return rates vary per nationality of origin, in which return rates to Iran, Iraq and Afghanistan are higher yet more diversified per receiving country than to Eritrea, Somalia and Syria.

We then investigated policy measures and implementation. The North-West European case studies have developed a range of policies to promote voluntary and forced return for rejected asylum seekers. Yet the specificities and similarities with regard to these policy measures alone do not explain differences in return pattern. The implementation of these policies, in terms of budgets and capacity, priority and effective bureaucracy complement part of the puzzle, while

it creates new questions as well. The report shows that the political space to act depends strongly on the public support of or controversy around these policies and their outcomes. This is the most opaque and complex factor, as ‘what the people want’ is a fascinating question that is driven by cultural, historical and emotional factors that we cannot grasp within the scope of our study but would require a more in-depth approach.

On the other hand, considering the low return rates, countries have also developed policy measures to deal with the non-deportability of rejected asylum seekers who are unwilling to return to their country of citizenship, which appears to be closely related to the priority that is given to migration enforcement. Figure 3 shows a continuum of policy measures and rationales that can tentatively be categorized into three main groups.

Figure 3. Dealing with (non-)deportability

Countries	Migration enforcement priority	Dealing with non-return	Rationale
Norway Denmark Netherlands	High priority to return all rejected asylum seekers through territorial and institutional exclusion	Continued access to food and accommodation	Migrants cannot provide for themselves because access to work has been limited (high degree of institutional exclusion) Locate migrants in order to facilitate deportation Only the most piteous rejected asylum seekers have a chance to be regularized.
Sweden Germany	Priority to return unwanted migrants only	Track change Duldung → regularization	Achieved deservedness of ‘integrated’ migrants
Belgium (and Italy / Spain)	No capacity / political will to enforce return	De facto tolerated stay Regularization	Accept the presence of undocumented residents

The Netherlands can be categorized in the group that prioritizes migration enforcement through territorial and institutional exclusion. The other side of this coin is that people who are effectively non-deportable need to be provided with food and shelter, because they cannot otherwise provide for themselves. To some extent these policies have resulted in a return of the

‘poorhouse’: basic accommodation in shelters with a basic income below the official social minimum for citizens.

On the other side of the continuum, there are countries that do not in practical terms prioritize migration enforcement, out of a lack of capacity or political will to do so. In these countries, there is more informal space to make a living as an undocumented migrant. In practice, the presence of undocumented migrants is silently accepted without the state interfering. The only way to deal with non-return is regularization.

In the middle of this spectrum, there are countries that in principle prioritize return, but are also susceptible to the social and humanitarian aspects and political sensitivity of deportation, and to the economic value of some migrants. They have formalized and individual-level options for regularizations in place, based on achieved deservedness.

Given that the Netherlands already belongs to the EU+ countries with the most developed post-entry migration enforcement infrastructure, it is questionable whether or not the Netherlands can increase the effectiveness of its migration enforcement much further. Lessons learned from the other case studies are the focus on legitimacy (Sweden), diplomacy (Norway), and the pragmatic attitude towards rejected asylum seekers that are well-integrated in society (Germany and Sweden).

Annex I Methodology

We took a two-phased mixed methods approach to address the research questions.

Phase 1

In **Phase 1**, we aimed to provide an overview of return rates and -modes (forced return or Assisted Voluntary Return) in selected countries across the European Union.

Statistical data and definitions

The best way to assess the rate of forced and Assisted Voluntary Return from different European countries would be to analyse **cohort data** (cf. Leerkes et al., 2014; Leerkes, Van Os and Boersema, 2017). In case of cohort data, a group of people who are required to leave the territory (for example, all asylum seekers who were rejected in year X) are followed over time. As such data are not regularly available –certainly not for different countries- we used Eurostat data.

Eurostat is the statistical office of the European Union. In its migration enforcement statistics, it mentions the number of persons ‘*returned to a third country*’ following an ‘*order to leave*’, and the total number of such persons returning to a different country, specified by EU and Schengen associated *country*, nationality of those having returned, year and destination of the return (total versus ‘returned to a third country’).

EU and Schengen associated countries (EU+, our abbreviation) are EU Member States plus Iceland, Liechtenstein, Norway and Switzerland.

Third countries are non-EU countries.

