Effective EU Migration Management: Balancing Return Enforcement and Fundamental Rights

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To what extent can the EU strengthen the effectiveness of return procedures while complying with its fundamental-rights and human-rights obligations?

Introduction

Migration is inherent to human history, yet it is necessary to balance regulation with fundamental rights as well as human-rights obligations. While it is an old phenomenon, migration nonetheless still raises debates about the way it should be handled. It invokes questions of how to help people in need, or those who, for other reasons, seek a life in another country, and

how to keep a country's identity as well as safety, among other things, in balance.

The number of people immigrating to the EU from non-EU countries declined from 5.3 million in 2022 to 4.4 million in 2023 and 4.2 million in 2024 (Eurostat, 2025, 2026b). These statistics refer to immigration in general, while the following statistics concern specifically irregular border crossings and sea arrivals. In 2026, there has also been a significant drop in irregular arrivals. As mentioned in IOM's 2026 data, sea arrivals to Europe fell to nearly 60,000, a decrease of 39% compared with the same period in 2025 (International Organization for Migration [IOM], 2026), along with a 40% drop in detections of irregular border crossings during the first five months of 2026 compared with the same period in 2025 (Frontex, 2026).

Protests and far-right sentiments, such as those that happened in The Hague in September (Al Jazeera, 2026a) and youth-led protests across Europe, including in France, have sparked anti-immigration discussions and claims (Al Jazeera, 2026b).

Why effective return procedures matter

An effective migration system requires a distinction between people who have a legal right to stay, those whose applications for international protection are still being examined, and those who have received a final decision confirming that they have no right to remain. Migration is not a single category, and the fact that someone has entered the EU irregularly does not automatically mean that they can be returned without further examination. However, when a person has no legal right to stay and the necessary procedures have been completed, the state must be able to enforce its return decision.

The scale of the problem is significant. According to the Council of the European Union, around two in three people ordered to leave the EU do not actually leave (Council of the European Union, 2026). Eurostat (2026a) states that there were 491,950 orders to leave in 2025, and that 135,460 third-country nationals were returned to a non-EU country following an order to leave that same year. Although these figures illustrate the scale of the issue, they do not directly establish the proportion of people who comply with the return decision issued in the same year. A system that issues return decisions without being able to enforce them risks weakening confidence in migration policy, while placing continued pressure on national authorities and the common European asylum system.

The new EU return rules: a step towards greater effectiveness

On 1 October 2026, the EU Council approved new rules for effective returns. These establish a common framework including a European Return Order, stronger cooperation obligations, and Member State collaboration. They permit return hubs in non-EU countries under human rights and non-

refoulement conditions (Council of the European Union, 2026; Regulation (EU) 2026/2280, arts. 1, 4, 5(13)-(15), 14, 18, 50(2)–(3)).

These changes promote a coherent migration policy. Differing national approaches weaken cooperation and allow subjects to move between countries, making enforcement more difficult. Consistent procedures reduce this ambiguity. The European Return Order addresses this by sharing crucial information via a common system (Regulation (EU) 2026/2280, arts. 5(13)-(15), 50(2)–(3)). Article 7 will allow recognizing and enforcing another Member State's return decision (Regulation (EU) 2026/2280, arts. 7(1), 50(3)). However, recognition is voluntary, offering no guarantee that every issued decision will be enforced elsewhere (Regulation (EU) 2026/2280, arts. 7(1), (9)-(10)). Thus, it remains unclear if this sufficiently reduces practical differences between Member States.

The regulation reinforces obligations on those subject to return decisions. Article 18 requires cooperating with authorities and not absconding, including moving to another Member State to avoid the procedure. Article 22 outlines consequences for non-compliance: financial penalties, reduced benefits or assistance, and criminal sanctions where national law permits. Measures must be effective and proportional; benefit reductions cannot leave persons unable to meet basic needs. Implementation starting 17 October 2027 will define practical effect (Regulation (EU) 2026/2280, arts. 18(3), 20(1), 22, 50(3)).

