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Advancing Alternative Migration Governance

ADMIGOV

Legal and operational infrastructures of Exit regimes targeting irregular migrants in the European Union

Deliverable 2.1

Arja Oomkens and Barak Kalir

2020

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ABSTRACT

The aim of this deliverable is to map, compare and analyze different Exit regimes in EU Member States in order to gain insight into the degree to which Exit is efficient and harmonized across the European Union. Special attention is paid to the degree to which current Exit policies and practices ensure legal safeguards to returnees. Based on our findings, we call on the European Commission to exercise extreme prudence before investing more budgets and committing more personnel to the enhancement of existing measures, like pre-removal detention, that are assumed but not proven to increase the effectiveness of Exit policies. We also recommend the construction of an indicator for evaluating the otherwise vague notion of what constitutes proportional and necessary measures in legislating and implementing Exit regimes. Without such indicator, we risk the withering away of legal safeguards in return and detention procedures in light of evermore restrictive policies that are increasingly punitive in their implications and whose effectiveness is not grounded in empirical evidence.

ACRONYMS

2030 Agenda for Sustainable Development	
ADMIGOV	Advancing Alternative Migration Governance
AVRR	Assisted Voluntary Return and Reintegration
BVMN	Border Violence Monitoring Network
CAT	Committee Against Torture
CJEU	Court of Justice of the European Union
DT&V	Repatriation and Departure Services (the Netherlands)
EBCG	European Border and Coast Guard/Frontex
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EESC	European Economic and Social Committee
EMN	European Migration Network
EU	European Union
EUROSTAT	Statistical Office of the European Union
HWWI	Hamburg Institute of International Economics
IOM	International Organization for Migration
NGO	Non-Governmental Organization
NYD	New York Declaration for Refugees and Migrants
SDGs	Sustainable Development Goals
WP	Work Package

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Introduction

This first deliverable for Work Package 2 (WP2) of the Advancing Alternative Migration Governance project (ADMIGOV) is an exercise in mapping the different existing Exit regimes in the EU. By Exit (with a capital E) we refer in this report specifically to the policies and practices that are aimed at having irregular migrants leave the territory of Member States and of the EU as a whole. According to the glossary of the European Migration Network (EMN), whose terminology we use in this report, an irregular migrant is 'a third-country national present on the territory of a Schengen State who does not fulfil, or no longer fulfils, the conditions of Entry as set out in the Regulation (EU) 2016/399 (Schengen Borders Code) or other conditions for Entry, stay or residence in that EU Member State'.

In our research, the orderly ways in which third-country nationals leave EU Member States, within the time span that is regulated for it, has been taken as the norm for the operations of Exit governance. We thus focused on the examination of the two main modalities concerning the Exit of irregular migrants: 'forced return' (also referred to as deportation, expulsion and forced removal) and so-called 'voluntary return' (which comes in different modalities, mostly differentiated according to the level of assistance that is provided to the migrant). There is a third form, which is often referred to as 'independent return', which is meant to capture irregular migrants who decide to leave an EU Member State without informing and/or drawing on the services of any state or non-state organization that work within the exit regime. In our understanding of it, independent return forms part of an exit regime, as the decision of irregular migrants to leave a certain Member State independently can be largely influenced by the exit regime which is at work (as well as various other factors).

By Exit regimes we refer to both the legal and the operational infrastructure that governs Exit.
Legal infrastructure refers to the formal procedures – laws, regulations, directives, readmission agreements, etc. – that determine the illegalization of certain migrants and outline the process that should result in their "voluntary" return or forced removal.
Operational infrastructure refers to the work of, and the investment in, state agencies and civil-society organizations responsible for the implementation of the procedures put forward by the legal infrastructure. The operational infrastructure thus includes entities in charge of detecting and arresting irregular migrants, pre-removal detention, forced deportation, assisted and "voluntary" return, and partnership programs.

The aim of this report is to make an inventory of current policies and to offer insights into similar and divergent practices of Exit regimes within the EU, based on the following parameters:

- The length and conditions of pre-removal detention;
- The investment – as in budget, personnel and infrastructure – that is dedicated to various operations aimed at implementing Exit policies;
- The estimated "success rate" of the existing Exit models, evaluated according to their stated goals, and measured by the number of exits per year (voluntary and forced), the number of re-entering deportees, and the peacefulness of procedures.

It is important to note that the notion of "success rate" is something we came up with for the sake of this report and is in line with the greater ambition of the ADMIGOV project to generate indictors for good governance. At the moment, there are no clearly stated indicators for evaluating past, current and proposed policies concerning Exit regimes in the EU. This is a point we reflect more on in the concluding part of the report.

The report presents and analyses the data we could access on Exit regimes across EU Member States. As will become clear, much relevant data in the field of Exit is either not systematically gathered or openly accessible.[1] We have therefore paid much attention to existing guestimates and other statistical data from which a more comprehensive picture can be constructed about the number and status of irregular migrants in the EU. Throughout the report, we draw on more detailed examples concerning the implementation of EU Exit policies in the Netherlands, Germany, Spain and Denmark. These four EU Member States represent different existing Exit models and are subject to an in-depth and comparative study within WP2 (which constitutes the focus of our next deliverable D2.2). The reflexive part of this report is guided by the following overarching questions that inform our boarder work within WP2: How close or far is the EU from implementing an efficient and harmonized Exit policy? To what extent do policies and practices ensure safe returns for irregular migrants? In the end of WP2, recommendations on current and alternative EU Exit models will be presented to the European Commission in line with the principles formulated in the 2030 Agenda for Sustainable Development (SDG) and the New York Declaration for Refugees and Migrants (NYD).

An important disclaimer is due before we proceed with the report. This report has been completed before the New Migration Pact of the European Commission has been published. Our internal reviewing process took much longer than expected due to Covid-19, and in that period the Pact has been announced. It is not feasible for us to revise this report in response to the Pact. References to the Pact shall be made in other deliverables of WP2.

SDGs and NYD on Exit governance

As stated in the ADMIGOV research proposal, the SDGs and the NYD form the contextual backdrop of this project. Therefore, throughout this report, these two documents serve as a reference point to assess existing Exit policies and practices, and in the end, to promote alternatives to current Exit governance models. To do so, we first need to discern some of the indicators for what might constitute desired Exit governance models in line with the NYD and the SDGs.

In September 2015, the United Nations General Assembly (GA) adopted the 2030 Agenda, including seventeen Sustainable Development Goals (SDGs). With these SDGs, States recognized the positive contribution made by migrants to inclusive growth and sustainable development worldwide. With regard to migration policy, the GA emphasized its aim to '[f]acilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies' before 2030 (SDG, no. 10).

The NYD, adopted on 19 September 2016 by all 193 Member States of the United Nations as Resolution 71/1, expands on the SDGs and aims to improve the ways in which the international community responds to large movements of refugees and migrants. The NYD puts emphasis on a shared commitment to fully protect the human rights of all refugees and migrants regardless of their status (point 5), and to manage, through international cooperation, migration in a humane, sensitive, compassionate and people-centered manner (point 11). The NYD also points out the importance of countering xenophobia and all forms of discrimination against migrants regardless of their status, and a shared commitment to take a range of steps to counter such attitudes and behavior (point 14).

On Exit governance, the NYD also provides a few guidelines. The NYD stresses that cooperation on return and readmission form an important element of international cooperation on migration, and

[1] For more on the difficulties of getting access to studying how states manages their mobility regimes, see Kalir et al. 2019.

therefore recalls that "states must readmit their returning nationals" (point 42) and ensure "proper identification and the provision of relevant travel documents" (point 58). The NYD also encourages cooperation between all States to ensure:

> *"that migrants who do not have permission to stay in the country of destination can return, in accordance with international obligations of all States, to their country of origin or nationality in a safe, orderly and dignified manner, preferably on a voluntary basis" (point 58).*

And, if forced or voluntary return is not possible, State parties to the NYD:

> *"(...) welcome the willingness of some States to provide temporary protection against return to migrants who do not qualify for refugee status and who are unable to return home owing to conditions in their countries" (point 53).*

In legal terms, this means that states may provide 'complementary', 'subsidiary' or 'humanitarian' protection granted on the basis of an international protection needed outside of the 1951 Refugee Convention framework. Such a status can, for example, be granted when an irregular migrant is unable to return to his or her country of origin because, upon return, s/he would be at risk of torture, inhuman or degrading treatment or punishment. In that case, deportation is prohibited under article 3 of the European Convention of Human Rights, article 4 of the Charter of Fundamental Rights of the European Union and article 33 of the Refugee Convention. To prevent irregular stay of irregular migrants who cannot return, EU Member States can henceforth provide subsidiary protection.

In the conclusion of this report, we will refer to the NYD and SDGs to contextualize current Exit governance models and practices in the four case studies of WP2 and provide an indication as to whether these are in line with these documents.

The European Commission's stated goals on return

Over the past three years, the European Commission has prioritized making return procedures in the EU more effective with an aim to increase return rates. In this light, the EC has broadened the mandate of the European Border and Coast Guard (EBCG)/Frontex to work on returns and adopted a Recommendation on making returns more effective in 2017 with a set of measures to be taken up by the Member States. At that moment, the European Commission also started preparing the recast of the Return Directive, despite its 2014 Communication (European Commission, 2014) to table legislate amendments to the Return Directive only after a thorough evaluation of its implementation.[2] The proposed amendments are aimed at achieving a more effective and coherent European return policy, in line with fundamental rights as enshrined in the Charter of Fundamental Rights of the EU, through providing clearer and more effective rules on return, more efficient instruments, and more efficient use of detention to support the enforcement of returns (European Commission, 2018b: 2). The proposed amendments also aimed at assisting Member States to increase returns and to send 'a clear signal that there are effective [return] procedures in place' to 'provide a disincentive for migrants to undertake perilous journeys in the first place'.[3]

[2] First presented in September 2018 (European Commission, 2018a).

[3] European Commission, 'State of the Union 2018: Stronger EU rules on return – Questions and Answers' (12 September 2018) (WWW-document), URL https://ec.europa.eu/commission/presscorner/detail/en/MEMO_18_5713 (accessed 5 August 2020).

The politically stated goals of the European Commission are clear: to increase return rates and ensure more effective and efficient return procedures. However, as this report will show, the figures on irregularly staying third-country nationals are often controversial or absent, and it is unclear what the official benchmarks of voluntary return and forced removal must be (e.g. is there only a focus on return rates, or also on cost-effectiveness and durability of return procedures). Along the same lines, because the implementation of the current 2008 Return Directive has not been evaluated yet, it is not evident whether the proposed amendments will ensure more efficiency and effectiveness of EU return procedures, and how efficiency and effectiveness can or will be best measured.

This report, and the other deliverables in WP2, builds on the findings – and provides additions to – the European Parliament's substitute impact assessment, which was conducted in March 2019 and the complementary recommendations provided by the European Parliament's *Committee on Civil Liberties, Justice and Home Affairs* in June 2020.

*

To start our assessment of the various models of Exit governance across the EU, chapter 1 first clarifies the terminology and methodology we use throughout the report, and shortly describes the delimitations of our desk research. In chapter 2, we examine and contextualize current stock estimates of the number of irregular migrants across EU Member States. In chapter 3, we discuss the legal and operational infrastructures, conditions, length, investments and current implementation practices of pre-removal detention in line with the 2008 Return Directive and its proposed amendments. Chapter 4 examines the legal and operational infrastructures of forced Exit and provides an analysis of the online data we found. With this data analysis, we aim to better understand the differences between how Member States count the number of forced returns, the investments in the Exit model in the Netherlands, Germany, and investments in Frontex over the past decade, in relation to the current state of return procedures and readmission agreements. Lastly, in chapter 5, we examine the legal and operational infrastructures of voluntary Exit, including assisted voluntary return (AVR), as well as the data on – and the investments made in – voluntary Exit over the past five to ten years. In both the chapters on forced and voluntary Exit, we try to relate to the estimated 'success rate' to the European Commission's stated goals on return, the number of re-entering deportees and the peacefulness of procedures.

1. Methodology

Before we start our mapping exercise with regard to irregular migrant populations across the EU, pre-removal detention practices, voluntary return and forced removal, this chapter first focuses on the methodology used in this report in terms of terminology, our mapping approach, and the delimitations and challenges of mapping Exit governance regimes.

1.1. Terminology

In line with our desk research into EU legislation, migration policies, and the implementation thereof, the terminology used in this report mostly draws on EU legislative sources. This approach also conforms to 'The EMN Glossary' defined by the European Migration Network to improve comparability between Member States.[4]

- Third-country national: any person who is not a citizen of the European Union within the meaning of Art. 20(1) of TFEU and who is not a person enjoying the European Union right to free movement, as defined in Art. 2(5) of the Regulation (EU) 2016/399 (Schengen Borders Code).
- Irregular migrant: a third-country national present on the territory of a Schengen State who does not fulfil, or no longer fulfils, the conditions of Entry as set out in the Regulation (EU) 2016/399 (Schengen Borders Code) or other conditions for Entry, stay or residence in that EU Member State.
- Pre-removal detention: administrative measure ordered by an administrative or judicial authority in order to restrict the liberty of a person to implement a removal procedure.
- Voluntary return: compliance with the obligation to return within the time-limit fixed for that purpose in the return decision.
- Assisted voluntary return: voluntary return supported by logistical, financial and/or other material assistance.
- Return decision: An administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.
- Removal order: An administrative or judicial decision or act ordering the removal of an irregular migrant.
- Forced removal: the enforcement of a return decision (i.e. the obligation to return) through the physical removal of an irregular migrant out of an EU Member State.

1.2. Approach to mapping Exit governance

In the NYD, State Parties are committed to the purpose of improving migration related data collection in order to enhance smooth international cooperation in this field:

> the importance of improved data collection, particularly by national authorities, and [Member States] will enhance international cooperation to this end, including through capacity-building, financial support and technical assistance. Such data should be disaggregated by sex and age and include information on regular and irregular flows, the economic impacts of migration and refugee movements, human trafficking, the needs of refugees, migrants and host communities and other issues (point 40).

[4] European Commission (Migration and Home Affairs), 'EMN Glossary' [WWW-document], URL https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_en (accessed 22 July 2020).

Because we take the relation between in-depth research and enhanced international cooperation seriously, we deem it essential to describe in detail our search for open access to official data and documents – because this is a challenging task. Throughout this report we describe the different ways in which we have tried to get access to data, how we navigated official websites and parliamentary responses, and how the official data we found can be interpreted and misinterpreted.

The desk research for this report is based on a descriptive approach to statistics, consisting of an examination of online statistical data, legal and policy documents, and official reports published on EU websites (e.g. Eurostat, the European Commission and the European Migration Network, EMN) and governmental websites of EU Member States. We also draw on EU law sources and case law of the Court of Justice of the European Union (CJEU), and take note of previous academic work on the available data on Exit governance. In addition, our methods also involved sending out official data-related questions per e-mail to our EU partners, such as EMN, and in the Netherlands we have sent out Freedom of Information requests on Exit budgets that were not disclosed or incomplete online.

While the scope of online access to statistical, legal and policy documents seemed endless, finding a way through the available data is always highly dependent on language proficiency and an understanding of state laws and practices of the particular Member State. Therefore, next to basic mapping of all Member States, we have gathered and interpreted more comprehensive data on the Netherlands, Spain, Germany, and Denmark. These are the four countries in which the ADMIGOV project decided to focus and where researchers in our team for WP2 have a vast experience. In putting together this report, we were able to consult our colleagues in the abovementioned Member States about similarities and divergences in national migration laws, governance, practices and the compiling of official data.

1.3. Delimitations: challenges of mapping Exit governance

The examination and comparative analysis of the data in this deliverable is not complete. For example, because the data on Eurostat is based on different calculative models used by EU Member States and some Member States simply do not provide data to Eurostat. The reason for this lack of coherent (or harmonized) public data lies in the fact that Member States are not obliged to gather data on return and detention procedures; there is no mechanism to check how data was gathered or measured.

Even though we were able to formulate some conclusions about the existing data on Exit governance and its implementation in Member States, this report only provides an indication of the current situation and is far from complete. The data needed for this desk research, to assess the various models of Exit governance across the EU, was only partly available. For example, legal infrastructures such as the EU Return Directive and statistical data on Eurostat were easily accessible, whereas finding data on the investments and conditions of return and detention procedures have been a much more cumbersome exercise.

Where the data we found online was incomplete, we inquired with our research partners in Spain, Denmark and Germany, but also with national authorities and relevant EU bodies. Whereas policy documents and official documents on return rates where shared by civil servants without hesitance, other subjects where more difficult to inquire about. In January 2020 we sent a freedom of information request to the Dutch authorities about missing data with regard to the investments in the Dutch Repatriation and Departure Service (DT&V), who are responsible for forced and voluntary returns from the Netherlands. Because we did not get an official response, we inquired with several DT&V employees to ask if this data could be made publicly available. Although their answers were

ambiguous, we never received the official document that was needed to complete the assessment of the investments made in the Dutch Exit model.

Another example where access to useful data was not granted. While researching stocks of irregular migrants across the EU, we found the database of the Clandestino-project, funded by the European Commission's Horizon 2020 between 2007 and 2009.[5] Of the various studies presented on the database, some were published on the EMN-website.[6] On the database, there was a hyperlink to the EMN website, but after clicking on this link there was no open access to the relevant documents. We therefore inquired with EMN to grant us access or to send us the missing documents, but access was not granted and we did not receive any documents. After several e-mails back and forth, the European Commission's Head of Agencies and Networks Coordination sector explained to us that the data we were seeking could as well be found on Eurostat and that the EMN website was not publicly available – only to 'stakeholders engaged in migration processes'.[7] This answer obstructed any further research into the stock estimations of irregular migrants, because Eurostat does not present data on this subject. But most of all this answer was troubling to us because, on the one hand, the EU has tasked us with the mission to conduct research and offer alternative policies (including for data gathering), and, on the other hand, another agency of the EU tells us that we are not a stakeholder in accessing its current database for the purpose of completing our approved and financed scientific research.

Another delimitation of this desk research was the impossibility to find official data on all (research) parameters in all EU Member States in the relatively short period of a year. For this deliverable, we therefore decided to focus on Member States which are also part of the case studies: the Netherlands, Spain, Denmark and Germany. Where data on all EU Member States was available, such as on Eurostat, we included it for comparative analysis. It was equally impossible to find statistical studies on the number of re-entering deportees, because Member States do not gather such data. We did find, and included, several academic studies that researched re-migration of migrants after their return from the EU.

[5] European Commission, 'EU-funded research project CLANDESTINO Database on Irregular Migration, 9 October 2019 [WWW-document]. URL https://ec.europa.eu/knowledge4policy/dataset/ds00039_en (accessed 9 February 2020.

[6] The Clandestino-project database is now offline. According to the main researcher of this project, Dita Vogel, the database is being updated: Database on irregular migration, URL http://irregular-migration.net/ (accessed 9 February 2020).

[7] E-mail correspondence with authors (13 November 2019).

2. Guesstimates and statistics on irregular migrants in the EU

In this chapter we first discuss the data and estimates that are available in EU Member States and what kind of methods are most commonly used to estimate irregular migrant populations in the EU. We also draw attention to challenges facing the use of existing (and outdated) guesstimates of irregular migrant populations for policy-making decisions. Secondly, we examine in what ways well-researched and repeated estimates – when understood in a context of changing migration and Exit policies over time – provide an indication of the efficiency and feasibility of Exit governance models. Such results are not only useful for policy-making, they also contribute to an open and honest public debate about return and Exit governance in a time when political party positions on this topic are highly polarized (Huddleston and Sharif, 2019). Similarly, such results are useful indicators along which the investment in Exit governance – in terms of budgets, personnel and goods – can be evaluated.

2.1. Introduction

Since irregular migrants are part of a 'shadow population', clear-cut official statistics and demographic data are not straightforward and their production requires systemic effort with help from statistical modeling. Yet, to our surprise, we found that very little is done across the EU in order to produce better estimates. For example, in the EU population and housing censuses, irregular migrants are left out of the data collection, presumably because national authorities do not know where they live and/or work. At the same time, it seems that no previous attempt has been made to include the irregular migrant population in any EU census.[8] Yet, best possible statistics and estimates can advance the debate on alternative migration governance when return is not a viable option.

2.2. EU data, estimates and methods

During a European Commission-Eurostat conference in Brussels on 10-11 March 2011, José Manuel Barroso, then President of the European Commission, noted:

> Statistics [...] play a key role in communicating our policies. We all enjoy watching diagrams and tables when we read the papers or watch websites. Moreover, modern communication tools, such as blogs and websites, are as hungry for reliable quantitative information as they are hungry for videos: because it captures the essence in a visual and user-friendly way (…).
>
> Given that statistics are expected to assume an even stronger role in our democracies, this is the right moment to reflect on the challenges in the use of statistics in the policy-making (Radermacher et al., 2011: 1).