Return to a third country. The statistics on persons returned to Third countries usually means return to their country of birth and/or nationality. It excludes removal to an EU country of first asylum (so-called Dublin cases). Return to a third country either pertains to deportation (‘forced return’) or to forms of assisted return with no physical force being applied (‘voluntary returns’), usually through IOM.

Ordered to leave. It is not completely clear how Eurostat defines ‘ordered to leave’. We assume that it refers to persons who have received what are called ‘**return decisions**’: under the EU Return Directive, all rejected asylum seekers and known (apprehended) irregular

migrants are to receive a ‘return decision’, which states that the person is to leave the territory within a reasonable period of time, usually four weeks in case the person is a rejected asylum seeker. Third countries are all non-EU countries. Eurostat also includes data on the number ‘negative first instance decisions’ and ‘positive final decisions’ specified by EU+ country and migrant nationality. Negative first instance decisions pertain to rejected asylum applications before eventual appeals. Positive final decisions are decisions resulting in a residence permit being reached after a first instance rejection (because of appeals).

Data analysis and procedure

We approximated the return rates involving 12 EU+ countries and six migration nationalities based on the following procedure.

Country selection

We first selected all EU+ countries with at least 10,000 negative first instance decisions in 2016 and 2017. Subsequently, we excluded three countries (Hungary, Poland and Greece) because they have land borders with non-EU+ countries that are regularly crossed by persons applying for asylum. Such land borders inflate the number of persons ‘returned to a third country’ as it will involve persons who are stopped at the border and are then handed over to the authorities of the country of transit. We kept Norway and Finland in the analysis, however. Both countries have land borders with a third country (Russia), but these land borders are not crossed regularly by the six nationalities selected. For eight of the twelve countries Eurostat also gives information about the share of ‘voluntary returns’ relative to the number of ‘forced returns’ (but without specifying the number of such return to a third country).

We then wanted to select nationalities of origin of which we could adequately estimate the population required to leave the territory. For this reason, we wanted to select nationalities of origin that produce mainly asylum seekers, as rejected asylum seekers are registered by the state whereas there are no accurate estimations of the size of the irregular population by country of origin for our selected ‘host’ countries.

We therefore selected the 10 nationalities with the highest number of rejected asylum seekers in EU+ countries in 2016 and 2017, but decided to exclude 4 of the top 10 countries from the analysis because a significant part of the returnees from these countries are not rejected asylum seekers but other irregular migrants including visa overstayers: Pakistan, Albania, Nigeria, and

Russia. For these countries of origin, the total population required to leave the territory is hard to assess.

The remaining nationalities of origin are Afghanistan, Eritrea, Iran, Iraq, Somalia and Syria. As discussed in section three, the fact that these asylum seeker-producing countries are often countries in conflict or under political repression, return rates are lower than average, as migration enforcement will be lower. However, had we chosen other nationalities, such as Albania or Macedonia, the measurement of the population required to leave the territory could be off the mark as only a limited share of the Albanians and Macedonians who are required to leave the territory are rejected asylum seekers (but overstaying ‘tourists’).

Return rates

The (approximated) return rates in Figure 1 are defined as follows: the total number of persons with nationality X returning through Assisted Voluntary Returns or forced return to a third country in the period 2013-2017 (numerator) divided by the total number of negative first instance decisions involving persons with nationality X in the period 2013-2017 *minus* the total number of positive first instance decisions involving persons with nationality X in the period 2013-2017 *minus* the total number of positive first instance decisions involving persons with nationality X who were returned to an EU Member State in the period 2013-2017 (denominator), multiplied by 100. We calculated the number of persons returned to a EU Member State by subtracting the number of persons returned to a third country from the total number of persons returned.

For example, we then find a ‘return rate’ for Afghan asylum seekers in the Netherlands of 16.9%: in the 2013-2017 period, 980 Afghans were returned to a third country from the Netherlands, while 6,430 negative decisions involving Afghans were reached in this period while 540 positive final decisions were reached and 90 Afghans were returned to a European country (usually under the Dublin Regulation). We subtracted the number of positive final positive decision and persons returned as a result of Dublin claims from the number of rejected asylum seekers because such persons are not required to leave the territory from the EU+ state in question.