A state has a legitimate interest in controlling who may reside within its territory and under what conditions. Repeated non-enforcement weakens rule of law confidence. Article 4(2) TEU states that respecting national identities is inherent in constitutional structures (Treaty on European Union, art. 4(2)), which underlines the need for a legally sound migration system regulating lawful residence and providing integration measures. Governments reasonably seek consistent application allowing lawful return enforcement. The previous Return Directive already permitted issuing and enforcing decisions, so this is not new. Regulation (EU) 2026/2280 rather establishes a common system potentially strengthening migration systems and lawful residency.

Fundamental rights as a necessary limit

New rules aim to improve enforcement, but effectiveness isn't measured solely by return numbers. Member States must uphold fundamental rights. Directive 2008/115/EC remains active during the transition to Regulation (EU) 2026/2280, applied in stages. Article 4 requires compliance with EU Law, the Charter, international law, non-refoulement, and fundamental rights (Regulation (EU) 2026/2280, art. 4). Article 14 sets conditions for third-country return arrangements; Article 15 prioritizes the child's best interests (Regulation (EU) 2026/2280, arts. 14–15). Article 19 of the Charter prohibits collective expulsion and protects against removal to states risking

the death penalty, torture, or inhuman treatment (Charter, arts. 19(1)-(2)). Remaining provisions apply on 17 October 2027, alongside Articles 11, 26, and 28 (Regulation (EU) 2026/2280, arts. 11, 26, 28, 50(3)). Article 11 postpones removal violating non-refoulement; Article 26 ensures effective remedies; Article 28 regulates suspensive appeal effects. These are vital for practical application.

These safeguards establish the legal conditions under which return decisions can be enforced. Authorities must assess individual cases and ensure destination safety before removal. Persons without a right to remain cannot be returned to countries posing real risks of torture or prohibited treatment (ECHR, art. 3; Regulation (EU) 2026/2280, art. 11). Children's interests, family circumstances, and serious health concerns cannot be ignored for administrative speed.

Return hubs outside the EU make these safeguards crucial. Cooperation agreements need meaningful safeguards and genuine opportunities to challenge returns risking fundamental rights (Regulation (EU) 2026/2280, art. 14). In *Hirsi Jamaa and Others v. Italy* (2012), the Court found violations after migrants intercepted at sea were returned to Libya without proper risk assessment (2012, Application No. 27765/09). In *Ilias and Ahmed v. Hungary* (2019), the Court found Article 3 violations regarding removal to Serbia, including failure to assess onward removal risks (2019, Application No. 47287/15). These cases show that states must assess risks and provide safeguards.

The *N.S.K. v. the United Kingdom* (application no. 28774/22) is relevant. On 14 June 2022, the European Court of Human Rights (ECtHR) indicated an interim measure preventing the applicant's removal to Rwanda until three weeks after the final domestic decision in ongoing judicial-review proceedings (European Court of Human Rights [ECtHR], 2022). This measure ceased on 6 February 2023 after the UK High Court quashed individual removal decisions (ECtHR, 2023). The applicant later withdrew his application after being granted access to the UK asylum system, and the Court struck the case from its list on 3 October 2024. It did not result in a final judgment on the legality of the Rwanda Agreement (*N.S.K. v. the United Kingdom*, 2024). Nevertheless, the case illustrates the importance of judicial protection where a proposed transfer may expose a person to a risk of prohibited treatment.

Conclusion

Therefore, effective migration management requires both clear rules and the willingness and capacity to enforce them. The new EU return rules are a step towards improving cooperation between Member States and reducing the ambiguity between return decisions and their implementation. They can also contribute to public confidence that migration policy is being applied consistently, while allowing countries to manage lawful residence

and pursue their legitimate interests in social cohesion and the preservation of national identity. However, the success of these measures will depend on their implementation and their compliance with fundamental-rights obligations. In particular, the voluntary nature of mutual recognition during the initial period and the practical difficulties of cooperation with third countries mean that the effectiveness of the regulation cannot be assumed in advance (Regulation (EU) 2026/2280, arts. 7, 50 (3)). Non-refoulement, individual assessment and the protection of family life and vulnerable persons must remain integral to return procedures. In general, effective migration management should not be understood as a choice between control and human rights. A credible system requires both: states must be able to enforce lawful decisions, and individuals must remain protected against unlawful removal. This balance is necessary for an enforceable migration system that is also legally sound and sustainable.