For the European Commission and EU politicians, the topic of irregular migration and Exit governance are high on the agenda.[9] Statistical data is often used to substantiate new policies on Exit, although the challenges of using these statistics are seldom explained or contextualized. For

[8] The explanatory notes on the Eurostat website on the 2021 population and housing censuses do not mention the topic of irregular migration (Eurostat, 2019), probably because it is not yet part of the mandate of EU statisticians working on populations and housing censuses.

[9] The focus on stronger enforcement of return policies in order to increase the overall effectiveness of the such policies can be found on EU level. The European Commission has emphasized this in its EU Action Plan on Return published on 9 September 2015, in its Communication on a more effective return policy in the EU published on 2 March 2017 and the attached Recommendation: Communication from the Commission to the European Parliament and to the Council, *EU Action Plan on Return, op. cit.* and Communication on a More Effective Return Policy in the European Union – *a Renewed Action Plan, op. cit.*, and Commission Recommendation on *making returns more effective when implementing Directive 2008/115/EC*, 2nd March 2017, C(2017) 1600.

example, the European Commission (EC) often refers to low yearly return rates to substantiate new and stricter rules that are aimed to increase the effectiveness of the EU's return policy.[10] However, this return rate solely includes the number of (EU-wide) return decisions per year divided by the number of third-country nationals who have left the territory of Member States, while it omits an explanation of how many irregular migrants (or third-country nationals without a permit to stay) already resided in the EU in the years before, the expected cost-effectiveness of introducing new Exit policies, and the expected durability of these new policies in relation to older ones.

2.2.1. The Clandestino Project

Over the past two decades, historical demographers, geographers, and migration analysts have assembled data and tested a variety of methods to calculate stocks of irregular migrant populations and to identify changing mobility patterns (Rogers et al., 2010; Jandl, 2011; Kraler and Reichel, 2011; Vogel et al., 2011).

The Clandestino project was the first EU-funded project to provide an inventory of data and estimates on the stock of irregular migrants staying across the EU. Researchers of the project covered twelve EU-countries (Greece, Italy, France and Spain in southern Europe; Netherlands, UK, Germany and Austria in Western and Central Europe; Poland, Hungary, Slovakia and the Czech Republic in Central Eastern Europe) and three non-EU transit migration countries (Turkey, Ukraine and Morocco). They reviewed past attempts at European-level estimates and found that these were outdated, vague, and unclear of origin (Vogel and Kovacheva, 2008). The researchers of the Clandestino Project therefore aimed to be clear and transparent, and discuss the ethical and methodological issues involved in the collection of data, the elaboration of estimates and their use (ibid.). In doing so, they responded to 'the need for supporting policymakers in designing and implementing appropriate policies regarding undocumented migration' (Vollmer, 2009: 2). The project officially ran from 2007 to 2009, although the project's researchers kept updating some of the estimates in the period after 2009 (Vogel, 2015).

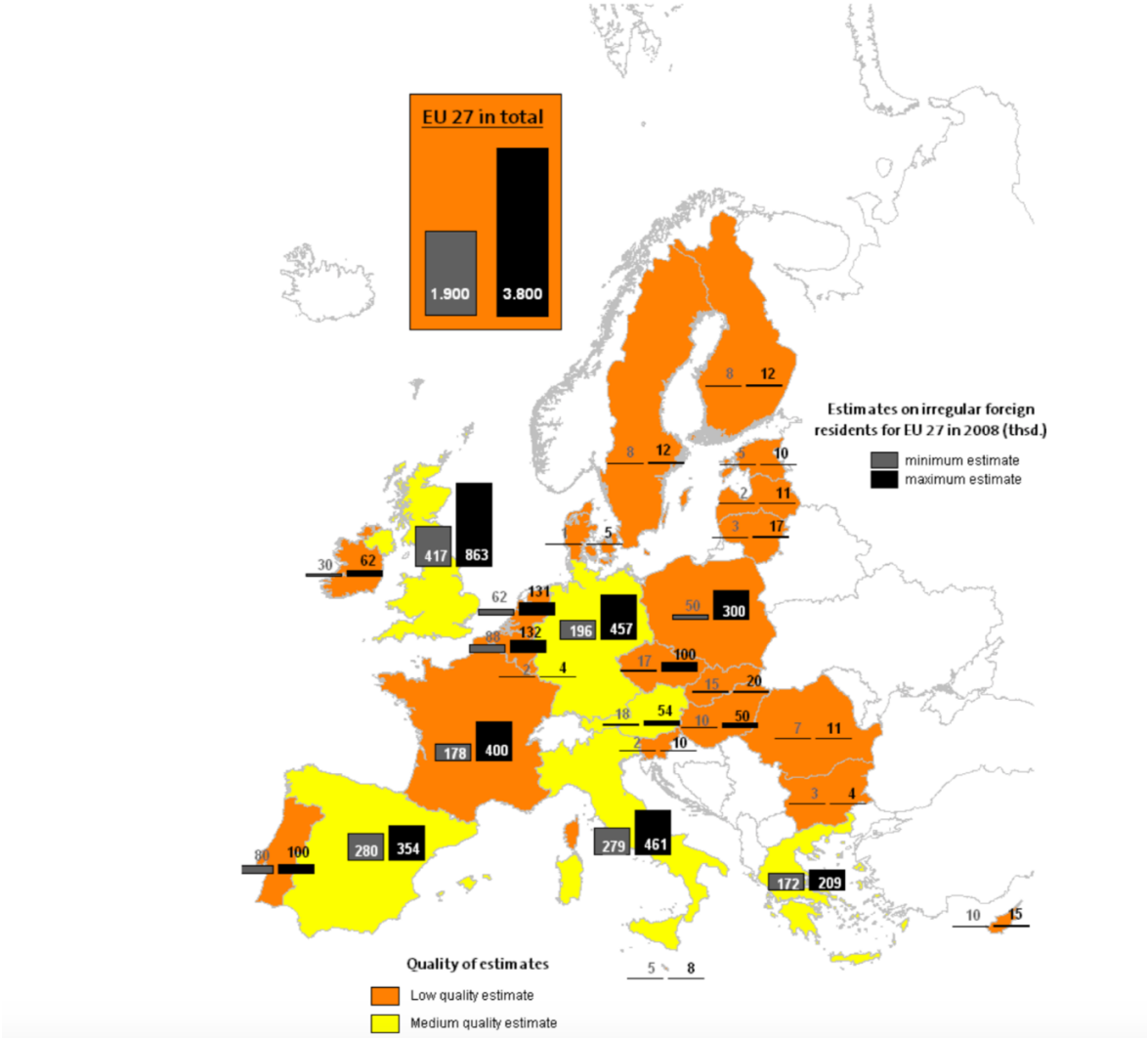
Clandestino showed that fewer irregular migrants were residing in the EU than the European Commission estimated. Clandestino also pointed out that most irregular migrants enter the country with a tourist visa or other type of visa and overstay or do not succeed in renewing their residence permits (Clandestino Research Project, 2009a, 2009b)[11] These findings are important, because in political (and public) spheres the focus most often goes out to difficulties in ensuring returns of rejected asylum-seekers (European Migration Network, 2016a).

While Clandestino Project researchers underlined that estimates of irregular migrant populations – including their own – were not highly reliable, they provided, for the first time since the EU started monitoring migration, transparent and clear origins of data. The Clandestino EU-wide estimate pointed to a minimum of 1.9 million and a maximum of 3.8 million irregular migrants in the 27 member EU states in 2008 (Vogel et al., 2011: 78). While the European Commission at that time estimated the population of irregular migrants to be between 4,5 million and 8 million (European Commission, 2007) based on a calculation with unclear and untraceable origins.

[10] For example, a total number of 516,115 third-country nationals were ordered to leave the EU and a total number of 188,905 third-country nationals were returned (European Commission, 2018c)
[11] ADMIGOV Deliverable 1.3 provides a detailed analysis of the Schengen Visa System and entry by air – statistically the most frequent way for persons to access the territory of EU and Schengen states.

Figure 1 below shows the estimates gathered from different data sources in 2008 by the Clandestino Project and the Hamburg Institute of International Economics (HWWI).

Figure 1. Estimates on irregular foreign residents in the EU-27 in 2008 (x1000)



Source: (Clandestino Research Project, 2009: 5)

For this European Union estimate, the Clandestino Project aggregated country-specific estimates. The researchers involved, Vogel and Kovacheva, used their own estimates for Austria, the Czech Republic, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Slovakia, Spain, and the United Kingdom. For other EU Member States, the researchers used data reports from REGINE, Undocumented Worker Transitions (UWT), European Migration Network (EMN), POLITIS and Migration Policy Group. Three major indicators of change in stocks were taken into account: the legalization effect of EU enlargement in 2004 and 2007; national regularization programs; and internal police apprehension numbers. However, Vogel and Kovacheva only included 'irregular foreign residents' in their estimate, defined as visa-overstayers and foreign nationals without any legal resident status in the country they are residing in (Vogel and Kovacheva, 2009: 5).[12]

[12] A number that misses out on EU citizens with a regular residence permit who work without a work permit.

At the conclusion of the Clandestino Project in 2009, the researchers pointed out that, even though it is difficult and costly to make estimates of irregular populations, a clear picture of migration in the EU is a prerequisite to good (and transparent) governance. The best way forward, as pointed out by the Clandestino Project, would be to create a collaborative research protocol between independent research institutes and official (state-driven) research departments – where the involvement of official research departments ensures a more complete picture of the data and the involvement of independent researchers helps prevent institutional bias (Clandestino Research Project, 2009d).

After the closure of the Clandestino Project, updates on the stock of irregular migrant populations across the EU have been scarce. However, there have been a few attempts in individual Member States and one EU-wide attempt. Most of these estimates use different definitions and methods and are therefore difficult to compare on EU-level. Therefore, due to lack of a clear picture of irregular migration on national and EU-level, it is difficult to understand what the impact of recent restrictive policies has been on the stock of irregular migrant populations. Nevertheless, the updates do provide an indication of the various methods available to reach best possible estimates and the need for more in-depth research on this topic as well as access to existing data. The following sections examine existing estimates in the four case studies of WP2: Germany, Denmark, the Netherlands and Spain.

2.2.2. Germany

In 2008, the researchers of the Clandestino Project estimated the irregular migrant population in Germany to be between 196,000 and 457,000. This was based on a compilation by Clandestino researchers and adjustment of official estimates in Germany from different sources, such as an expert estimate by the German Ministry based on Police Criminal Office data, an assumed multiplier of enforcement data, an academic expert estimate with multiplier method based on police apprehension data, and an academic expert estimate derived from an econometric estimate of shadow economy and the assumed share of foreigners in the shadow economy (Clandestino Research Project, 2009a, 2009b).

In 2014, Dita Vogel, a researcher previously involved in the Clandestino-project, updated this number. She estimated that the irregular migrant population, those living without any knowledge of the immigration authorities in Germany,[13] to be between 180,000 and 520,000. For this estimate, Vogel used a multiplier method and apprehension data from the Police Criminal Statistic (Polizeiliche Kriminalitätsstatistik – PKS) of the Federal Criminal Office. On the one hand, based on the assumption that irregular migrants show crime-avoiding behavior Vogel concluded that they are underrepresented in crime statistics of the regular German population with similar demographics (young, male). On the other hand, based on the idea that irregular migrants are more likely than the regular German population to be arrested, precisely because they are young and male *and* fulfill police stereotypes of 'foreigners', they are overrepresented in crime statistics for the whole of the German population (Vogel, 2015).

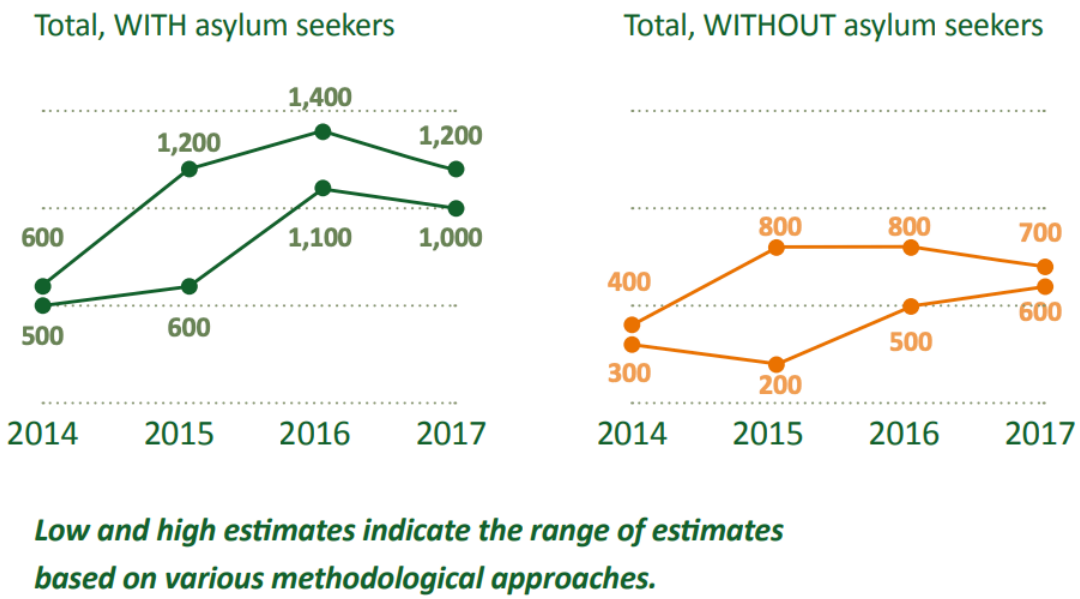
The Multiplier Method (Germany)
This method is most commonly used to estimate the stock of an (unknown) irregular migrant population. The idea behind the method is that an estimate can be deduced from the size of a known subtotal by use of an appropriately derived multiplier (Jandl, 2011). The German estimate by Dita Vogel in 2014 provides a good example of the multiplier method in practice. Vogel put forward a wide range of possibilities for the total stock

[13] Vogel notes that this estimate excludes persons whose seemingly legal residence depends on false papers or identities and persons under the obligation to leave who are known to the authorities (Vogel, 2015: 2)

(including a minimum and maximum) and thereby acknowledged the uncertainties of using a crime statistics database to come to a sound estimate. She based the multiplier for this study on the assumption that irregular migrants are both under- and overrepresented in German crime databases, depending on the demographic structure of these statistics (Vogel, 2015: 3). Problematic with this assumption – in which irregular migrants are considered to be young, male and to fall within the framework of police stereotypes – is that it dismisses a great heterogeneity of migrants in terms of countries of origin, gender and age. Although Vogel does not present a clear-cut solution for this issue, she takes it into account through the maximum estimate, which in turn narrows the gap for miscalculation.

In 2019, PEW Research Center formulated a new estimate, shown below in Figure 2.

Figure 2. Low and high estimated unauthorized immigrant population (x1000) in Germany with and without asylum seekers (2014-2017)



Source: PEW Research Center, 2019: 46.

Düvell and Hosner, researchers at the German *DeZIM Institut*, responded critically to the report, and underlined that the data presented by the PEW research study are unsuitable to Germany. Because the PEW study disregards German legislation, the estimate for Germany is, according to the Düvell and Hosner, highly exaggerated and damaging to the public debate about irregular or 'illegal' migrants. The first point of critique was that the study includes asylum-seekers waiting for their procedure to start. Based on German legislation (and this holds for all EU countries) this group has leave to remain in Germany for the duration of their procedure and is therefore authorized to stay. The second point of critique was that a second estimate presented by the PEW study, without asylum-seekers, still included migrants with temporary protection and tolerated stay – they have leave to remain on German territory. The third point of critique referred to the inclusion of persons who do illegal work, because this number also includes persons with lawful stay who decide to do illegal work. On top of that, Düvell and Hosner pointed out that because the PEW study used labor force surveys combined with migration data, many people have been counted twice. Thus, Düvell and Hosner concluded, the data and methods used incorrectly assume that all persons without a permanent residence permit in Germany are irregular or 'illegal'. Because the topic of irregularity or 'illegality' in Germany is part of a very heated debate, Düvell and Hosner warned for the risk of misinterpretation and misuse of these numbers (Düvell and Hosner, 2019).

The latest update by the German authorities on how many irregular migrants reside in Germany with an order to leave was provided for the year 2019. At the end of this year, the total number amounted to 249,922 irregular migrants. This number consists of persons who have received a return decision as well as temporary protection/*Duldung* (202,387)[14] – meaning their deportation is temporarily suspended – and persons who have an immediate obligation to return (47,535) (Deutscher Bundestag, 2020). This is the number of migrants who are known to the authorities and thus comprises another population than the one described by Vogel in 2014.

2.2.3. Denmark

In 2008, the Clandestino Project's estimate for Denmark was between 1000 and 5000 irregular residents. According to the researchers, this estimate was of low quality because of a general lack of available data on this topic (Vogel and Kovacheva, 2009: 9).

According to Larsen and Skaksen, researchers from the Danish institution The Rockwool Foundation, the stock of the irregular migrant population in 2018 was approximately 25.900, compared to approximately 23.300 in 2017 and 22.200 in 2016. In their report, the researchers acknowledge that accurate stock numbers are difficult to estimate, yet they also argue that they are 95 % certain (Larsen and Skaksen, 2019). Larsen and Skaksen use the capture-recapture method and data provided by the National Police, based on the number of persons charged with illegal work and/or illegal stay between 2007-2018. The researchers point out that some persons may have been counted twice, if they were both working illegally and had no legal stay in Denmark (Larsen and Skaksen, 2019: 5). For this reason, and because the study by the Rockwool Foundation does include illegal workers whereas the Clandestino Project did not, this method calculates much higher numbers than the Clandestino Project would have done.

Furthermore, contrary to the findings of the Rockwool Foundation, the Danish National Police points out that it is not evident that stock of the irregular migrant population is either rising or falling. In their view, fluctuations in numbers of, for example, apprehension data are caused by several different factors, such as patterns of criminality or the police's efforts to detect irregular migrants (Rigspolitiet, 2018: 3).

2.2.4. The Netherlands

In 2008, the minimum estimate for the population of irregular migrants was 62,000 and the maximum estimate was 131,000 based on a compilation by Clandestino Project researchers and their adjustment of official estimates in the Netherlands from different sources. These different sources mainly included scientific study estimates with a capture-recapture method and were based on police apprehension data (Hamburg Institute of International Economics, 2009).

[14] *Duldung* literally means 'tolerated'. The *Duldung* is a tolerated stay permit and is issued for individuals who are, in principle, obliged to leave the country, but for whom departure is temporarily not feasible due to obstacles in the deportation process. Obstacles to deportation include, but are not limited to: humanitarian reasons (e.g. risks of degrading or inhumane treatment or torture upon return to a country of origin), a severe illness, lack of identification papers, necessary medical treatment, participation in a certified vocational training program (Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet § 60 Verbot der Abschiebung).

The latest official estimate for the Netherlands was conducted in 2012 by van der Heijden, Cruyff, and van Gils, researchers at the Research and Documentation Centre (WODC), which is part of the Dutch Ministry of Justice and Security. These researchers estimated that in the period from 1 July 2012 to 30 June 2013 the stock of irregular migrants was 35,530, with a 95% confidence interval ranging from 22,881 to 48,179. According to them, the estimate stock of irregular migrants in 2009 was 41,835 with a 95% confidence interval from 20,654 to 63,015. In 2012 and 2009 the same methods were used, namely the capture-recapture method based on apprehension data and of the Dutch 'Alien Police' (van der Heijden et al., 2015). The study also makes use of so-called 'transfer data,' by which they most likely mean the transfer of irregular migrants from the Aliens Police to the Dutch Repatriation and Departure Services (DT&V) – although this is not clearly explained in the report.

The forthcoming official estimate about the irregular migrant population in 2017 was not yet published when this report was written in October 2020 (Ministerie van Justitie & Veiligheid, 2019a).

The Multiplier Method: Capture-Recapture (The Netherlands)
The capture-recapture method is a multiplier method used in the Netherlands based on police apprehension data. The multiplier method is developed through a repeated sampling of the same population. The method postulates that the single and repeated captures found in the apprehension data follow a probable distribution, known as "the Poisson distribution". The reliability of the capture-recapture method depends on two critical factors: First, a constant population over the period studied; and second, a constant probability of apprehension that does not change after a previous capture (Jandl, 2011). With regard to the first point, the Dutch study by WODC in 2012 acknowledged that some irregular migrants are more visible than others; underestimation of the total migrant population was therefore likely. The WODC researchers partly solved this issue by including covariables such as gender and age and by creating a separate Poisson distribution for each group (WODC, 2015: 7). What must be noted as well is the unlikeliness that an irregular migrant population remains exactly the same over the study period of one year; especially when the number of return decisions per year are compared to the number of effective returns (see chapter 5). With regard to the second point, the probability of apprehension is unlikely to stay exactly the same for each person 'captured' throughout the study period. The WODC researchers for example mention that the reliability of the Poisson distribution model lowers when police recognize an irregular migrant or when an irregular migrant changes his or her behavior (ibid.). The reliability of the estimate therefore relies on the hypothesis that there are no significant changes to the irregular migrant population and their behavior over the course of a year.