Rates of voluntary and forced return

For the eight selected EU+ countries where Eurostat specifies the number of voluntary returns and forced return separately, we also approximated the rates of voluntary return for the six migrant nationalities selected as well as the rates of forced return. This was done by assuming that the share of voluntary return among the return to a third country for migration nationality from an EU+ is equal to the share of voluntary returns for that nationality among all returns involving persons with that nationality (including returns to EU countries).

Limitations

The Eurostat data, as used here, give a good indication of the return rates among rejected asylum seekers from different EU+ countries. Nevertheless, five methodological limitations should be mentioned.

First, all Eurostat data are administrative counts by year; the migrants being counted are part of different cohorts (i.e., they will have arrived in Europe at different points in time). The calculated return rate for a given period is also influenced by developments in the population required to leave the territory before and during that period. If the number of rejected asylum seekers was higher in the years before the period examined, the measured return rate will be relatively high as persons from the previous cohort will be included in the numerator (part of them returned in the period examined), but not in the denominator (they were not rejected in the period examined). Similarly, if the population required to leave the territory increased during the period examined the return rate will be relatively low: part of those who have received a negative decision will still be awaiting appeals to a negative decision. We have tried to reduce such biases by examining a relatively long period of time (5 years).

Second, the Eurostat counts on asylum decisions will include double counts as they also pertain to decisions regarding repeated asylum applications. Eurostat data show that 4% of all applications in the 12 EU+ countries involving nationals from the six countries of origin selected were repeated applications. If we assume that all repeated applications resulted in negative decisions, repeated applications represent a maximum of 10% of the negative first instance decisions. The actual return rates may therefore be a few percent points higher than reported here, as size of the population required to leave the territory may have been overestimated by 5% to 10%. This underestimation of the return rate is compensated, however, by an unknown overestimation of the number of rejected asylum seekers returning: although

we selected typical asylum countries the number of persons returning to a third country could still include irregular migrants who have never applied for asylum.

Third, counts of persons ‘returned to a third country’ will include an unknown number of persons who have been handed over to the authorities of transit countries outside of the EU (eg Turkey or Morocco). The number of such returns from the 12 EU+ countries included in the analysis is, to our knowledge, limited.

Fourth, the Eurostat data do not include information about the number of persons receiving return decisions who leave the territory through *non-assisted* return, i.e., who leave without any involvement of organisations in the field of migrant return. However, there is no evidence that the numbers of migrants leaving in that way are particularly high in the case of rejected asylum seekers from relatively unsafe countries. For example, in a sample of 108 migrants who were at risk of receiving a return decision (mostly asylum seekers from relatively unsafe countries who were rejected in the regular asylum procedure) about 80% scored the lowest value on a question measuring their return intentions in the next 12 months (they scored a 1 on a 1-7 scale measuring return intentions), and only a handful of respondents really intended to return (Leerkes, Galloway, and Kromhout 2010).

Finally, the Eurostat data give no information about the *sustainability* of the returns. We know that a significant number of deportees continue their migration project in the region or by migrating to Europe once again (Schuster and Majidi 2015).

Phase 2

In **Phase 2**, we further explored policy practices aimed at increasing voluntary and forced return as well as policy practices to deal with non-deportability. The case studies were based on document analysis and we planned interviews with approximately 20 key informants – academics, government and NGO representatives from the respective countries.

Data analysis and procedure

For the case studies, we proceeded as follows:

1. Based on the figures produced by the statistical analysis, we wrote up the general similarities and specific return patterns per country, leading to a number of guiding questions in addition to the general questions of the study.

2. We then looked for documentation (Policy and NGO reports and academic literature) on the specific case studies and comparatively across the EU.
3. Next, we approached key country or comparative experts on the topic to discuss our findings. We spoke to experts on return from the EU in general, and country specialists on Norway, Sweden, the Netherlands, and Belgium. Within the limited time frame of the report, we did not yet speak to country specialists on Denmark and Germany.
4. We merged our findings into a draft report
5. We presented our findings to the committee and we finalized the report.

Limitations

The narrow time frame for this report did not allow us to reach full saturation in terms of document analysis and expert interviews. Moreover, while migration enforcement policies in The Netherlands, Sweden, Belgium and Germany are very well-documented in the EMN reports, Norway and Denmark are not included in these reports. Comparable information is easier to find on Norway than for Denmark. Additional data collection was still taking place when the report went to press and will be included in our full report later. Throughout the report, we have clearly indicated which elements still need further investigation.

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