References

Al Jazeera. (2026a, September 19). *Dutch riot police break up violent far-right protest in The Hague.* https://www.aljazeera.com/news/2026/9/19/dutch-riot-police-break-up-violent-far-right-protest-in-the-hague

Al Jazeera. (2026b, October 18). *What's behind Europe's youth protests?* [Video]. https://www.aljazeera.com/video/newsfeed/2026/10/18/whats-behind-europes-youth-protests

Charter of Fundamental Rights of the European Union, 2012 O.J. (C 326) 391. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT

Council of Europe. (1950). *Convention for the Protection of Human Rights and Fundamental Freedoms.* https://www.echr.coe.int/documents/d/echr/convention_eng

Council of the European Union. (2026, October 1). *Council adopts new rules on return for those with no right to stay in the EU.* https://www.consilium.europa.eu/en/press/press-releases/2026/10/01/council-adopts-new-rules-on-return-for-those-with-no-right-to-stay-in-the-eu/

European Court of Human Rights. (2022, June 14). *The European Court grants urgent interim measure in a case concerning an asylum seeker's imminent removal from the UK to Rwanda* [Press release]. https://hudoc.echr.coe.int/app/conversion/pdf/?filename=Interim&id=003-7359967-10054452&library=ECHR

European Court of Human Rights. (2023, April 11). *Notification of case concerning asylum seeker's removal from the UK to Rwanda* [Press release]. https://hudoc.echr.coe.int/app/conversion/pdf/?filename=Court+gives+notification+of+case+concerning+asylum+seeker&id=003-7620973-10489477&library=ECHR

European Parliament and Council of the European Union. (2008). *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. Official Journal of the European Union, L 348*, 98–107. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0115

Eurostat. (2025). *Migration and asylum in Europe—2025 edition.* https://ec.europa.eu/eurostat/web/interactive-publications/migration-2025

Eurostat. (2026a). *Enforcement of immigration legislation statistics.* Statistics Explained. Retrieved October 26, 2026, from https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Enforcement_of_immigration_legislation_statistics

Eurostat. (2026b). *Migration to and from the EU.* Statistics Explained. Retrieved October 21, 2026, from https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Migration_to_and_from_the_EU

Frontex. (2026, June 12). *Irregular border crossings into the EU down 40% in the first five months of 2026.* https://www.frontex.europa.eu/media-centre/news/news-release/frontex-irregular-border-crossings-into-the-eu-down-40-in-the-first-five-months-of-2026-h4gbBB

Hirsi Jamaa and Others v. Italy, Application No. 27765/09 (European Court of Human Rights, Grand Chamber, February 23, 2012). https://hudoc.echr.coe.int/eng?i=001-109231

Ilias and Ahmed v. Hungary, Application No. 47287/15 (European Court of Human Rights, Grand Chamber, November 21, 2019). https://hudoc.echr.coe.int/eng?i=001-198760

International Organization for Migration. (2026, September 17). *New IOM data: Migrant arrivals to Europe fall 39% in 2026 while deaths continue to rise.* https://www.iom.int/news/new-iom-data-migrant-arrivals-europe-fall-39-2026-while-deaths-continue-rise

N.S.K. v. the United Kingdom, Application No. 28774/22 (European Court of Human Rights, October 3, 2024). https://hudoc.echr.coe.int/eng?i=001-237927

Regulation (EU) 2026/2280 of the European Parliament and of the Council of 7 October 2026 establishing a common system for the return of third-country nationals staying illegally in the Union and repealing Directive 2008/115/EC of the European Parliament and of the Council, Council Directive 2001/40/EC and Council Directive 2004/191/EC, 2026 O.J. (L 2026/2280). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32026R2280

Treaty on European Union (consolidated version), 2012 O.J. (C 326) 13. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012M/TXT