2.2.5. Spain

In 2008, the researchers of the Clandestino Project estimated the irregular migrant population in Spain to be between 280,000 and 254,000 irregular migrants. This estimate was based, amongst other data, on the number of applications in the context of the 2005 regularization program, the number of municipal registrations (the Padrón) minus the national registration of persons with residence permits (residual method), and the number of persons with residence permits pending renewal (Clandestino Research Project, 2009e). In Spain foreigners can register in the municipal registration system (the Padrón) without getting into problems with the police or national authorities. In January 2009, González-Enríquez, a Clandestino Project researcher, updated the estimate stock of irregular migrants in Spain. The estimate pointed to a total number of irregular migrants ranging between 300,000 and 390,000. The minimum estimate is based on a multiplier method and the results of a survey about the legal status of 15,500 foreign residents in Spain. The maximum number is the result of a comparison of the number of residence permits issued by the Interior Ministry and the number of irregular migrants registered in the Padrón, Spain's population register (González-Enríquez, 2009).

The residual method (Spain)
This method compares immigration statistics based on the municipal population register data (Padron) with the number of nationally issued residence permits granted in a specific period of time. The Clandestino researchers expect that most irregular migrants are registered in the Padrón, because of the benefits that come with registration, such as free healthcare. Furthermore, registration makes it possible for irregular migrants in Spain to apply for a temporary residence permit after two uninterrupted years of stay in Spain, if they are registered in a municipality (in the Padrón) and have sufficient financial resources (see for more information: Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, article 29.3). Nevertheless, academics have also argued against the reliability of this data, pointing out that there is a considerable underregistration of irregular migrants in The Padrón and a presumable high share of non-deregistration upon emigration (Gonzalez-Ferrer 2009: 7). These probabilities problematize the use of the Padrón – and the residual method – for estimating the stock of irregular migrants in Spain.

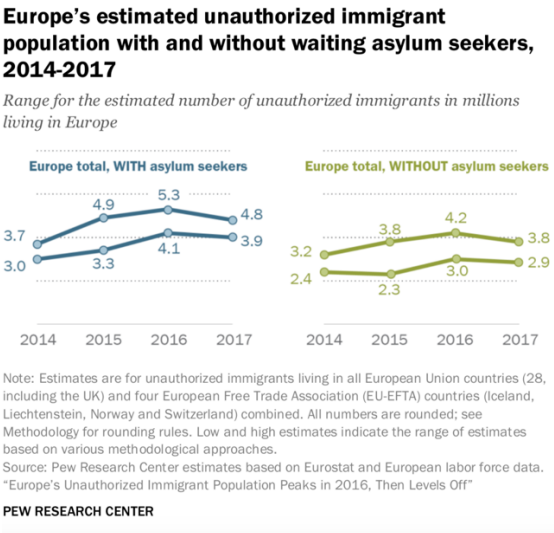
To our knowledge, no official attempt to estimate the irregular migrant population in Spain has been made after 2009. Most official data is concerned with the number of irregular arrivals to Spain by air, land, and sea (Ministerio del Interior, 2019). However, the State Attorney General's Office (*La Fiscalía General del Estado publicada*) does report on the stock of irregular unaccompanied minors in Spain.[15]

2.2.6. PEW Research Center: EU-level estimates on 2014-2017

The latest study on irregular migrant populations at the EU level was published by Connor and Passel, researchers at PEW Research Center (Connor and Passel, 2019), a non-partisan think tank based in the U.S. in November 2019 (see figure 2). This is the first estimate for all European countries combined since the Clandestino Project. The population of the PEW study includes so-called 'unauthorized' migrants. Contrary to the Clandestino Project, 'unauthorized' as defined by Connor and Passel also includes persons who are awaiting the outcome of their asylum application and persons with temporary or humanitarian protection, because 'their future residential status is uncertain' (Connor and Passel, 2019: 3). The main method used for this study is the residual method based on a population census, by which the total number of authorized immigrants in the EU are subtracted from the total number of non-EU citizens. The study does not clarify or reflect on how reliable the use of the combination of the data sources are.

[15] See the yearly *Memoria de la Fiscalía* on https://www.fiscal.es/.

Figure 3. Europe's estimated unauthorized immigrant population (2014-2017)



Source: PEW Research Center (Connor and Passel, 2019)

Based on this definition of 'unauthorized,' Connor and Passel note that the number of unauthorized migrants living in the EU increased since 2014 (when there were an estimated 2.4 million to 3.2 million), peaking in 2016 (3.0 million to 4.2 million) before a decrease in 2017 (2.9 million to 3.8 million). The study points out that the same pattern holds true if waiting asylum-seekers are included in the estimates (Connor and Passel, 2019: 13).

The critical analysis by DeZIM Institut researchers Düvell and Hosner, mentioned in the section about Germany, is also relevant to other European Member States. If 'unauthorized' means every person without permanent residency (Connor and Passel, 2019: 31), the number of irregular migrants is exaggerated throughout the EU. Even though the PEW study shows estimates with and without waiting asylum-seekers, the numbers are still exaggerated because of the inclusion of persons with temporary or humanitarian stay. Because Connor and Passel do not point out what part of this estimate includes migrants with temporary stay or humanitarian protection, the estimates presented are not too useful.

The data gathered and produced by the Clandestino Project and other researchers (e.g. of the Rockwool Foundation, WODC and PEW research center) to produce scientific estimates of the irregular migrant population show that there are various methods available. Most estimates are based on apprehension data and population register statistics. Even though an estimate can never be precise, the methodologies must be sound.

A first issue with the quality of the estimate often has to do with the lack of data or the low quality and unclear origins of the data. A second issue is a matter of definition: who is included in the stock of irregular migrants? We have seen that such decision may lead to less useful data.

In addition, the calculation of new estimates of the stock of irregular migrants across the EU has not been a political priority. Only in some Member States there are certain efforts in this direction, albeit non-systematic. Commissioned research into this topic remains a discretionary matter of all Member States.

Table 1. Overview of discussion on stock estimates

	Estimate	Last update	Who	Data	Research method	Factors of uncertainty
Denmark	25.900	2018	Larsen and Skaksen, The Rockwool Foundation	Police data on numbers of people charged with illegal work and/or stay	Multiplier method (capt	• Impossible to know how many of the people charged with illegal work or stay in a particular year are still in Germany. • The estimates relate to something that the people involved want to keep hidden. • There is a bias towards people who are most visible through their behavior. • People may be counted twice, for both illegal work and illegal stay.
Germany	Between 180.000 and 520.000	2014	Vogel, The Clandestino project	Police apprehension data	Multiplier method	•The assumption for this estimate is that irregular migrants are young, male and fall within the framework of police stereotypes. •There is a bias towards people who are most visible through their behavior. This dismisses a great heterogeneity of migrants in terms of countries of origin, gender and age (although the author does not present a clear-cut solution for this issue, she takes it into account through the maximum estimate, which in turn narrows the gap for miscalculation).
Netherlands	35.530	2012-2013	Van der Heijden, Cruyff and van Gils, WODC (Scientific Research and Documentation Center), Dutch Ministry of Justice and Security	Police apprehension data, 'transfer' data	Multiplier method: capture-recapture ("the poisson distribution")	•The reliability of this estimation relies on the hypothesis that there are no significant changes to the irregular migrant population and their behavior over the course of a year. Because there are asylum rejections and visa-overstayers every year, and because irregular migrants may migrate from one country to another, it is highly unlikely that there are no significant changes to the irregular migrant population on a yearly basis. Furthermore, it is highly unlikely behavior does not change once an irregular migrant has been apprehended; they may become more careful or police officers may recognize an irregular migrant. •There is a general bias towards people who are most visible through their behavior.
Spain	between 300.000 and 390.000	2009	González-Enríquez, The Clandestino project	Population register data (the Padron)	Residual method	•Underregistration of irregular migrants in The Padrón (population register) and non-deregistration upon emigration makes this method less reliable. •There is a general bias towards people who are most visible through their behavior.

2.3. Data on apprehensions

On European level, statistics under the Enforcement of Immigration Legislation (EIL) are collected by the EC's statistical agency, Eurostat. As the previous sections showed, data on apprehensions are also important because they are often used as the statistical basis for estimates on stocks of irregular migration populations. Data on apprehensions are highly contingent on enforcement efforts; an increase in apprehensions often simply reflects tougher enforcement (Kraler and Reichel, 2011). Therefore, much attention should be given to the context in which these datasets are produced and interpreted in each EU Member State.

Since there is little available data on fluctuations across time in the overall investment in immigration control in Member States, it is impossible to know whether increase/decrease in apprehensions reflects a more/less efficient implementation of an Exit regime. An increase/decrease in apprehensions can simply be a derivative of changes in the total irregular migrant population in a certain Member State. Yet it can also, of course, indicate more/less investment in enforcement. We thus wonder what the use is of collecting data on apprehensions if there is no complementary effort to systematically collect data – on a yearly base – on the overall investment in enforcement and the total irregular migrant population.

The following table presents Eurostat statistics, which records persons who are apprehended or have otherwise come to the attention of national immigration authorities.

Table 2. Third country nationals found to be illegally present in EU countries (2009-2019)

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Austria	17.145	15.220	20.080	23.135	25.960	33.055	86.220	49.810	26.660	18.840	16.090
Belgium	13.710	12.115	13.550	15.085	15.075	15.540	16.275	19.320	18.285	19.145	17.585
Bulgaria	1.465	1.705	1.355	2.050	5.260	12.870	20.810	14.125	2.595	1.305	655
Croatia	:	:	:	:	4.150	2.500	3.295	3.320	3.495	5.580	13.630
Cyprus	8.030	8.005	8.230	7.840	7.015	4.980	4.215	3.450	4.090	6.040	8.895
Czech Republic	3.955	2.655	3.085	3.315	3.695	4.430	8.165	4.885	4.360	4.505	4.995
Denmark	640	665	400	630	395	515	2.165	1.390	1.105	1.135	1.195
Estonia	860	860	1.020	905	910	720	980	665	755	980	1.305
Finland	6.660	3.755	3.305	3.620	3.365	2.930	14.285	2.130	930	1.305	1.220
France	76.355	56.220	57.975	49.760	48.965	96.375	109.720	91.985	115.085	105.880	120.455
Germany	49.555	50.250	56.345	64.815	86.305	128.290	376.435	370.555	156.710	134.125	133.525
Greece	108.315	115.630	88.840	72.420	42.615	73.670	911.470	204.820	68.110	93.365	123.025
Hungary	6.835	6.970	9.655	12.175	28.755	56.170	424.055	41.560	25.730	18.915	36.440
Ireland	5.035	4.325	2.470	2.035	1.465	900	2.315	2.315	2.775	2.045	1.955
Italy	53.440	46.955	29.505	29.345	23.945	25.300	27.305	32.365	36.230	26.780	26.885
Latvia	245	195	130	205	175	265	745	745	400	395	215
Lithuania	1.495	1.345	1.895	2.080	1.910	2.465	2.040	1.920	2.210	2.660	2.440
Luxembourg	260	215	265	350	260	440	190	140	300	320	580
Malta	1.690	245	1.730	2.255	2.435	990	575	450	530	1.990	620
Netherlands	7.565	7.580	6.145	4.005	2.715	2.645	2.340	2.685	2.165	2.790	3.565
Poland	4.520	4.005	6.875	8.140	9.280	12.050	16.835	23.375	28.470	31.245	30.900
Portugal	11.130	10.085	9.230	9.110	5.155	4.530	5.145	6.500	6.005	4.760	5.890
Romania	4.365	3.525	3.365	2.145	2.400	2.335	2.010	2.430	3.340	2.565	3.030
Slovakia	1.715	1.440	1.145	1.395	1.025	1.155	1.985	2.035	2.590	2.635	2.005
Slovenia	1.065	3.415	4.350	1.555	1.040	1.025	1.025	2.475	4.180	4.345	5.765
Spain	90.500	70.315	68.825	52.485	46.195	47.885	42.605	37.295	44.625	78.280	62.865
Sweden	22.230	27.460	20.765	23.205	24.400	72.835	1.445	1.210	2.145	1.720	2.170
United Kingdom	69.745	53.700	54.150	49.365	57.415	65.365	70.020	59.895	54.910	27.830	22.275
EU total	568.525	508.850	474.690	443.425	452.270	672.215	2.154.675	983.860	650.175	650.175	650.175

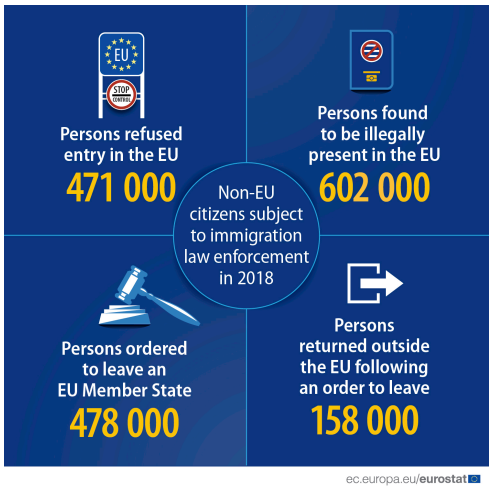
Source: Eurostat 2020

At first sight, the above table appears to provide comparable statistical apprehension data across the EU, easy to take over for a guesstimate of EU migrant populations. However, from these statistics it does not become clear how the data published on EU-level relates to data on national level. For example, the statistical data on apprehensions published by the Dutch police present different figures than the data presented in the Eurostat database with regard to the Netherlands.[16] Furthermore, the Dutch police and Eurostat use different terminologies: the Dutch police refers to 'personal identity checks', while Eurostat refers to 'apprehensions' (Ministerie van Justitie & Veiligheid, 2018b: 41). When examining Eurostat statistical data, as presented in table 2, there is no clarity about different terminologies in Member States. Yet, without an understanding of how Eurostat figures relate to national figures and terminologies, it is difficult to come to a reliable guesstimate of EU irregular migrant populations.

Furthermore, without context, plain statistical data presented on Eurostat can be confusing (or misleading) to a lay reader. Figure 4 below, a downloaded image from Eurostat's webpage 'Statistics Explained' ('Enforcement of Immigration Legislation statistics), provides a good example of this issue.

[16] The Dutch authorities only clarify the number of persons that were stopped in the street for a personal identity check. For example, in 2018, this number amounted to 4.240 persons, of which only 19% had no permit to stay in the Netherlands.

Figure 4. Explanation of the types of irregular presence and its numbers in 2020



Source: Eurostat 2020

With no contextual information, the number 602,000 may easily be interpreted as the total stock of irregular migrants in the EU. It would be more precise if the explanation, for example, mentioned that this statistic refers to the number of irregular migrants who were found to lack identity documents after apprehension.

Overall, current statistical data presented on Eurostat do not come with a contextualization about the way datasets were produced and how they can best be interpreted. This is problematic, because these datasets are used for policy-making, research projects into irregular migration populations, and public information campaigns.

2.4. The political use and misuse of statistical data

As indicated in the former section, statistical data needs contextualization because such data are often considered hard and simple facts, powerful policy tools, and are also likely to receive a lot of media coverage. When statistical data on irregular migrant populations is contextualized, this can further an open and honest public debate about Exit governance regimes as well as allow for a better assessment of the investments in operative Exit models. However, when statistical data is misinterpreted or misused, 'whether through malice or incompetence, genuine harm is done' (Vardeman and Morris, 2003: 21). Similarly, misinterpretation and misuse of data may contribute to a decrease of public support for the phenomenon of migration. Therefore, this section draws attention to the challenges facing the use of current statistics and guesstimates of irregular migrant populations for policy-making.

An example of misinterpretation and misuse of statistical data in the media can be shown in relation to the Netherlands. On 3 January 2020, the Dutch Minister of Health, told NRC Newspaper that current migration numbers to the Netherlands were *'way too high'.* He said that 80,000 persons migrate to the Netherlands each year and that this is too much.

> *'Migration happens to us and this makes people insecure. Labor migration, refugees, we have to make it predictable (…) Look, if you allow ten thousand migrants, in forty years from now this number will confirm the CBS figures, four hundred thousand plus their children. At least. So, six hundred thousand plus. But we don't have ten thousand migrants now, if you*

subtract the number of emigrants from the number of immigrants, there will be more than eighty thousand a year.'[17]

Even though he identified the source (CBS), he misinterpreted or misused the statistics – in accordance with the 2019 CBS research indeed, the positive balance comes down to a total of 122,000 immigrants instead of 80,000.[18] He also did not explain why the current legal and policy framework for labor migration and migration law is not predictable or controlling enough. This is of importance, because the current framework already ensures who can stay legally in the Netherlands and who cannot, for example through visa or asylum procedures. His statements were mentioned in almost every newspaper in the Netherlands, causing an uninformed and misleading debate on this topic,[19] in which online commenters mainly expressed xenophobia and resentment towards immigrants who supposedly all cause problems and take away houses.[20] This is an interesting and typical example of how data on migration can be misused for political gain. By failing to specify to which groups of migrants the CBS statistics referred to, and by pointing out that numbers were in general way too high, he demonized (irregular) migrants while at the same time increasing public support for his upcoming election campaign.

Politicians, policymakers, mass media and press frequently demonize (irregular) migrants with statistics (Vollmer, 2017). Yet, as Kraler and Reichel, researchers of the Clandestino Project pointed out, it is unfortunate how 'little attention is paid to what the numbers actually represent, how they were produced, by whom and for what purpose' (Kraler and Reichel, 2011). Currently, statistics are neither reproduced systematically and according to a conformed methodology, nor with respect to existing statistics.

2.5. Conclusion

Since the European Commission put a stop to the Clandestino Project, there have been no reliable estimates available of the size of the illegalized migrant population in all EU member states. The fact that estimates on the stock of the irregular migrant population in the EU are few and far between does not have to do with methodological difficulties, knowledge, or research skills, but with an apparent lack of political will across many EU member states to gather such data. Estimates of irregular populations are necessarily based on assumptions, because these are always constructed with irregular, inferred, and incomplete data. Nevertheless, well-researched estimates with clear, traceable origins have proven to be not only feasible, but also essential to an informed, professional and honest political and public debate.

Throughout this chapter, we have sought to examine a variety of studies which presented estimates on the stock of irregular migrants in Denmark, Germany, The Netherlands, and Spain, despite

[17] NRC Handelsblad, 'Tachtigduizend migranten per jaar is te veel voor Nederland' (3 January 2020).
[18] According to the independent statistical agency *CBS*, the total number of immigrants in 2019 was estimated at 272 thousand. In addition to Dutch people who returned (34 thousand), this number mainly concerns EU citizens (115 thousand), non-EU citizens who come to work, live or study in the Netherlands with a visa (107 thousand) and finally asylum seekers who are recognized as refugees and their family members (16 thousand). At the same time, approximately 150,000 people emigrated from the Netherlands in 2019. (Stoeldraijer et al., 2019). 272,000 immigrants minus 150,000 emigrants is a total number of 122,000 extra immigrants in 2019.
[19] NOS, CDA'er De Jonge wil aantal immigranten beperken (4 January 2019); Tubantia, Minister Hugo de Jonge: Het huidige aantal immigranten is te hoog (4 January 2020); AD, Minister Hugo de Jonge: Het huidige aantal immigranten is te hoog (4 January 2020); Trouw, 'CDA'er Hugo de Jonge wil voorspelbare migratie' (5 January 2020).
[20] See for example the commentary below this article: Elsevier Weekblad, 'Hugo de Jonge moet maximaal aantal immigranten noemen' (6 January 2020).

constraints involved in gathering such data. These studies applied various methods to come to their best possible estimate, and while each methodology has its flaws, these studies are the best we currently have. Still, the Clandestino Project shows there is a precedent for EU-wide studies of irregular and illegalized migrant populations that are thorough, wide-ranging, and transparent about their data collection, though they are dependent of course on political willingness not only to spend money and time on research, but to implement findings and recommendations throughout the EU.

At this moment, a lack of clear estimates is leveraged by politicians throughout Europe in order to further their agenda, whether by exaggeration (The Netherlands) or downright misleading (Italy). At the same time, the vagueness of any current estimates has also been used to legitimize the growth of border and security organizations, justifying increasing staff as well as funneling financial aid to various private and public law enforcement agencies. Problematic about this is that the intended prevention of irregular migration through growing enforcement agencies and restrictive migration policies is not necessarily successful, and is often counterbalanced by more 'invisible' migration which is more difficult to detect and measure (Czaika and Hobolth, 2016).

If estimates on stocks of irregular migrant populations across the EU become part and parcel of policymaking decisions, it will become easier to see the influence of specific implementations on the fluctuations of those populations, both in single member states and across the EU. For example, such decision making might look at the EU-wide decrease of irregular migrant populations in 2002 as a consequence of the expansion of the EU to include many previously illegalized or irregular labor migrants from Eastern European countries, or the increase of the irregular migrant population in Italy in 2019 due to the abolishment of subsidiary protection. With more precise data on how those populations might fluctuate due to such policy changes, it becomes easier to estimate how many people do not have access to decent healthcare, which is a high risk to others who live in close proximity as the COVID-19 pandemic has made clear, live in poor housing conditions, are forced into irregular or illegal labor, and might be helped out of such conditions. Such insights might then be used to concretize the ways irregular migrants are discussed in political and public debates, and ensure policy-making that is based on the reality of their living conditions instead of unreliable data.[21]

Working with a more accurate picture of irregular migrant populations is especially important with regard to the current governance of Exit in the EU, as well as the very idea that an Exit strategy must be in place for all irregular migrants throughout the EU. Costly measures can only be evaluated if there is consistent, verifiable data to evaluate their efficacy. At the moment, there is not only a lack of such data but also no clear agreement on what constitute efficacy in governing Exit. Is efficacy to be measured in terms of cost-effectiveness? Absolute numbers of irregular migrants who leave the EU? Or in the durability of return procedures and the securing of re-entry?

[21] The Clandestino Project recommended taking the following steps: design new regularization policies for migrants staying irregularly in the EU (Clandestino Research Project, 2009f, 2009c); allow for flexible migration regulations to ensure that migrants with lawful stay do not slip into irregular status (Clandestino Research Project, 2009g); open up legal migration channels (Clandestino Research Project, 2009g); for example for low-skilled labor migrants in sectors such as agriculture and horticulture – sectors in which most people are now working irregularly to fulfill the sector's needs (Clandestino Research Project, 2009a, 2009b).

3. Pre-removal detention

In chapter three, we chose to move from mapping irregular migrant populations to mapping pre-removal detention laws and practices across the EU. Similar to the former chapter, chapter three maps existing data (statistics, but also legal infrastructures) and assesses the extent to which this data is used to inform policy-making. This is of central importance to assessing Exit governance, because pre-removal detention is directed at having irregular migrants leave the territory of Member States of the European Union (EU) and of the EU as a whole.

3.1. Introduction

In this chapter we discuss the legal and operational infrastructures, conditions, length, investments and current implementation practices of pre-removal detention in line with the 2008 Return Directive, its proposed amendments, and caselaw of the Court of Justice of the European Union (CJEU).

3.2. Legal infrastructures

3.2.1. Article 15 of the Return Directive and CJEU jurisprudence

In line with article 15 of the Return Directive, EU Member States can only detain irregular migrants – unless less coercive measures can be applied – if they are subject to return procedures, if there is a risk of absconding or if they avoid or hamper the preparation of Exit procedures. The recast of the Return Directive, as proposed by the European Commission in September 2018, adds a list of broad criteria for assessing the 'risk of absconding,' which may make any person a potential absconder. Furthermore, the period of time in detention should be as short as possible and only be maintained 'as long as removal arrangements are in progress'. Detention must be ordered by administrative or judicial authorities, reviewed at 'reasonable intervals', and must cease when 'it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down in paragraph 1 [risk of absconding and hampering the preparation of the return process] no longer exist'.

In its caselaw, the Court of Justice of the European Union (CJEU) has highlighted that article 15 of the Return Directive has protective elements for irregular migrants, stating that the person in pre-removal detention must be immediately released if there is no real prospect of removal to a country outside the EU within the authorized maximum period of detention.[22] The CJEU also clarified that reasons of public order and public safety cannot be used as a justification for pre-removal detention under the Return Directive. Although the Recast of the Return Directive, as proposed by the European Commission in September 2018, now states that irregular migrants (or: 'third-country nationals') who pose a threat to public order or national security can be detained if deemed necessary. In doing so the European Commission appears to bypass CJEU jurisprudence.

3.3. Length and review of pre-removal detention

Article 14(5) and 14(6) of the Return Directive establish the maximum length of detention – in line with the requirement of legal certainty and ECtHR caselaw[23] – and prevent indefinite detention. These two articles set a maximum period of detention of six months, which may be extended with a maximum of twelve months in exceptional cases – in total this leads to a maximum limit of eighteen months in total.

[22] Case C-357/09, Kadzoev, judgment of 30 November 2009.
[23] ECtHR, *Abdolkhani and Karimnia v. Turkey*, 30471/08, (22 September 2009), para. 135.

To gather the most up-to-date data for table 3 on the length of pre-removal detention across countries in the EU, we have consulted official websites of EU Member States. Where official and recent data was difficult to find we used the EMN inform over the year 2017 (European Migration Network, 2018: 41). These sources have been helpful for gathering data on the maximum length of detention across the EU, but it is important to note that there are some inaccuracies. For example, the EMN inform states that the maximum length of detention in Belgium is 18 months, while the EMN national contact point in Belgium stated half a year later that this was 8 months (European Migration Network and National Contact Point Belgium, 2018). Furthermore, the information is inconsistent with regard to Hungary and Luxembourg (stating two different maximum lengths of time for each Member State). Whenever we found inaccuracies, we prioritized the most recent information together with national laws and policies.

Table 3. length of pre-removal detention

	2008 **Before Return Directive**[24]	**2010** **Two years after publication of the EC Return Directive**[25]	**2019** **After 2017 EC Recommendation**[26]
Austria	10	10	18
Belgium	8	8	8
Bulgaria	No information	12	18
Croatia	No information	No information	18
Cyprus	No time limit	No time limit	18
Czech Republic	6	6	18
Denmark	No time limit	No time limit	18
Estonia	No time limit	No time limit	18
Finland	No time limit	No time limit	12
France	1	1	3
Germany	18	18	18
Greece	3	18	18
Hungary	6	6	12
Ireland	2	2	8
Italy	1,3	6	6
Latvia	20	20	18
Lithuania	No time limit	No time limit	18
Luxembourg	3	4	12
Malta	18	No time limit	9

[24] This table is based on data provided by the European Parliament: 'Controversy over custody period and re-entry ban' [WWW-document],"
URL https://www.europarl.europa.eu/sides/getDoc.do?type=IM-PRESS&reference=20080609BKG31068&language=EN (accessed September 2008).
[25] This table is based on data provided by the European Union Agency for Fundamental Rights (FRA) in the report 'Detention of Third-Country Nationals in Return Procedures' (September 2010).
[26] This table is based on data provided by the European Council on Refugees and Exiles (ECRE), see their online database: https://www.asylumineurope.org/ (accessed 15 June 2020); data provided by the Global Detention Project: https://www.globaldetentionproject.org (accessed 15 June 2020); and data provided by the European Network on Statelessness (ENS): https://index.statelessness.eu/ (accessed 15 June 2020). These organizations gather up-to-date data on a yearly basis and always refer to the relevant national laws.

Netherlands	No time limit	No time limit	18
Poland	12	12	6
Portugal	2	2	2
Romania	6	24	18
Slovakia	6	6	6
Slovenia	6	12	4
Spain	1,3	2	2
Sweden	No time limit	No time limit	12
United Kingdom	No time limit	No time limit	No time limit in the law, except for pregnant women and children (7 days)

In 2014, the European Commission pointed out that the maximum time limit in the Return Directive had led to a reduction of maximum length of detention across the EU (European Commission, 2014). Nevertheless, in a recent publication about the Return Directive and detention policies across the EU, Majcher (2020) notes that the Return Directive only had a shortening effect in two countries that had a maximum length of longer than 18 months and six countries that had not provided for a maximum in their legislation. She also indicates that twelve countries currently have a longer permissible period of detention than before the adoption of the Directive. This suggests that overall, the Return Directive has not led to a reduction of the maximum length of detention, but has extended it.

Where shorter periods of pre-removal detention were welcomed by the European Commission in 2014, longer periods were recommended during the following years. With its Recommendation in 2017, which was written to urge Member States to increase their return rates, the European Commission pointed out:

> The maximum duration period of detention currently used by several Member States is significantly shorter than the one allowed by Directive 2008/115/EC and which is needed to complete the return procedure successfully. These short periods of detention are precluding effective removals (European Commission, 2017a).

However, the EC recommendation of 2017 does not indicate which research or database substantiates the conclusion that short periods of detention preclude effective removals. Given that pre-removal detention is a costly operation (see next section), it is also important to note here that no explicit rationale is advanced by the EC recommendation of 2017 in pushing to invest more budgets in pre-removal detention instead of any other measures that might increase the efficiency of Exit models.

Table 4 shows how the maximum length of pre-removal detention across the EU evolved, starting before publication of the Return Directive in 2008, two years after publication of the Return Directive, and ending two years after the EC Recommendation of 2017 to increase returns.[27] Between the Publication of the Return Directive in 2008 and 2019, a total of nine Member States

[27] It would have been most illustrative to also have an overview of the maximum length of detention per EU Member State for the year 2016, just before the European Commission recommended to extend the period of detention in the Member States. Although the European Commission must have an overview of this, we were not able to find such an overview online.

increased the maximum length of pre-removal detention,[28] of which six Member States did so after 2010.[29] Five Member States which did not have time limits for pre-removal detention set a limit of 18 months after 2010,[30] and one Member State which did not have a time limit for pre-removal detention set a limit of 12 months after 2010.[31]

The proposed Recast of the Return Directive no longer sets a "limited" period of detention but a "maximum" period of between three and six months. This means that the minimum period for detention in national law would have to be at least three months. This would imply an increase in current detention periods laid down in national legislation for countries such as Portugal and Spain.

The recast also proposes to set the maximum length of border detention at four months in draft article 22 (7), making the overall maximum period in detention for irregular migrants a total of 22 months. The European Parliament has proposed to lower the initial length of border detention to three months, extendable by another six months.[32]

Even though the European Commission expects that longer detention periods will ensure effective removals, practitioners (e.g. those working in pre-removal detention centers) argue to the contrary. During the fieldwork for the case studies conducted in Work Package 2, practitioners expressed that 2-3 months in detention is enough to determine if forced (and in some cases 'voluntary') return is an option.[33]

Next to the doubts these practitioners have about extending the length of pre-removal detention, it is also of importance to assess whether the 22 months period is in line with the principles of necessity and proportionality. Under article 5(1) ECHR, detention becomes unlawful once return is no longer feasible (when there is no imminent prospect of forced return). A detention period of 18 tot 22 months may therefore be excessive if there is no prospect of return. For example, if a person is stateless, lacks documentation or is non-deportable for other reasons, there is no feasible prospect of return. For these groups of irregular migrants, detention becomes unlawful under article 5(1) ECHR.

Nevertheless, there is no exemplary (legal) practice in any of the EU Member States that shows that stateless people and non-deportable persons are released from detention before the 18-month period ends. Promising in this respect is that some Member States (Italy, Latvia, Luxembourg, the Netherlands, Norway, Slovakia, and Sweden) bound by the Return Directive provide access to legal aid, which is needed for the review of pre-removal detention (Majcher, 2020: 467). At the same time, it is unclear how often a legal review of the detention measure occurs in practice.

Another issue that arises with regard to stateless people and non-deportable persons is the possibility of re-detention, or repeated detention. Because this group still lacks a legal status upon their release, they face a risk of re-detention, such as was the case for Saïd Shamilovich Kadzoev before the CJEU.[34] The case of Mr. Kadzoev illustrates the legal vacuum of stateless people and other non-deportable persons before EU law (Mincheva, 2010: 371). The periodic reports written by the

[28] Austria, Bulgaria, Czech Republic, France, Greece, Hungary, Ireland, Italy and Romania.
[29] Austria, Bulgaria, Czech Republic, France, Greece, Hungary, Ireland, Italy.
[30] Cyprus, Denmark, Estonia, Lithuania, the Netherlands.
[31] Finland.
[32] European Parliament, "Draft Report on the proposal for a directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals" (recast), Amendment 110–111.
[33] Interview of authors with the director of a detention center in the Netherlands (13 July 2020).
[34] CJEU, *Saïd Shamilovich Kadzoev (Huchbarov)*, C-357/09 PPU (30 November 2009).

CAT Committee about the Netherlands and Cyprus show how stateless people and non-deportable persons were held in pre-removal detention facilities repeatedly for longer than eighteen months because of a lack of identity documents. The Committee then recommended to Cyprus and the Netherlands to strictly keep to the maximum time limit of eighteen months, also in the context of a repeated detention. To Cyprus, the Committee recommended that the national authorities should ensure a temporary residence permit for non-deportable persons after their release from detention, in order for them not to remain stuck in a repeated cycle of detention. Without legal pathways toward regularization, these groups are at risk of ongoing re-detention.

3.4. Conditions of pre-removal detention

3.4.1. Article 16 of the Return Directive and CJEU jurisprudence

Article 16 of the Return Directive stipulates that migrants must be detained in separate specialized administrative institutions. The CJEU has pointed out that article 16(1) of the Returns Directive must be interpreted as requiring a Member State to detain irregular migrants for the purpose of removal in a specialized detention facility – even if there are federal states (in this case in Germany) in a Member State that do not have such a detention facility.[35] In another case, the CJEU reminded Member States that article 16(1) of the Returns Directive lays down a strict obligation that requires the separation of irregular migrants from ordinary prisoners.[36] The European Committee for the Prevention of Torture (CPT) has added that the buildings and the system of pre-removal detention must not be prisonlike.[37] These legal safeguards for irregular migrants are there to protect migrants from ending up in a criminal prison system based on administrative grounds.

3.4.2. Pre-removal detention in practice

Table 4 on the next page shows that all EU Member States have at least one designated pre-removal detention facility. The Netherlands nevertheless also houses criminal detainees in pre-removal detention facilities – although they are separated from irregular migrants who are detained on an administrative basis. In Estonia, Finland and Hungary, irregular migrants may be detained in police detention facilities if there is not enough space in the designated pre-removal detention facilities (European Migration Network, 2018). In Sweden, Greece, Cyprus and Austria, police facilities are used on a regular basis (Table 4).

[35] Joined Cases C-473/13 and C-514/13, Brero and Bouzamate, judgement of 17 July 2014.
[36] Case C-474/14, Thi Ly Pham, judgement of 17 July 2014, paragraph 9.
[37] European Committee for the Prevention of Torture and Inhuman and Degrading Treatment of Punishment: CPT Standards, CPT/Inf/E (2002) 1 -Rev. 2015, Art IV B. 28; CPT/Inf/E (2002) 1 – Rev. 2015.

Table 4. Pre-removal detention (facility and facility executive) per country in 2020

	facility type	facility executive
Austria	Designated immigration detention centers (in Vordernberg) and three immigration detention police facilities.	The immigration detention center is run by a private security company (G4S) and the police facilities are run by the national police - Ministry of Interior.
Belgium	Designated detention-for-deportation facilities: closed centers and return homes (the latter only for families).	Aliens Office (l'Office belge des Etrangers) - Ministry of Interior.
Bulgaria	Two designated detention-for-deportation facilities.	Migration Directorate - Ministry of Interior.
Croatia	Three designated detention-for-deportation facilities, two detention facilities in Zagreb Airport and in Dubrovnik Airport.	The Border Police Directorate - Ministry of Interior.
Cyprus	One designated detention-for-deportation facility (Mengoia) and police stations across the country (Menogia).	Police - Ministry of Interior.
Czech Republic	Three designated detention-for-deportation facilities.	Refugee Facilities Administration - Ministry of Interior.
Denmark	Designated immigration detention facilities.	Danish Prison and Probation Service - Ministry of Justice.
Estonia	Designated detention-for-deportation facilities.	Police Border and Coast Guard - Ministry of Justice.
Finland	Two designated detention-for-deportation facilities.	Finnish immigration service - Ministry of Interior.
France	Five designated detention-for-deportation facilities.	National Police (Direction centrale de la Police aux frontières) - Ministry of Interior, private company Gepsa and humanitarian organizations.
Germany	Designated detention-for-deportation facilities.	The competent authorities for the management of the centres are the prison authorities under the Ministry of Justice or the (regional) police authorities. By way of exception, the Munich Airport Hangar 3 detention centre opened in September 2018 is directly managed by the newly funded Bavarian State Office for Asylum and Returns (Bayerisches Landesamt für Asyl und Rückführungen). In Munich Airport Hangar 3, the authorities cooperate with private security companies to take over certain tasks.
Greece	Designated detention-for-deportation facilities, but also police stations.	National Police - Ministry of Public Protection.
Hungary	One designated detention-for-deportation facility (Nyírbátor) and de facto detention in transit zones (Röszke and Tompa).	National Police - Ministry of Interior.
Ireland	Criminal prison system.	Irish Prison Service - Department of Justice and Equality.
Italy	De facto detention in four hotspots and on boats and seven designated detention-for-deportation facilities.	Police - Ministry of Interior, Frontex and the Badia Grande Cooperativa, cultural association Acuarinto in partnership with the French private company Gepsa.
Latvia	Two designated detention-for-deportation facilities.	State Border Guard - Ministry of Interior.
Lithuania	One designated detention-for-deportation facility and two de facto detention centres, one at Kena border crossing point and one at Vilnius International Airport.	State Border Guard Service - Ministry of Interior.
Luxembourg	One designated detention-for-deportation facility.	Immigration Directorate - Ministry of Foreign and European Affairs, private security guards.
Malta	Two designated detention-for-deportation facilities and de facto detention in a refugee reception centre.	Armed Forces of Malta - Ministry for Home Affairs, National Security and Law Enforcement.
Netherlands	Three designated detention-for-deportation facilities in Zeist, Rotterdam and Schiphol Judicial Complex.	The Custodial Institutions Agency (DJ) - Ministry of Justice and Security manages the detention facility. The Repatriation and Departure Service (DT&V) also has a presence in detention facilities, to manage forced exit from there.Private security guards are contracted for the transportation of detainees.
Poland	Six designated detention-for-deportation facilities.	Border Guard - Ministry of Interior.
Portugal	Three designated detention-for-deportation facilities at the airports of Lisbon, Porto and Faro.	Immigration and Border Service (Serviço de Estrangeiros e Fronteiras) - Ministry of Interior.
Romania	Seven designated detention-for-deportation facilities (rarely used), two public custory facilities and one detention facility in the transit zone of Otopeni Airport in Bucharest.	General Inspectorate for Immigration (Inspectoratul General pentru Imigrari) - Ministry of Interior.
Slovakia	Two designated detention-for-deportation facilities.	Bureau of Border and Aliens Police (BBAP) of the Interior Ministry's Police Force Presidium (PFP).
Slovenia	One designated detention-for-deportation facility (Mengoia), one reception center for refugees, and two detention facilities in the border transit zones of Jože Pučnik Airport in Ljubljana and Edvard Rusjan Airport in Maribor.	Slovenian Police - Ministry of Interior.
Spain	Designated immigration detention centers: *Centros de Internamiento de Extranjeros* (CIE) and ad hoc spaces at borders.	National Police (Cuerpo Nacional de Policía) - Ministry of Interior.
Sweden	Designated immigration detention centres. Migrants can also be held in the police's detention centres or in one of the remand centres of the Swedish Prison and Probation Service (it is not clear how often this happens).	Swedish Migration Agency - Ministry of Justice.
United Kingdom	Criminal prison system, seven detention-for-deportation facilities and three short-term holding facilities where detainees can be held for a maximum of 7 days).	Private Security Company (G4S).

In many Member States, designated pre-removal detention facilities are former prisons turned into specialized facilities. Since the CJEU judgment in 2014[38] most Federal States in Germany which did not have specialized facilities before have announced that the necessary institutions would be established; deportees were sent to facilities in other Federal States in the meantime. Nevertheless, to this day, several pre-removal detention centers are former prisons turned into specialized facilities, e.g. Büren in North Rhine-Westphalia, Eichstätt and Erding in Bavaria (Asylum Information Database, 2018: 97). This also holds true for Denmark, Spain and the Netherlands. In Denmark, pre-removal detention facilities are geographically isolated in old military and prison facilities, surrounded by fences and operated by the Danish Prison and Probation Service. Under Danish Law, residents of the pre-removal detention centers are not detained and are free to go; although this practically is impossible (Suárez-Krabbe et al., 2018). In Spain, pre-removal detention facilities have no prison status under the law, this does not always correspond with reality. A former prison turned into a CIE (former Penitentiary Centre of Archidona) opened in November 2017 and closed in January 2018 because it did not live up to (EU) standards.[39] Furthermore, in the Netherlands, the same prison buildings are used for pre-removal detention as for criminal detention. For example, the three immigration detention centers (in Zeist, Rotterdam, and Schiphol Judicial Complex) are designed in such a way that they can be adjusted to a criminal prison without any modification. The facilities in Rotterdam and Zeist have previously been used for criminal prisoners (Amnesty International, 2018). The detention center in Zeist also houses a Closed Family Facility (GGV), which is adjusted to the needs of children in such a way that it cannot be used as a criminal facility, although NGO *Defence for Children* is highly critical of the conditions in this facility (Goeman and Schuitemaker, 2018). It is therefore not ensured, in line with the CPT recommendations, that designated pre-removal detention facilities are not prison-like.

3.4.3. Privatization of pre-removal detention

The Return Directive does not forbid outsourcing or privatization of pre-removal detention facilities. Since the 1990s, a weakening economic climate in the EU combined with an increase in irregular entries and asylum applications (e.g. following the disintegration of the Soviet Union and the wars in the former Yugoslavia) led many EU Member States to introduce restrictive migration policies (Guiraudon and Lahav, 2000). This move towards controlling migration has coincided with a trend towards securitization and privatization of pre-removal detention facilities, which were previously regarded as the domain of the government. The following paragraphs show how this privatization trend can be seen in pre-removal detention facilities in countries across Europe, with examples from the UK, Austria, France, Germany, Italy and the Netherlands (see table 3).

The United Kingdom

Where the increased use of contracting private (security) companies for the management of pre-removal detention facilities in most of the EU is a relatively new phenomenon, this has been standard practice in the UK since 1971. Since the Immigration Act of 1971, pre-removal detention centers were introduced and privately operated.[40] Since 2016, seven of the UK's pre-removal detention centers are run by four private contractors (G4S, Serco Mitie PLC and GEO Group (Shaw:

[38] Joined Cases C-473/13 and C-514/13, Brero and Bouzamate, judgement of 17 July 2014.

[39] Ombudsman, 'El Defensor del Pueblo detecta numerosas carencias en las instalaciones de Archidona en las que se encuentran internados más de medio millar de ciudadanos extranjeros', 1 December 2017, available in Spanish at: http://bit.ly/2GdXu3z.

[40] Christine Bacon, RSC Working Paper No. 27: The Evolution of Immigration Detention in the UK: The Involvement of Private Prison Companies, Working Paper Series, Refugee Studies Centre, Department of International Development, Queen Elizabeth House, University of Oxford, September 2005.

2016). This consistent privatization efforts must be problematized for three reasons – in accordance with the protection of irregular migrants and the accountability of the UK government. First, for private security companies, pre-removal detention is a lucrative business; they have been persistent lobbyists in favor of expansive detention regimes in the UK (Bacon 2005: 2). Second, in their business model, private security companies often do not work with a human rights-based approach; for example, in 2014 alone, there were 300 allegations of physical assault and racist violence perpetrated by private security guards, reports of sexual abuse, suicide, and several deaths (Open Access Now: 2014). Also, a Home Office-commissioned report concluded the family pre-removal detention facility was too expensive for the purposes it served (Shaw 2016). And third, privatization of pre-removal detention decreases transparency with regard to the responsible authorities and makes accountability for human rights abuses at these facilities unclear.

Austria, Italy, France, Germany, the Netherlands

In Austria, the UK private security company G4S is tasked with assisting the police in pre-removal detention facilities.[41] Here too, concerns about the division of tasks and accountability between the public security service and this private company have been raised.[42] Furthermore, UNHCR has access to enter the facilities without restrictions, but NGOs need to obtain an authorization from the authorities to act as detainees' legal representatives. Lawyers can visit their clients during working hours in a special visitor's room.[43]

In Italy, the pre-removal detention facility Ponte Galeria near Rome has since December 2014 been managed by cultural association Acuarinto in partnership with the French private company Gepsa [*Gestion etablissements penitenciers services auxiliares*], which is related to a multinational energy corporation and provides staffing and support services to prisons. Gepsa was contracted by the Italian authorities because they had the most advantageous bid – which included a cut on several basic services for detainees (Esposito et al., 2015). Article 7(2) of the Italian Reception Decree states that UNHCR or organizations working on its behalf, family members, lawyers assisting asylum seekers, organizations with consolidated experience in the field of asylum, and representatives of religious entities also have access to pre-removal detention facilities. Nevertheless, access can be limited for public order and security reasons and, following a regulation on pre-removal detention, authorization to enter the facilities is needed from the competent Prefecture for family members, NGOs, representatives of religious entities, journalists and any other person. According to the Association for Juridical Studies on Immigration (ASGI), access to the facilities is often restricted.[44]

France has the largest detention system in the EU and detains about 50,000 migrants annually. Contrary to the UK, France does not run pre-removal detention facilities privately, but they do contract private company Gepsa to provide staffing and services, an operation Gepsa shares with various humanitarian organizations. What stand out about France is that it is the only EU Member State that allows for the permanent and daily presence of humanitarian organizations in the pre-removal detention facilities; often they have their own offices to support irregular migrants with challenging detention or removal orders (Daems and van der Beken, 2018). This results in an extraordinary amount of readily available information, which provides a rare insight into the management and daily operations of pre-removal detention facilities.

[41] On 30 December 2013, The Minister of Interior Mikl-Leitner explained in response to a parliamentary request (parliamentary request 11/AB XXV) that G4S is tasked to assist the Austrian police in pre-removal detention facilities.

[42] Der Standard, 'Securitys auf Rundgang in der neuen Schubhaft' 2 April 2014 [WWW-document], URL http://bit.ly/1dgpJ1Y (accessed 11 May 2020).

[43] Asylum Information Database (AIDA), Country Report: Austria (2019), p. 110.

[44] Asylum Information Database (AIDA), Country Report: Italy (2019): p. 139.

In Germany, the decentralized system of immigration enforcement makes for diverging experiences with regard to how pre-removal detention system is operated. In some federal states, access by support and assistance organizations is inhibited, while in others they are allowed to enter the facilities. There is also no consistent practice regarding employment personnel; there has been criticism and calls for reform about the employment of undertrained staff in both the public and private sector (Daems and van der Beken, 2018).

In the Netherlands, the provision of security at detention centers is outsourced to private companies, such as G4S.[45] Lawyers and NGOs have access to the pre-removal detention facilities to provide legal information and assistance. Furthermore, the transportation of irregular migrants to pre-removal detention facilities, to court, or to their country of origin is carried out by the transportation service of the Ministry of Justice and Security, which in turn contracts private security guards.[46] Because pre-removal detention has an administrative character and no criminal character, Dutch law states that handcuffs must be an exception, and should only be used when migrants are trying to flee. Amnesty International reports that handcuffs are nevertheless almost always used in public – a practice that is humiliating for the migrants involved – apparently because the guards are unaware whether administrative or criminal law applies (Amnesty International, 2018).

Overall, it is not forbidden under EU law for private security companies to manage (formerly) public pre-removal detention facilities. However, there is no harmonized notion of what the management and support services of these facilities must look like. Therefore, conditions in pre-removal detention facilities may vary, often to the detriment of the migrants who are kept in detention for administrative reasons only. A critical review must be made regarding the role of lobbies of private security companies in pushing for the expansion of pre-removal detention facilities (in a similar way to managing entrance as indicated in our WP1 report). Similarly, there should be a systematic reviewing of the professional training of management and service providers in pre-removal detention facilities, and a clear mechanism for specifying and ensuring the accountability for human rights abuses.

3.4.4. Pre-removal detention: administrative or punitive?

Across the 28 EU Member States, pre-removal detention is an administrative measure. This means that pre-removal detention in theory should not be punitive in character. It is described as a preventive measure, albeit aimed at the prevention of absconding or non-cooperation of irregular migrants with return procedures. Yet, as these preventive measures force irregular migrants to cooperate with return procedures, they have a punitive effect.

Majcher and De Senarclens (2014) point out that the qualification of pre-removal detention as administrative has serious implications for the procedural protection offered to detainees. This has to do with the fact that administrative detention does not require the same fair trial guarantees as criminal detainees are entitled to. The fair trial guarantees that can be derived from article 6 of the ECHR are, for example: presumption of innocence, personal hearing, right to legal advice and

[45] G4S Nederland, 'Ondersteuning Politie en Justitie' [WWW-document], URL, https://www.g4s.com/nl-nl/oplossingen/secure-solutions/politie-en-justitie (accessed 8 January 2020).
[46] Dienst Justitiële Inrichtingen, "Dienst Vervoer & Ondersteuning" (WWW-document], URL https://www.dji.nl/locaties/landelijke-diensten/dienst-vervoer-en-ondersteuning-dvo/ (accessed 8 January 2020).

translation, time and facilities to prepare one's defense, and the right to remain silent. On the same note, the Return Directive does not obligate states to effectively assess the feasibility of alternatives to detention in each individual case, which is an inherent part of criminal proceedings.[47] That this has an effect on the wellbeing of irregular migrants and was confirmed by a study in 2015 on pre-removal detention facilities (CIEs) in Italy – which pointed out that irregular migrants tend to prefer the guarantees and opportunities in criminal prisons over CIEs (Goeman and Schuitemaker, 2018).[48]

With article 16 of the Return Directive, EU policymakers intended to separate the punitive criminal prison system from the administrative pre-removal detention system, but the punitive character of administrative pre-removal detention appears to be heavier. For example, the punitive goal of pre-removal detention can be discerned from the main ground stated by the majority of Member States on which the risk of absconding is assessed (and detention is decided), namely a 'lack of documentation' (European Commission, 2014: 15). This means that, even though a Member State does not know when it will be possible to remove the person concerned from the national territory, they can detain him or her as a precautionary measure.

Because of the discrepancy between the administrative label of pre-removal detention and its punitive character, Majcher and Senarclens (2014) point out two directions. In line with the administrative and preventive character of pre-removal detention, they argue that this practice should only be used to prevent irregular migrants from absconding (if less coercive measures cannot be applied) and should be ordered for the shortest period prior to removal – and not solely on the basis of the lack of documents or irregular status of a person (Majcher and de Senarclens, 2014). In case such a legal framework is not possible and pre-removal detention remains punitive in character, they argue that the same fair trial guarantees must be applicable as those that apply to criminal proceedings.

3.4.5. The implementation of the Return Directive

In 2014, the European Commission communicated to the European Parliament and the European Council that there was a great variation in the practical implementation of article 15 of the Return Directive, for example with regard to the interpretation of 'reasonable interval' for the review of the detention measure. Some Member States for example reviewed detention weekly, while others only did so after six months (European Commission, 2014). The EC noted that various stakeholders had requested further guidance on this topic, and concluded:

> The Commission will follow up on all shortcomings identified by the implementation report and will pay particular attention to the implementation by Member States of those provisions of the Directive which relate to the detention of returnees, safeguards and legal remedies, as well as the treatment of minors and other vulnerable persons in return procedures (European Commission, 2014: 7).

In its 2017 Recommendation on making returns more effective, the Commission stressed the importance of harmonization among Member States to increase return rates. To do so, the Commission recommended to diminish legal safeguards, such as the right to appeal, and increase

[47] This follows from article 6(2) ECHR (presumption of innocence) read in conjunction with the right to release pending trial (art. 5(3) ECHR.

[48] For example, the regular prison system provides more opportunities to pass the time, while in CIEs this is not allowed (Esposito et al., 2015).

the length of detention. It is unclear what the effects of these recommendations have been, because no (published) evaluation has been carried out yet.
In September 2018, the European Commission proposed a recast of the 2008 Return Directive, despite its 2014 Communication (European Commission, 2014) to table legislate amendments to the Return Directive only after a thorough evaluation of its implementation. This means that while the recast of the Return Directive is more punitive in character than before, the effect this has and will have on return rates is unclear.

Because no impact assessment of the 2008 Return Directive has been conducted by the European Commission, the European Parliament released a substitute impact assessment in March 2019, complemented by the European Parliament's *Committee on Civil Liberties, Justice and Home Affairs* in June 2020. With regard to pre-removal detention, these studies for example stress that the broad interpretation and application of the definition 'risk of absconding' undermines the guarantee of an individual assessment where all circumstances and interests are taken into account. In addition to this crucial insight, it is important to stress that there is no evidence that a broad application of pre-removal detention – e.g. where a risk of absconding can be determined on the basis of a lack of documentation (section 3.4.4.) – will increase return rates.

3.5. Investments in pre-removal detention

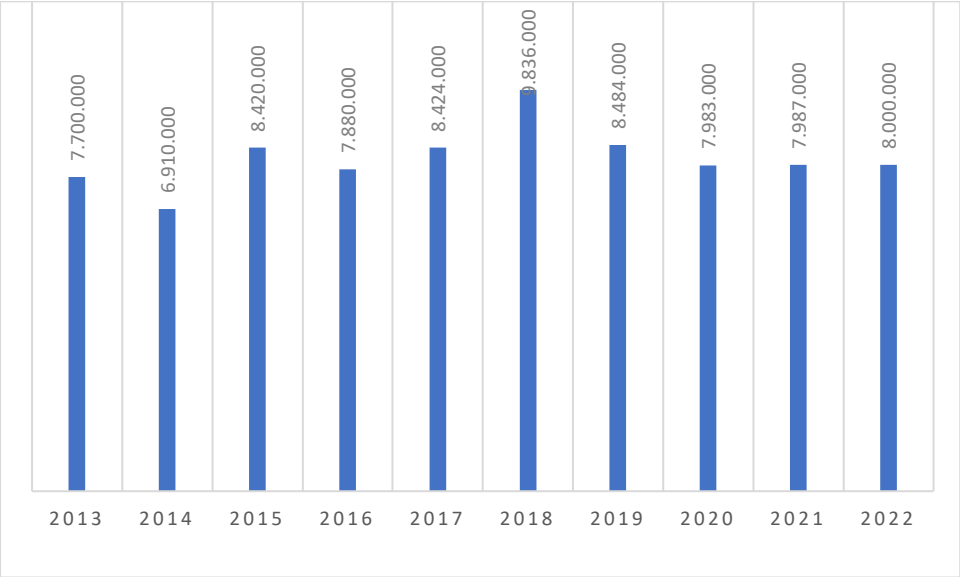
This section assesses the investments in pre-removal detention – another central part of the operational infrastructures of Exit governance – and contains an indicative analysis of the available data on these investments – budget, personnel and infrastructure – in Germany and the Netherlands. We choose these two countries because as they are most familiar and accessible to us. Limiting the scope of analysis to these two countries – instead of the four case studies of Work Package 2 – was necessary because of the general difficulty to gather (disaggregated) data on investments in pre-removal detention across countries in Europe.

3.5.1. The Netherlands

In the Netherlands, we did not find fully fledged disaggregated data on the financial aspects of pre-removal detention. It would, for example, have been interesting to understand better how much of the investments are allocated to private parties, such as G4S. However, we did find the investments allocated to the *Custodial Institutions Agency* (Dienst Justitiele Inrichtingen), who manage the pre-removal detention facilities, and the *Transport and Support Service* (Dienst Vervoer & Ondersteuning), that, among other things, operates transfers to court or organize forced returns for irregular migrants who are not 'fit to fly'.

Figure 5 shows the investment and budgetary planning between the years 2013 and 2022. Between 2013 and 2018, the numbers are based on the financial year reports of the Dutch Ministry of Justice and Security (Ministerie van Justitie & Veiligheid), while the numbers between 2019 and 2022 are based on its budgetary planning (at the time of writing, there is no overview yet of the expenses for these years). More specifically, figure 5 shows that the expenses of pre-removal detention facilities and management steadily grew from around 7 million in 2016 to around 10 million in 2018. The budgetary planning for the subsequent years after 2018 is kept at around 8 million per year until 2022. Because there is no clear cost breakdown of the investments available, it is not possible to indicate what the largest cost item is.

Figure 5. Investments in pre-removal detention in the Netherlands (2013-2022)



Source: (Ministerie van Justitie & Veiligheid, 2019b: 82, 2019c: 87, 2018a: 82, 2017: 82).

3.5.2. Germany

Based on the information provided by German federal states on the investments in pre-removal detention, it is not possible to estimate the total costs of pre-removal detention per year on a national level in Germany. When officially asked by German parliamentarians to provide such information in 2016, only some of the federal states provided a breakdown of the costs based on comparable indicators (Praxis Abschiebungshaft und Fragen zum Haftvollzug, 2016: 97-100).[49] Most federal states only provided an overview of the average imprisonment costs per day.[50] These states did not provide any other data, simply because they do not keep track of such information.[51] The federal state of Hesse even replied to the questions that they do not keep data on the costs of pre-removal detention, because of the "immense effort" (*immensen erfassungsaufwandes*) it would take to do so (Ibid., p. 101). Only one federal state, Nordrhein-Westfalen, provided an extensive and specified breakdown of the costs on pre-removal detention – although this was only for 2013 as table 5 shows.

[49]Berlin, Brandenburg, Niedersachsen, Rhineland-Palatinate/Rheinland-Pfalz and Baden-Württemberg were the only federal states that provided information that can be compared.

[50]Hessen (Ibid., p. 101), Schleswig-Holstein (Ibid., p. 104), Bayern/Bavaria (Ibid., p.100), Bremen (Ibid., p.97-100), Hamburg (Ibid., 97-99), Mecklenburg-Vorpommern (Ibid., p. 97-99), Sachson-Anhalt (Ibid., p.97-98), Thüringen (Ibid., p. 97-99), Saarland (Ibid., p.102) and Sachsen (Ibid., p.102-103).

[51]See for example the response by Saarland (Ibid., p.102) and Sachsen (Ibid., p.102-103).

Table 5. Investments in pre-removal detention in Nordrhein-Westfalen (2013)

Cost breakdown	EUR
Personnel costs	621454,1
Other real-estate costs: materials for repairs and maintenance, real estate expenses for management and entertainment	1173,06
Material costs	
Library	89
Clothing, equipment, personal care	263,21
Other materials	12878,24
Losses of movable supplies	8520
Service costs	
Expenses for other purchased services / private service providers	3081393,52
Expert opinion, contract for work, legal advice	39165,58
Cost allocation	
Payroll personnel	473033,4
Real estate	675840,46
Material	29878,18
Other	10339,52
In-house activities	9854,67
Total costs	4.963.882,94

Source: (Deutscher Bundestag, 2016a: 102)

Table 6. Average daily costs of imprisonment in the different German "Bundes Länder" from 2012-2018 (in EUR)

	2012	2013	2014	2015	2016	2017	2018
Berlin	65,26	65,26	70,71	77,8	x	x	x
Brandenburg	167,12	121,67	117,38	100,28	51,56	144,69	x
Rhineland-Palatinate	100,08	313,14	x	307,65	307,65	299,87	x
Baden-Württemberg	102,39	84,38	x	x	x	x	x
Hesse	106,18	112,46	118,66	x	x	x	x
Schleswig-Holstein	138,65	155,25	x	x	x	x	x
Bayern/Bavaria	x	x	105,71	x	x	x	x
Bremen	42,95	42,95	42,95	51,24	x	52,71	53,18
Hamburg	112,63	93,27	93,27	x	x	x	x
Mecklenburg-Vorpommern	68,43	68,85	83,77	x	x	x	x
Sachson-Anhalt	114,68	117,84	x	267,16	x	x	x
Thüringen	99,96	111,92	109,5	x	x	x	x
Saarland	x	x	x	79			x
Sachsen	x	82,19	83,62	x	x	x	x
Niedersachsen	x	x	x	267,16	220,22	122,63	x
Nordrhein-Westfalen	x	x	x	349,46	278,96	235,72	x
Average	101,67	114,1	91,73	187,47	214,6	171,12	53,18

Source: (Deutscher Bundestag, 2016a, 2018a)

Because these figures do not provide insight into the total imprisonment costs per year, we have attempted to provide an indication for the year 2018. In 2018 there were 2.777 people in immigration detention, with an average cost of 146,78, - EUR per detainee per day. That would amount to a total 407,612,69, - EUR if every migrant would have been imprisoned for only one day. Another example: the average duration in pre-removal detention in 2018 was below six weeks (Deutscher Bundestag, 2018b: 38 and 35-56). Therefore, if we take a period of two weeks (14 days) as a pillar, pre-removal detention would cost the national German authorities about 5.706.577,64, - EUR every year. If we take a pillar of six weeks (42 days), the pre-removal detention costs of national German authorities would rise to 17.119.732,91, - EUR per year.

Berlin, Brandenburg, Lower Saxony, Rhineland-Palatinate and Baden-Württemberg have provided figures that come close to a complete picture of pre-removal detention in these federal states (including personnel, interpreters, materials). These figures still do not present the total costs of pre-removal detention in Germany, because many federal states did not provide any data. To further contextualize these figures, it is important to note that the pre-removal detention facility in Berlin was closed in November 2015, due to a ruling of the Court of Justice of the European Union (CJEU) rendering the collective imprisonment of irregular migrants with criminal detainees unlawful.[52] The costs indicated by Baden-Wuerttemberg for 2014 are relatively low because they only cover half of the year and, in line with the same CJEU ruling, their pre-removal detention capacity had to be reduced to 35 places.

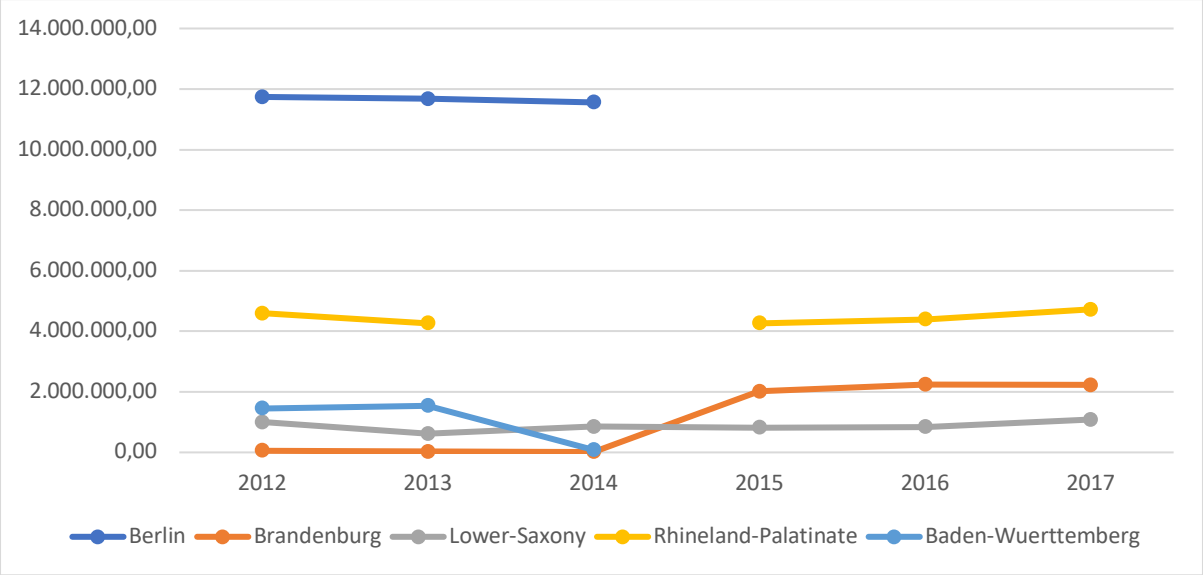
Table 7. Total (published) investments in pre-removal detention in Germany

	2012	2013	2014	2015	2016	2017
Berlin	11.739.295,45	11.671.110,47	11.558.182,76			
Brandenburg	56.820,00	28.714,00	11.972,00	2.014.856,00	2.240.636,00	2.220.595,00
Lower-Saxony	1.003.796,00	618.345,00	855.152,00	815.381,07	844.645,12	1.085.973,05
Rhineland-Palatinate	4.595.357,00	4.261.237,00		4.266.068,00	4.392.881,00	4.724.574,00
Baden-Wuerttemberg	1.458.729,00	1.538.452,00	81.712,00			

Source:(Deutscher Bundestag, 2018a: 109, 2016a: 98-100)

[52] See section 4.3.1. for a (case) description of this CJEU ruling.

Figure 6. Total (published) investments on pre-removal detention in 5 Länder (Berlin, Brandenburg, Lower Saxony Rhineland-Palatina and Baden-Wurtemberg) from 2012-2017



Source: (Deutscher Bundestag, 2018a: 109, 2016a: 98-100)

Overall, gathering data on the investments of Member States in pre-removal detention facilities, management and personnel is a difficult and cumbersome exercise. There is no obligation for Member States to gather such data and there are no indicators of what the breakdown of the costs must indicate. In the Netherlands and Germany, there is a lack of transparency into the specific investments in pre-removal detention. Even though the Netherlands and Germany provide some data, the investments are incomparable because these two Member States provide different indicators and types of investments. Keeping in mind that the Netherlands and Germany are two Member States known for keeping track of most national data, mapping the investments on pre-removal detention in all 27 Member States currently is practically an impossible task.

3.6. Conclusion

Currently, there is no systematic data gathering by EU Member States with regard to the efficiency and feasibility of current pre-removal detention policies and practices. Furthermore, conditions of pre-removal detention are still often prison-like, the length of time in detention has increased across the EU without clarity on whether this increases returns, and it is difficult to find out what the investments in pre-removal detention facilities exactly amount to – although there is a clear upward trend.

This chapter first showed how, across countries in the EU, there is no harmonized notion of what type of management pre-removal detention facilities must have. Member States increasingly work with private and security companies, while it is often unclear what their (legal) responsibilities are or what their professional training has been.

Second, in most EU Member States, detention of irregular migrants is managed in specially designated pre-removal detention facilities. This means that administrative detention is often kept separate from criminal detention. However, pre-removal detention facilities are often still prisonlike (because many are former prisons) and in many EU Member States, the introduction of specially designated facilities has led to an increase in the number of irregular migrant detainees. This shows

how there is a discrepancy between the administrative label of pre-removal detention and its punitive character.

Third, while the European Commission suggests extending the length of pre-removal detention to 22 months in its proposed recast of the Return Directive, there is no evidence that this will increase return rates. Similarly, there is no evidence that a broad application of pre-removal detention – e.g. where a risk of absconding can be determined on the basis of a lack of documentation – increases return rates. To the contrary, practitioners express that 2-3 months in detention is enough to determine if forced (and in some cases voluntary) return is an option; keeping irregular migrants in pre-removal detention after that period is not cost effective. In addition, under article 5(1) ECHR, detention becomes unlawful once return is no longer feasible. There is however no exemplary practice in any of the EU Member States that either shows that stateless people and non-deportable persons are released from detention before the 18-month period ends or that stateless people and non-deportable people are exempt from re-detention.

Fourth, gathering data on the investments of Member States in pre-removal detention facilities, management and personnel is a difficult and cumbersome exercise. There is no obligation for Member States to gather such data and there are no indicators of what the breakdown of the costs must indicate. In the Netherlands and Germany, there is a lack of transparency into the specific investments in pre-removal detention.

Systematic data gathering by EU Member States with regard to pre-removal detention would provide a better understanding of the efficiency and feasibility of current detention policies and implementation practices across countries in Europe. Important questions that remain unanswered after this desk research are: how many irregular migrants are held in pre-removal detention each year? Does an increased length of pre-removal detention lead to an increased return rate? What is the role and accountability of private security companies in detention centers? With what type of indicators can we compare investments in pre-removal detention facilities and management in EU Member States? Notably, there is no harmonized notion of the parameters to measure the efficiency, feasibility, and cost-effectiveness of pre-removal detention.

4. Forced Exit

This chapter examines the legal and operational infrastructures of forced Exit and provides an analysis of the online data we found. With this data analysis, we aim to better understand the differences between how Member States count the number of forced returns, the investments in the Exit model in the Netherlands, Germany, and investments in Frontex over the past decade, in relation to the current state of return procedures and readmission agreements. We also try to relate to the estimated 'success rate' to the European Commission's stated goals on return, the number of re-entering deportees and the peacefulness of procedures.

4.1. Legal infrastructures

4.1.1. Return decisions under the 2008 Return Directive

The Return Directive obliges Member States to issue a return decision to a person staying irregularly on their territory. In accordance with article 3(4) of the Return Directive, a return decision can be issued by administrative or judicial authorities and has two distinctive elements: it must contain a statement that the stay of an irregular migrant is "illegal" and it must impose an obligation to return. Article 6(6) of the Return Directive allows other elements to be part of the return decision, such as an entry ban, a voluntary departure or designation of the country of return. The EC's Return Handbook notes with regard to this last article:

> Member States enjoy wide discretion concerning the form (decision or act, judicial or administrative) in which a return decision may be adopted. Return decisions can be issued in the form of a self-standing act or decision or together with other decisions, such as a removal order or a decision ending legal stay (European Commission, 2017b)

Because of this wide discretion, the institutions that issue a return decision may also vary. For example, in the Netherlands, the Ministry of Justice and Security is responsible for the operative model of Exit governance. Under the Ministry's scope of responsibility fall the Immigration and Naturalisation Services (IND), who issue a return decision and removal order, and the Repatriation and Departure Service (DT&V) plus the Aliens Police (AVIM), who coordinate forced returns. In Spain, Exit proceedings are the responsibility of the Ministry of the Interior. The Commission for Asylum and Refugees (CIAR) execute a return decision and the National Police and the General Commissariat or Foreigners and Borders (Comisaría General de Extranjería y Fronteras) coordinate deportation orders and forced returns.

At the level of the national authorities, many actors are involved in issuing a return decision. Because Member States have their own practices and institutions it is unclear what the effect of a return decision issued in one Member State has in another Member State. What happens, for example, if an irregular migrant who was ordered to leave the Netherlands is apprehended in Germany? The Return Directive does not comment on this. The issue is that every Member State has rules of its own with regard to Entry, pre-removal detention, Exit and the length and condition of interdiction; and every Member State has its own human rights standards.[53]

According to Eurostat statistics, Member States have issued around 400,000 to 600,000 return decisions each year between 2009 and 2019 (see table 8). More specifically, the figures in table 8 refer to 'third country nationals found to be illegally present who are subject to an administrative or

[53] Steve Peers, *EU Justice and Home Affairs Law*, fourth edition, Oxford EU Law Library (Oxford: oup, 2016): 523–525.

judicial decision or act stating that their stay is illegal and imposing an obligation to leave the territory of the Member State'.[54]

Table 8. Number of 'third-country nationals who were ordered to leave' from 2009-2019

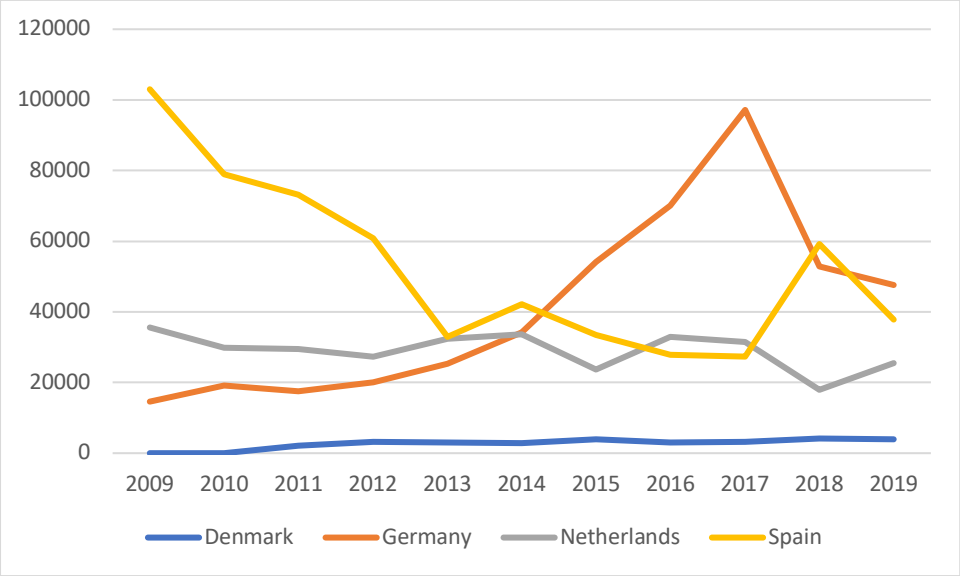
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Austria	10.625	11.050	8.520	8.160	10.085	:	9.910	11.850	8.850	10.690	13.960
Belgium	24.035	22.865	36.885	50.890	47.465	35.245	31.045	33.020	32.235	24.160	22.010
Bulgaria	1.465	1.705	1.355	2.050	5.260	12.870	20.810	14.120	2.600	1.305	1.245
Croatia	:	:	:	:	4.355	3.120	3.910	4.730	4.400	6.350	15.510
Cyprus	3.205	2.845	3.205	3.110	4.130	3.525	2.250	1.575	1.850	1.595	1.300
Czech Republic	3.805	2.915	2.520	2.375	2.405	2.460	4.510	3.760	6.090	3.445	8.955
Denmark	:	:	2.170	3.295	3.110	2.905	3.925	3.050	3.185	4.155	3.920
Estonia	150	110	480	580	600	475	590	505	645	875	1.190
Finland	3.125	3.835	4.685	4.300	4.330	3.360	4.905	17.975	7.255	5.435	7.395
France	88.565	76.590	83.440	77.600	84.890	86.955	79.950	81.000	84.675	105.560	123.845
Germany	14.595	19.190	17.550	20.000	25.380	34.255	54.080	70.005	97.165	52.930	47.530
Greece	126.140	132.525	88.820	84.705	43.150	73.670	104.575	33.790	45.765	58.325	78.880
Hungary	4.850	5.515	6.935	7.450	5.940	5.885	11.750	10.765	8.730	8.650	3.235
Ireland	1.615	1.495	1.805	2.065	2.145	970	875	1.355	1.105	1.385	2.535
Italy	53.440	46.955	29.505	29.345	23.945	25.300	27.305	32.365	36.240	27.070	26.900
Latvia	220	210	1.060	2.070	2.080	1.555	1.190	1.450	1.350	1.540	1.615
Lithuania	1.210	1.345	1.765	1.910	1.770	2.245	1.870	1.740	2.080	2.475	2.320
Luxembourg	185	150	:	1.945	1.015	775	700	655	915	850	1.070
Malta	1.690	245	1.730	2.255	2.435	990	575	415	470	515	620
Netherlands	35.575	29.870	29.500	27.265	32.435	33.735	23.765	32.950	31.565	17.935	25.435
Poland	11.875	10.700	7.750	7.995	9.215	10.160	13.635	20.010	24.825	29.375	29.305
Portugal	10.295	9.425	8.570	8.565	5.450	3.845	5.080	6.200	5.760	4.590	5.980
Romania	5.125	3.435	3.095	3.015	2.245	2.030	1.930	2.070	1.975	2.080	3.325
Slovakia	1.180	870	580	490	545	925	1.575	1.735	2.375	2.500	1.905
Slovenia	1.065	3.415	4.410	2.055	1.040	1.025	1.025	1.375	1.220	1.290	2.060
Spain	103.010	78.920	73.220	60.880	32.915	42.150	33.495	27.845	27.340	59.255	37.890
Sweden	17.820	20.205	17.600	19.905	14.695	14.280	18.150	17.585	20.525	22.310	21.260
United Kingdom	69.745	53.700	54.150	49.365	57.415	65.365	70.020	59.895	54.910	21.490	22.275
Total EU member states (27)	524.865	486.380	437.155	434.280	373.035	404.715	458.625	426.255	450.390	456.660	491.195
Total EU member states (28)	594.610	540.085	491.305	483.640	430.445	470.075	533.400	493.790	516.100	478.135	513.470

Source: Eurostat 2020.

[54] These statistics do not include persons who are transferred from one Member State to another under the mechanism established by the Dublin Regulation. See: Eurostat, 'Third country nationals found to be illegally present' (migr_eipre) [WWW-document], URL https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_eipre&lang=en (accessed 8 May 2020).

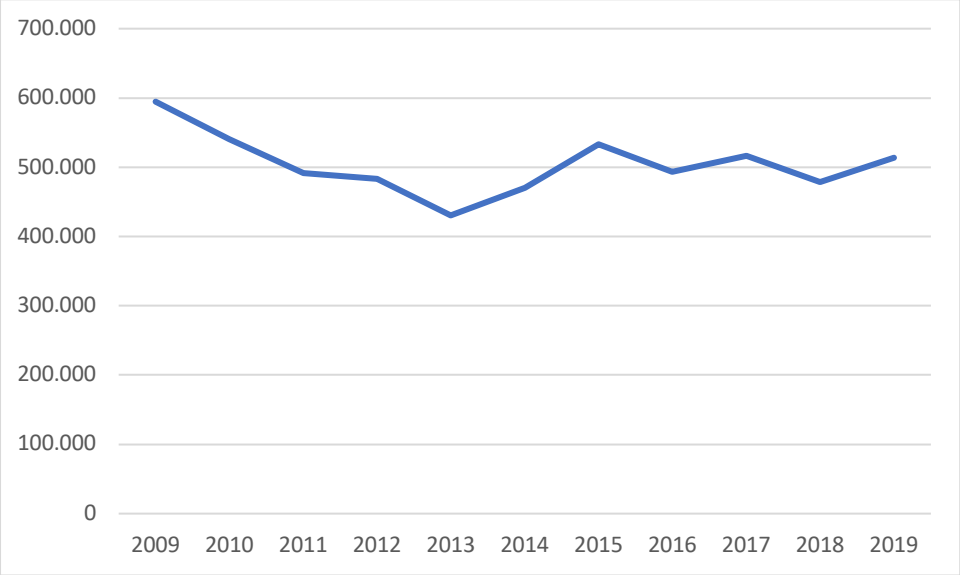
In Table 8 we see that France has the largest number of orders to leave, followed by Greece and Spain. In figure 7.1 we show the figures of Denmark, Germany, the Netherlands and Spain in a graph, which makes it easier to see the flow throughout the years. It is striking that Germany has a peak in 2017, which most likely is the result of the relatively high number of asylum-seekers entering Germany in 2015. Of the 1.3 million asylum-seekers entering the European Union, Norway and Switzerland that year, more than half applied for asylum in three countries: Germany (442.000), Hungary (174.000) and Sweden (156.000) (Connor, 2016: 17). Compared to the numbers of asylum applications in Denmark (21.000), the Netherlands (43.000) and Spain (15.000) (ibid.), Germany has processed approximately six times the total number of asylum applications in these three countries combined. Since it takes time to process asylum applications, the relatively high number of asylum applications in Germany in 2015 explain the peak in return decisions in Germany in 2017, while the other countries did not get such a peak in the same year.

Figure 7.1 Number of 'third country nationals ordered to leave' from 2009 to 2019 in Denmark, Germany, Netherlands and Spain *



Source: Eurostat 2020
*these four countries have special attention in ADMIGOV's future work.

Figure 7.2 Total number of 'third country nationals ordered to leave' in the 28 EU Member States



Source: Eurostat 2020

Important to note is that these figures are not fully comparable because Member States have divergent practices for issuing return decisions. Some Member States issue a return decision more than once, some do not issue a return decision for children separately, some exclude refusals at the border (European Parliament - Committee on Civil Liberties, Justice and Home Affairs, 2020).

To provide an indication of the return rates in Member States, we will compare these figures to Eurostat data on 'third country nationals returned to a third country following an order to leave' (table 9). Eurostat defines this category as persons who have left the territory of the Member State following an administrative or judicial decision stating that their stay is illegal and imposing an obligation to leave the territory.[55] This number includes forced and assisted voluntary returns – according to Eurostat, unassisted returns are also included if they were reliably recorded – and excludes EU transfers under the Dublin Regulation.

[55] Eurostat, 'Enforcement of Immigration Legislation (migr_eil)' (WWW-document), URL https://ec.europa.eu/eurostat/cache/metadata/en/migr_eil_esms.htm (accessed 8 May 2020).

Table 9. Number of 'third country nationals returned to a third country following an order to leave' from 2010-2019 according to Eurostat 2020

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Austria	5.355	3.765	3.395	3.605	:	:	5.895	5.715	6.805	6.800
Belgium	4.200	5.675	7.605	6.885	5.250	5.550	6.920	5.880	4.585	3.940
Bulgaria	210	335	605	1.015	1.090	540	1.105	1.250	610	595
Croatia	:	:	:	2.530	2.150	1.405	1.720	1.980	2.165	2.390
Cyprus	4.060	4.605	4.370	3.915	2.985	1.840	1.035	760	730	455
Czechia	920	530	430	320	315	330	390	680	720	580
Denmark	385	485	1.010	1.605	910	1.040	930	1.115	1.165	1.460
Estonia	40	355	375	415	100	40	380	580	710	1.050
Finland	960	2.490	2.640	2.685	2.855	2.980	5.610	3.565	2.850	2.990
France	13.235	13.360	15.130	13.270	13.030	12.195	10.930	12.720	15.445	15.615
Germany	10.875	14.120	12.440	15.585	19.060	53.640	74.080	44.960	29.055	25.140
Greece	51.785	10.585	16.650	25.465	27.055	14.390	19.055	18.060	12.465	9.650
Hungary	2.165	4.180	4.675	3.230	3.440	5.755	780	685	875	810
Ireland	805	755	740	585	335	205	245	270	310	470
Italy	4.890	6.180	7.365	5.860	5.310	4.670	5.715	7.045	5.615	6.470
Latvia	190	1.055	2.065	2.070	1.550	1.030	1.355	1.275	1.465	1.565
Lithuania	1.230	1.645	1.820	1.660	1.925	1.685	1.545	1.860	2.110	2.015
Luxembourg	70	345	0	605	605	720	405	435	275	270
Malta	270	160	570	460	495	465	420	470	530	600
Netherlands	9.345	9.240	9.405	7.765	7.655	8.385	11.890	8.195	8.830	11.055
Poland	6.620	6.920	6.690	8.375	9.000	12.750	18.530	22.165	25.700	25.895
Portugal	1.150	1.090	:	1.135	760	565	370	310	280	465
Romania	3.015	2.875	2.890	2.235	2.085	1.995	1.865	1.815	1.705	2.355
Slovakia	585	435	315	370	655	970	1.390	1.725	2.095	1.580
Slovenia	1.085	1.170	970	640	150	155	205	120	150	155
Spain	19.860	20.325	17.520	16.240	14.155	12.235	9.530	10.165	11.800	11.525
Sweden	10.900	9.845	12.290	9.035	6.230	9.695	10.160	6.845	6.850	6.425
United Kingdom	44.705	44.630	46.545	47.205	41.265	40.965	36.445	29.090	24.455	19.435
Total EU member states (27)	154.200	122.520	131.960	137.560	129.155	155.225	192.460	160.650	145.905	142.320
Total EU member states (28)	198.910	167.150	178.500	184.765	170.415	196.190	228.905	189.740	170.360	161.755

Source: Eurostat 2020

Compared to the number of third country nationals who were ordered to leave every year (table 8), the number of third country nationals who were forcibly returned or participated in an assisted voluntary return program to third countries indicates the current low state of efficiency of the EU Exit model. Between 2010 and 2019, there is a consistent gap between the number of persons issued with a return decision and the number of persons who have left the EU as a consequence of this return decision. The number of persons who returned to a third country in 2015 (196.190) stood at **36,7%** of the return decisions issued in that same year (533.400). This return rate remained low the following years. In 2016: **46,3%** and in 2017: **36,7%**. The number of persons who returned to a third country in 2018 (170.360) stood at **35,6%** of the return decisions issued in that same year (478.135) and in 2019, the number of persons who returned to a third country (161.755) stood at **31,5%** of the return decisions issued in that same year (513.470).[56]

[56] With regard to our **four case studies**, based on Eurostat statistics (table 9/table 8): the number of persons in Spain who returned to a third country in 2019 (11.525) stood at **30,4%** of the return decisions issued in that same year (37.890); the number of persons in the Netherlands who returned to a third country in 2019 (11.055) stood at **43,5%** of the return decisions issued in that same year (25.435); Based on Eurostat statistics (table 9/table 8), the number of persons in Denmark who returned to a third country in 2019 (1.460) stood at **37,2%** of the return decisions issued in that same year (3.920); Based on Eurostat statistics (table 9/table 8),

To a certain extent, yearly return rates may be underestimated because a part of the third country nationals who received a return decision will most likely be awaiting an appeal procedure. Nevertheless, considering the low fluctuations in numbers each year between 2010 and 2019, this underestimation will only be a small percentage.

From another perspective, return rates such as the ones calculated above – in line with the European Commission's own calculations[57]– are overestimated. Mainly when understood in the context of an already existing shadow population of irregular migrants in the EU. Compared to the EU stock estimates of irregular migrants (discussed chapter 3), the number of persons who return each year to a third country is almost nihil. Taking into account the PEW study mentioned in chapter 3, which is not exact but provides an indication, there were about 3 to 4 million irregular (or unauthorized) migrants residing in the EU in 2017. In this context, the return rate in 2017 would stand at 4,7 to 6,3% of the total irregular migrant population in the EU.

4.1.2. Recast of the Return Directive

Over the past few years, the European Commission has prioritized making return procedures in the EU more effective with an aim to increase return rates. In this light, the EC has broadened the mandate of the European Border and Coast Guard (EBCG)/Frontex to work on returns and adopted a *Recommendation on making returns more effective* in 2017 with a set of measures to be taken up by the Member States. At that moment, the European Commission also started preparing the recast of the Return Directive.[58]

The proposed amendments are aimed at assisting Member States to increase returns,

> Notably by limiting the scope for inconsistent interpretation of the EU rules, securing a better link between asylum and return procedures, reducing the length of procedures and ensuring more effective use of measures to prevent absconding. In helping to increase the rate of effective returns, the new rules will improve the credibility of the EU's migration policy and send a clear signal that there are effective procedures in place to make sure that migrants found to be staying irregularly in the EU, will be returned. Effective return procedures will also provide a disincentive for migrants to undertake perilous journeys in the first place [59]

The proposed amendments contain fewer protective standards for irregular migrants and start from the presumption of deterrence (intensifying apprehensions, pre-removal detention and identification processes). However, there is no (academic) evidence that shows that such a deterrence-minded approach – for example, as the "hostile environment" policy approach that is practiced in the UK for more than a decade – ensures higher return rates. In fact, academic research into the effects of UK policies guided at deterrence have concluded, for example, that 'the British

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the number of persons in Germany who returned to a third country in 2019 (25.140) stood at **52,9%** of the return decisions issued in that same year (47.530).

[57] European Commission, 'State of the Union 2018: Stronger EU rules on return – Questions and Answers' (12 September 2018) (WWW-document), URL https://ec.europa.eu/commission/presscorner/detail/en/MEMO_18_5713 (accessed 8 May 2020).

[58] First presented in September 2018 (European Commission, 2018a).

[59] European Commission, 'State of the Union 2018: Stronger EU rules on return – Questions and Answers' (12 September 2018) (WWW-document), URL https://ec.europa.eu/commission/presscorner/detail/en/MEMO_18_5713 (accessed 8 May 2020).

government's use of health service data to restrict immigration is a very bad idea'.[60] In addition, a focus on restrictive policies, securitization and migration control may have the unintended consequence that irregular migrants go 'under the radar' and end up in more precarious situations (Czaika and Hobolth, 2016). In this light, the European Economic and Social Committee (EESC) published a critical commentary on 23 January 2019 that highlighted the increased legal uncertainties for irregular migrants in the proposed amendments.

The EESC also asked the European Commission for in-depth monitoring of the effectiveness and human rights standards of enforcement policies on return and pre-removal detention, and insight into the cost-effectiveness of forced and voluntary returns. With regard to the meaning of 'the effectiveness' of returns, the European Commission has mostly described this process as making the carrying out of returns more effective and to increase return rates. In the recently published draft report on the implementation of the Return Directive, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) problematized this definition: "most factors impeding effective return are absent in the current discourse, as the effectiveness is mainly stressed and understood as return rate" (European Parliament - Committee on Civil Liberties, Justice and Home Affairs, 2020). To better understand the effectiveness of the Return Directive, the LIBE recommends to look at the circumstances of returned persons after they have arrived in their destination country.

In addition to the circumstances of returned persons (their legal safeguards and the sustainability of their return), there are also other factors at play that influence the effectiveness of return procedures, such as the perception of a third country national about the safety and economic situation in his or her country of origin, his or her medical situation, and the economic situation in the destination country.[61] Thus, state-level data on the number of persons who have left the EU must be contextualized with qualitative data on the livelihoods and perceptions of irregular migrants living in EU Member States.

4.2. Data analysis on forced exits per year

Currently, national authorities are not required to monitor or report on the cost-effectiveness pre-removal detention, forced and voluntary exits. This deliverable, and the ADMIGOV-project more generally, attempts to provide insight into the questions asked by the EESC and the LIBE mentioned in the former section, but due to a lack of (access to) data and transparency of data, this report can only provide an indication of the current situation and is far from being complete.

Table 15 below provides an indication of the number of forced removals per Member State each year, as presented on Eurostat. Eurostat defines enforced return as: 'the situation in which the third-country national is subject to the enforcement of the obligation to return (the enforcement procedure has been launched).

Table 10. Number of enforced returns from 2014 to 2019 per European country

	2014	2015	2016	2017	2018	2019
Austria				1.670	4.925	2.585

[60] See: Hiam, L., Steele, S., & McKee, M. (2018). Creating a 'hostile environment for migrants': The British government's use of health service data to restrict immigration is a very bad idea. *Health Economics, Policy and Law, 13*(2), 107-117.

[61] The Dutch Ministry of Justice acknowledges the difficulties for assessing the effectiveness and efficiency of current return procedures, noting that such factors also influence these procedures (Ministerie van Justitie en Veiligheid, 2019).

Belgium	2.640	2.525	2.630	2.615		2.200
Bulgaria	665	555	345	485	330	450
Croatia	1.415	690	950	1.085	1.320	1.565
Cyprus						
Czech Republic			265	265	225	305
Denmark	1.315	2.480	1.305	1.470	1.655	1.970
Estonia	305	85	95	135	140	220
Finland						
France	12.415	12.325	9.220	9.730	10.820	12.985
Germany[62]	10.884	20.888	25.375	23.966	26.114	22.097
Greece					7.760	
Hungary	3.745	5.765	610	2.020	1.280	1.715
Ireland		250	425	140	160	300
Italy	4.330	3.655	4.505	4.935	5.180	6.035
Latvia	100	340	315	175	100	80
Lithuania						
Luxembourg		175	110	140	80	130
Malta	100	180	95	170	225	205
Netherlands[63]	4.400	4.400	6.400	5.990	5.900	6.570
Poland		850	790	905	1.145	1.020
Portugal	370	370	385	315	295	370
Romania	290	180	350	440	415	
Slovakia	1.020	1.020	1.020	1.020	1.020	1.020
Slovenia	115	110	175	100	180	370
Spain	12.295	10.960	9.280	9.470	11.730	
Sweden	1.945	2.545	2.490	2.945	885	
United Kingdom						

Source: Eurostat 2020

Table 10 shows that Germany has the highest number of forced returns, followed by France, Spain and the Netherlands. It is interesting to see that (almost) no figures are available for 2019 for Greece, Cyprus, Lithuania and the UK.

A first issue with the figures provided on Eurostat is that they do not contain any information about the sustainability of returns. Third country nationals who have been forcibly removed often re-migrate irregularly to Europe for a second, third or fourth time – even if the unpredictable and dangerous route through Libya and the Mediterranean was well known before they left (Kleist,

[62] Because Germany does not provide any data to Eurostat, these figures are based on the annual reports published by the Federal Government of Germany (Deutscher Bundestag, 2018b, 2019a, 2020).
[63] Because the Netherlands does not provide any data to Eurostat, these figures are based on the annual reports published by Dutch Ministry of Justice and Security: 'Rapportage Vreemdelingenketen' (2014-2019), section 6.2.1. ('Ketenbreed vertrek').

2018; Schuster and Majidi, 2015). Thus, return rates are only one aspect to understand the efficiency and feasibility of the EU Exit model. Without an idea about sustainability, through for example post-Exit monitoring, it is not possible to formulate conclusions.[64]

A second issue with regard to the figures provided in **table 10** (and table 9) is that they are not complete and are based on different calculative models. For example, in Germany and the Netherlands, and Spain, the total number of forced returns includes refusals at the border, while Denmark does not. Furthermore, Germany and the Netherlands also include transfers of persons to another Member State under Dublin Regulation in these total numbers, while Spain and Denmark do not.

4.2.1. How do Member States count forced return?

To provide an in-depth overview of how Member States count forced returns, we have looked into our four case studies: Germany, the Netherlands, Denmark and Spain. This overview substantiates current issues for a comparative analysis between Member States on forced return.

Germany
The German authorities count the following parameters for forced return: abschiebungen (deportations); Dublin Überstellung (Dublin transfers); zurückweisungen (return at the border, occuring when irregular Entry is detected at the border; false documents, entry ban, unsuccessful airport asylum procedure); and zurückschiebungen: deportations within six months after irregular Entry.

The Netherlands
The Dutch authorities count the following parameters for forced return (Ministerie van Justitie & Veiligheid, 2020): Aantoonbaar/gedwongen vertrek (forced/demonstrable departure) to a country of origin, an EU Member state or another country. The Dutch authorities also keep track of niet-aantoonbaar vertrek (non-demonstrable departure); which often implies that the third country national involved is not on the radar of the Dutch authorities, even though it is not clear if s/he has left the territory of the Netherlands. This last category is not included in table 9 and 10.

Denmark
In Denmark, forced return is counted as: 'accompanied departure', a procedure in which the police accompanies a third country national to a third country; 'ensured departure', a procedure in which the police witnesses the actual boarding of the plane; and 'voluntary departure', a situation in which the Danish authorities have received 'true and confident' information about the departure of a third-country national (Styrelsen for International Rekruttering og Integration and Udlændingestyrelsen, 2018: 17).

Spain
The Spanish authorities count the following parameters for forced return (Defensor del Pueblo, 2019: Anexo 2, Tabla 6): 'devoluciones', which refers to persons who are ordered to return after they attempted to enter Spain in an irregular manner (not via an official border crossing point, e.g. migrants who arrive by boat or plane or try to enter Spain in Ceuta and Melilla); and 'expulsiones', which refers to persons who are returned following an administrative procedure under the Immigration law based in most cases with regard to their irregular stay in Spain.

[64] ADMIGOV deliverable 2.4 will elaborate on the topic of sustainable re-integration, and assess the safety and security concerns of returnees' post-Exit.

Despite these differences between Member States, we can still come to the conclusion that there is a consistent gap between the number of persons issued with a return decision and the number of persons who have forcibly (and voluntarily, see next chapter) left the EU as a consequence of this return decision. Yet, because of the variations in the calculative models of Member States, a full and complete comparison of the figures on forced return is currently not possible.

4.2.2. Frontex return operations and investments

To better contextualize return rates and the cost-effectiveness of return procedures in the EU, this section takes into account existing data on return procedures by – and investments in – Frontex/the European Border and Coast Guard (ECBG). In 2004, Frontex was established to assist in the organization of joint return operations, since in most Member States this competence falls under the border guard authorities. Although return was not a priority at first, Frontex has gradually expanded its practice in this field as return procedures became more central to EU policy on irregular migration. Since 2011, upon the initiative of Member States, Frontex has the power to organize and coordinate joint return operations.[65] in 2016, Frontex was transformed into the European Border and Coast Guard (EBCG or Frontex), and will further strengthen its role in return operations in light of the 'migratory crisis of 2015'.[66] Frontex's mandate grew in November 2019 with the adoption of a new regulation:

> the Union framework in the areas of external border control, return, combating cross-border crime, and asylum still needs to be further improved. To that end, and to further underpin the current and future envisaged operational efforts, the European Border and Coast Guard should be reformed by giving the Agency a stronger mandate and, in particular, by providing it with the necessary capabilities in the form of a European Border and Coast Guard standing corps (the 'standing corps').[67]

This standing corps is meant to consist of up to 10,000 operation staff by 2027 and has executive powers. The new mandate also allows Frontex to provide technical support to Member States in return operations and provides Frontex with a wider scope of possibilities to organize joint return operations.

To speed up forced removals, Frontex organises joint return flights, in which multiple Member States participate. Where Frontex organised only 15 flights in 2008, the organisation organised 345 flights in 2018 (see table 11). Since its inception up to 2018, Frontex has coordinated or co-organised around 1250 return operations, in which almost 54,211 persons have been forcibly returned.

[65] Regulation (EU) No 1168/2011 of the European Parliament and the Council (25 October 2011), art. 9.
[66] Regulation (EU) No 2016/1624 of the European Parliament and of the Council (6 October 2016).
[67] Regulation (EU) 2019/1896 of the European Parliament and the Council (13 November 2019).

Table 11. Frontex return operations[68]

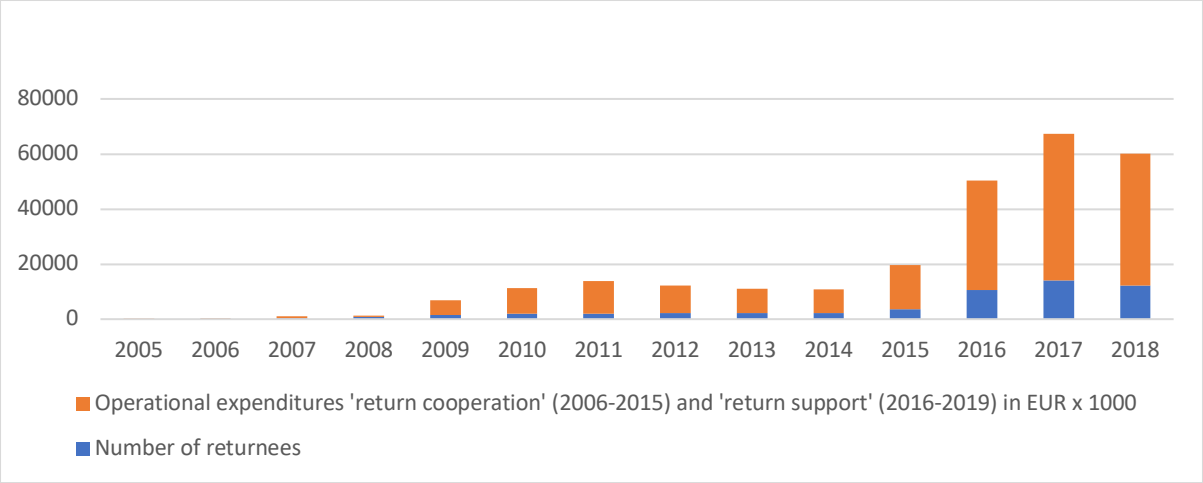
	Total number of charter flights coordinated or organised by Frontex	Number of returnees	Number of staff members	Operational expenditures 'return cooperation' (2006-2015) and 'return support' (2016-2019) in EUR x 1000
2005	**0**	0	44	80
2006	**4**	74	72	325
2007	**11**	387	130	600
2008	**15**	801	120	560
2009	**32**	1622	226	5.250
2010	**39**	2038	294	9.341
2011	**42**	2059	304	11.671
2012	**39**	2110	304	9.993
2013	**39**	2152	300	8.850
2014	**45**	2271	315	8.449
2015	**66**	3565	309	16.002
2016	**232**	10698	365	39.585
2017	**341**	14189	526	53.060
2018	**345**	12245	6.717	47.853
2019	n/a	n/a	n/a	63.042

In the yearly financial reports of Frontex between 2016 and 2019, 'Return support' is part of the breakdown of the costs of the operational activities. Nevertheless, in the general reports and budget reports between 2006 and 2015, budgets (or percentages of budgets) are included for 'Return Cooperation'. Frontex explains in their report 'Budget 2016' that new budget chapters 'A-37 Return support' and 'A-38 International and European cooperation' have been added as a new budget structure to reflect the EC decision on the changes to Frontex organization. Referring to return support instead of return coordination indicates the increased role of Frontex in the management of returns in the EU. For example, the 2016 European Border and Coast Guard (EBCG/Frontex) Regulation introduced new return support in the form of 'return interventions', a deployment of Frontex return teams to Member States to assist with return procedures (art. 54) and in the form of 'collecting return operations', where the means of transport and the forced-return escorts are provided by the country of return, a third country (Art. 51 (3)(4)).

[68] **Number of flights, number of returness and number of staff members:** frontex, *annual report 2006*, 2007, p. 15; frontex, *general report 2007*, 2008, p. 35–36; frontex, *general report 2009*, 2010, p. 18–19; frontex, *general report 2010*, 2011, p. 37–39; frontex, *general report 2011*, 2012, p. 51; frontex, *general report 2012*, 2013, p. 54; frontex, *general report 2013*, 2014, p. 18; frontex, *general report 2014*, 2015, p. 51–52; frontex, *general report 2015*, 2016, p. 53; frontex, *annual activity report 2016*, 2017, p. 71; frontex, *annual activity report 2017*, 2018, p. 25; *Frontex, annual acivity report 2018*, 2019. **Operational expenditres (return coordination/support):** Frontex budget 2015, p.6; Frontex budget 2006 (new draft budget 2006); Frontex budget 2007 (amended N2); Frontex budget 2008 (amended N2); Frontex budget 2009 (amended N1); Frontex budget 2010 (amended N2); Frontex budget 2011 (amended N3); Frontex budget 2012 (amended N2); Frontex Budget 2013 (amended N1); Frontex Budget 2014 (amended N2); Frontex general report 2014, 2015, p. 27; Frontex, general report 2015, 2016, p. 30 (our own calculation based on Frontex indication that return cooperation covered 14% of the operational costs that year); Frontex Budget 2016 (amended N2) Frontex Budget 2017 (amended N3): p.3; Frontex budget 2018 (amended N5); Frontex budget 2019, p.3 (will most likely still be amended).

In 2016, the budget for staff members also went up, to match the increased budget on returns (European Commission, 2015: 3-4). The new budget on international and European cooperation also includes cooperation with third countries on return procedures. Because it is unclear what the breakdown of the costs are, we cannot include an overview in this deliverable (although it is clear that the overall costs on return at Frontex are higher when staff and third-country return cooperation would be included. We used the information available on 'Return support' and 'Return cooperation' to make this table.

Figure 8. Frontex return operations x operational return expenditures (EUR)



Since Frontex was established in 2005, their organizational budget has been steadily growing. The biggest increase in the expenditures of the agency occurred in 2016, as a result of the so-called 'migration crisis' in 2015. The annual budget largely flows (70 to 75%) to operational activities, such as joint operations on land, sea and air borders and return support/cooperation.

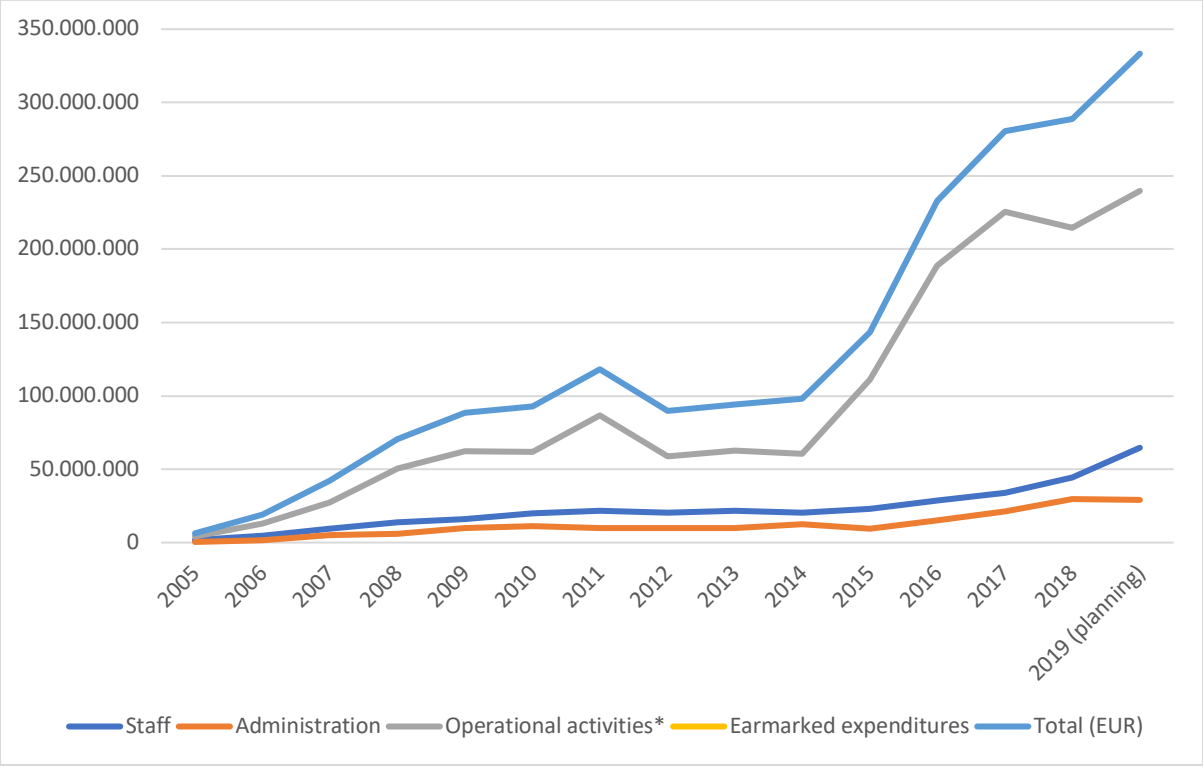
Table 10. Yearly Frontex expenditures (EUR)

	2005	2006	2007	2008	2009	2010	2011
Staff	1.722.700	4.700.000	9.397.500	13.860.000	15.956.000	20.085.000	21.447.000
Administration	410.000	1.400.000	5.256.500	5.937.000	10.044.000	11.150.085	10.009.500
Operational activities*	4.147.502	13.066.300	27.326.000	50.635.000	62.250.300	61.611.843	86.730.500
Earmarked expenditures							
Total (EUR)	6.280.202	19.166.300	41.980.000	70.432.000	88.250.300	92.846.928	118.187.000

	2012	2013	2014	2015	2016	2017	2018	2019 (planning)
Staff	20.550.000	21.641.000	20.472.000	22.768.000	28.850.000	33.686.000	44.369.000	64.640.000
Administration	10.077.000	9.758.100	12.590.000	9.304.000	15.010.000	21.221.206	29.643.558	28.955.000
Operational activities*	58.951.000	62.550.900	60.348.700	111.228.000	188.897.000	225.652.794	214.650.962	239.736.000
Earmarked expenditures			4.534.377					
Total (EUR)	89.578.000	93.950.000	97.945.077	143.300.000	232.757.000	280.560.000	288.663.520	333.331.000

Source: Frontex[69]

Figure 9. Yearly Frontex expenditures (EUR)



[69] Frontex budget 2006 (new draft budget 2006); Frontex budget 2007 (amended N2); Frontex budget 2008 (amended N2); Frontex budget 2009 (amended N1); Frontex budget 2010 (amended N2); Frontex budget 2011 (amended N3); Frontex budget 2012 (amended N2); Frontex Budget 2013 (amended N1); Frontex Budget 2014 (amended N2); Frontex Budget 2015 (amended N3); Frontex Budget 2016 (amended N2) Frontex Budget 2017 (amended N3): p.3; Frontex budget 2018 (amended N5); Frontex budget 2019, p.3 (will most likely still be amended).

In table 10/figure 9, the operational activities between 2006 and 2019 are specified by Frontex as: land borders, sea borders, air borders, return operations/co-operation/support, risk analysis, Frontex Situation Centre, Training Research & Development, Eurosur program, Pooled Resources & EBGT, Misc. operational activities, operations response, situational awareness and monitoring, research and innovation, fundamental rights office, international and European cooperation.

Over the years, Frontex saw an increase in its (budgetary) focus on returns, with a budget of approximately 6,3 million in 2005 to a budget of approximately 300,3 million in 2019. Thus, the Frontex expenditures increases 53 times in 14 years. However, Frontex's management indicates that the increased budgets did not always mirror realistic implementation. In the annual activity report 2018, Frontex notes that the budget for return operations was not all spent because 'the initial budget proved to be over-estimated for some Member States' (Frontex, 2019: 74). And in 2017, Frontex' management indicates:

> EUR 17 million was returned from Title 3, where the budget for return-related activities and the non-mandatory operational reserve had been overestimated and did not keep pace with real developments (...) Although Frontex had increased its operational activities and achieved significant improvements, the budgetary allocation also could not be fully used due to political constraints with regard to return and readmission activities (Frontex, 2018)

What these developments and political restraints were is not specified by Frontex, although with regard to return and readmission the EU traditionally considers a lack of cooperation with third countries an obstacle to effective removal (Council of the European Union, 2015).

4.2.3. Frontex return operations and legal safeguards

Frontex coordinates and organizes return operations (which includes one Member State), joint return operations (which includes multiple participating Member States) and provides practical and financial assistance to participating states. One risk such operations inherently involve is the risk of collective expulsion. The European Court of Human Rights (ECtHR) explains the concept of collective expulsion in light of article 4 of protocol 4:

> any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group.[70]

Joint return operations may tempt Member States to accelerate proceedings to be able to be included in a joint return flight (Majcher, 2020). If Member States in this process fail to assess the specific individual circumstances of each person or impede on legal or linguistic assistance for the third country national involved, a joint return operation may take the form of a collective expulsion. While this is a viable risk, neither Council Decision 2004/573 on the organization of joint flights, the Frontex Regulation, nor the Returns Directive contain relevant legal safeguards. Yet, article 4 of Protocol 4 and article 19(1) of the Charter prohibit collective expulsions and apply to all Member States. Majcher therefore points out that Member States are obliged to take into consideration the individual circumstances of every person in every return decision and its implementation (Majcher, 2020).

[70] ECtHR, *Andric v. Sweden*, 45917/99, admissibility decision, (February 23, 1999); ECtHR, *Conka v. Belgium*, 51564/99, (February 5, 2002), para. 59; ECtHR, *Hirsi Jamaa and Others v. Italy*, 27765/09, GC, (February 23, 2012), para. 166.

Another risk to the protection of legal safeguards during joint return flights is the lack of (transparency on) the monitoring of these flights. In 2015, the Dutch Ombudsman researched joint return operations organized by Frontex in the Netherlands and noted that there was no monitoring or inspection on Frontex flights. Without the monitoring of the conduct of escorts and guards from different Member States, the Ombudsman pointed out, it is not possible to maintain common standards in all EU Member States. The Ombudsman recommended a coordinated supervision, in which the supervisor on board can supervise the activities of escorts from all Member States who are part of the joint return operation. As of 2020, there is no independent monitoring body; to the contrary, Frontex monitors its own return operations.[71] While this is an improvement to before, the goals and criteria for their monitoring are unclear and Frontex does not publish anything about their monitoring activities. It is furthermore questionable whether Frontex should monitor its own return operations, because of the risk of institutional bias.

This is problematic because the EU Common Guidelines only mention that, during return operations:

> Restraint will be used appropriate to the level of resistance faced. All such restraints are subject to the authority of the captain, who is in charge of the aircraft in connection with all safety and security measures. Authorised restraints and equipment are allowed on board as indicated in the flight offer. Offensive weapons are prohibited.[72]

This broad description leaves much leeway for the use of restraint to escorts and guards, and as long as there is no independent monitoring or supervision, it is unclear how escorts and guards will interpret these guidelines. Therefore, it is also unclear to what extent their conduct is in line with international and EU human rights standards and whether common standards in all EU Member States are maintained.

Return cooperation between Frontex and Member States also forms a more general risk to the protection of legal safeguards. There are many different forms of cooperation, and it is unclear whether similar common standards apply under all circumstances. The Dutch Transportation Services (DV&O) for example work together with Frontex in Hungary, Lesbos Sicily and Lampedusa to support the border security team; DV&O provides its own vans and personnel (Frontex, 2018).[73] The cooperation of Frontex with Italy takes on a different form. Frontex for example provides the Italian authorities different types of funding. For example, in 2015, the Italian authorities received **8.900.000,** EUR for rescues at sea and 1.200.000, - EUR for expulsions. In 2016, these figures were **6.200.000, -** EUR for rescue at sea and **1.900.000, -** EUR for expulsions. And in 2017: **4.100.000, -** EUR for rescue at sea, **3.100.000, - EUR** for expulsions (Corte dei conti, 2018). Rescue at sea funding was allocated to the Italian national police, the financial guard and the deployment of personnel for the joint operations coordinated by Frontex. Funding for expulsions was allocated to forced return procedures and state police escorts (ibid.). In both the cooperation between the Netherlands and Frontex and between Italy and Frontex, it is clear that Frontex has a prominent role in the coordination and organization of procedures related to forced return, but we have not found any information online on how Frontex maintains common standards in the implementation of these procedures. There is thus a lack of transparency on how, and to what extent, common standards are maintained.

[71] Frontex Annual Activity Report (2018), p. 27.
[72] Council Decision 2004/573/EC, Common Guidelines.
[73] The DV&O also mentions this cooperation with Frontex in an introductory movie: Dienst Vervoer & Ondersteuning, 'Kennismakingsfilm DV&O 2020' (WWW-document), URL https://www.youtube.com/watch?v=oW447lqyzkk (accessed 8 May 2020).

Finally, the extensive data sharing powers of Frontex are another potential risk factor for the legal safeguards of returnees. Frontex is tasked with operating a centralized return management platform, which also allows for automatic data transfers, such as personal data and information on individual asylum interviews (Gkliati, forthcoming). If such information is shared with a country that a person was originally fleeing from, this has the potential to lead to retaliation measures against returnees and their families, and can therefore impede on their safety.

4.2.4. Return and readmission

Return procedures are for a big part dependent on the acceptance of third countries to admit returnees. Without cooperation of destination countries, the EU and Member States cannot complete the return procedure; the flight may still go to the destination country, but if this country refuses Entry, the returnee will take the next flight back to Europe. Along these lines, the EU considers the main reasons for non-return to relate to practical problems in the identification of returnees and in obtaining the necessary documentation because of a (perceived) lack of cooperation of destination countries on readmission (European Commission, 2014). These obstacles are understood to hamper effective return procedures and to result in low return rates.[74]

In 2016, the Commission acknowledged – in a new Communication – that cooperation with third countries is essential to ensuring effective and sustainable returns and established a new Partnership Framework with third countries under the European Agenda on Migration (European Commission, 2016). Following this 2016 Communication, different informal arrangements on readmission have been concluded with, amongst others, Afghanistan, Bangladesh, Ethiopia, Ivory Coast, Guinea, and Turkey. With regard to these arrangements, the European Parliament's LIBE Committee has voiced serious concerns, because they were concluded informally and without parliamentary scrutiny, without democratic oversight and respect to legal review. In addition to the informalization of return and readmission, the LIBE Committee is also concerned about the conditionality of readmission arrangements, noting that the funding earmarked for development cooperation is more and more redirected away from development goals, to put pressure on destination countries to cooperate on return and readmission (European Parliament - Committee on Civil Liberties, Justice and Home Affairs, 2020).

Because of the lack of legal review of these informal arrangements, it is also unclear to what extent they include legal safeguards for returnees; to return in a safe, orderly and dignified manner – in line with the New York Declaration. Therefore, the LIBE Committee has recommended the European Commission to engage in post-return monitoring (ibid.).

That legal safeguards for returnees are not always protected in return and readmission arrangements follows from the EU-Turkey deal, concluded in March 2016. First of all, the legal status of the EU-Turkey agreement is unclear. Neither the European Parliament nor national parliaments were involved in its creation. The final form was limited to a press statement. Second, the arrangement assumes that Turkey is a safe country to return to for asylum seekers. However, the UNHCR has no insight into the treatment of people being returned from Greece to Turkey, because the Turkish authorities do not allow UNHCR to track these persons.[75]

[74] Council of the European Union, *Note from Presidency to Delegations: Return and Readmission Policy*, 7156/15 (13 March 2015).
[75] UNHCR, Representation in Greece, GREAT/HCR/973: *'Response to query related to UNHCR's observations of Syrians readmitted to Turkey'*, 23 december 2016.

4.3. Investments forced Exit

Similar to pre-removal detention and other data on forced return, it is not easy to gather data on the investments made by Member States. In this section, we look at the investments in forced Exit by the Dutch and German authorities. What follows is an overview of various types of investments that are difficult to compare.

4.3.1. The Netherlands

Between 2013-2018, the numbers are based on the financial year reports by the Dutch government. Between 2019 and 2022, the numbers are based on budgetary planning (Ministerie van Justitie & Veiligheid, 2017a, 2018b, 2019c, 2019b). To examine the expenditures of the Dutch Repatriation and Departure Service (DT&V) over a span of ten years, we have filed a freedom of information request with the Dutch authorities (for the years 2018-2022) in January 2020. To date, we have not received a reply.

Table 11. Investments forced removal (including flights, management, appeal) in the Netherlands (EUR)

The Netherlands - costs forced exit (incl. flights, management, appeal)	2013	2014	2015	2016	2017
'Aliens departures'	11.545.000	13.086.000	13.384.000	8.018.000	19.737.000
Expenses of the Repatriation and Departure Service (DT&V) personnel and facilities (housing and ICT).	51.187.000	46.028.000	46.217.000	50.065.000	57.172.000
	2018	2019	2020	2021	2022
'Aliens departures'	16.012.000	8.161.000	8.856.000	8.760.000	9.372.000
Expenses of the Repatriation and Departure Service (DT&V) personnel and facilities (housing and ICT).	freedom of information request	freedom of information request	freedom of information request	freedom of information request	freedom of information request

Source: (Ministerie van Justitie & Veiligheid, 2017a, 2018b, 2019c, 2019b)

Overall, investments in forced Exit are quite high, while return rates are quite low. At the same time, there are multiple failed deportations, leading to high cost input without an operational outcome. In the Netherlands in 2016, 5220 flights were booked of which 2090 were cancelled; in 2017, 6860 flights were booked of which 3150 were cancelled; and in 2018, 6670 flights were booked of which 3260 were cancelled.[76]

4.3.2. Germany

On a national level the German authorities do not systematically gather (or do not systematically present) data on the costs dedicated to the operations of the Exit model, detention for deportation or Exit counselling. Due to the federal system, such responsibilities and their implementation lie with

[76] NOS, 'Helft uitzettingen asielzoekers per vliegtuig mislukt' (WWW-document), URL: https://nos.nl/artikel/2292031-helft-uitzettingen-asielzoekers-per-vliegtuig-mislukt.html (accessed 8 October 2020).

each federal state individually. Yet, the federal states do not gather data on their investments systematically, and even though there have been several inquiries by members of parliament in past years both federal and national governments do not show intend on doing so prospectively.

The only budgetary costs and planning on a national level are directed at refugees, namely the so-called "Flüchtlingsbezogene Belastungen" (Refugee-related Expenditures). These budgetary costs, for example, include budgets for the federal states and municipalities working with refugees, admissions, accommodation, and registration in the asylum procedure, social benefits and integration services (see table 12 below).

Table 12. Refugee-related investments by the Federal Republic of Germany (EUR)

	2019	2020	2021	2022	2023
Tackling the roots of migration	8,3	8,3	7	7,2	7
Admission, accommodation and registration in the asylum procedure	1,1	1,2	1,2	1,2	1,2
Integration Services	2,8	2,6	2,2	2	1,9
Social benefits asylum procedure	4,6	5	5,1	5,2	5,2
Relief for federal states and municipalities	6	3,7	3,2	0,4	0,4
Total refugee-related financial burdens on the federal budget	22,9	20,8	18,7	16	15,8
Total (specified in billions)	45,7	41,6	37,4	32	31,5

Source: (Bundesministerium der Finanzen, 2018)[77]

In addition to the fact that there is no further breakdown of these costs – which makes these numbers quite unclear – the descriptions do not refer to the costs dedicated to the operations of the Exit model. Federal states and municipalities can prescribe to a part of the overall budget, but it is not clear how these are spent and what the destination of this budget must be in the terms of the German authorities. Furthermore, the budgetary planning and costs are only directed at refugees, which seems to preemptively exclude all migrants who did not seek asylum.

On 16 January 2016, the German authorities responded to questions asked by members of parliament on the costs of forced exits per year between 2012 and 2015. In an official document (Deutscher Bundestag, 2016a: 104) an overview is provided about these costs per federal state. Some federal states gave a specific breakdown of the costs of forced exits, some gave no specifications or answer at all. Therefore, it is not possible to provide a complete national overview of the costs dedicated to the operations of the German Exit model between 2012 and 2015. It is nevertheless possible to combine some of the costs per federal state in this period in an overview table:

Table 13. Investments forced removal in Germany (EUR)

Federal State	2012	2013	2014	2015
Baden-Wuerttemberg	1.458.251,68	1.425.395,15	1.617.599,41	
Bavaria				

[77] The Federal Government of Germany notes that this table includes preliminary estimates.

Berlin[78]	342.234,00	411.510,00	385.120,00	
Brandenburg	164.985,74	130.224,73	48.834,12	19.019,19
Bremen				
Hamburg				
Hesse				
Mecklenburg-Western Pomerania	272.364,42	228.964,82	330.290,61	117.805,23
Lower-Saxony				
North Rhine-Westphalia	2.484.769,03	2.365.973,57	2.529.438,35	2.675.265,64[79]
Rhineland-Palatinate	420.285,30	2.020.923,29	333.874,52	
Saarland				
Saxony				
Saxony-Anhalt				
Schleswig-Holstein[80]	314.200,00	416.900,00	346.200,00	450.000,00
Thuringia				
Total (EUR)	5.457.090,17	6.999.891,56	5.591.357,01	3.262.090,06

Table 13 shows the lack of disaggregated data on forced exits in Germany, which makes a comprehensive analysis impossible. Only seven of the sixteen federal states provided data, all of which are measured differently and include or exclude different tasks. Furthermore, it is not possible to find data on the number of forced exits per year in the federal states, which would have allowed for a conservative estimate of the total costs related to forced Exit. Such data is not publicly available, but would have to be inquired from each federal state.

The investments in North Rhine-Westphalia (NRW) are relatively high and therefore deserve a closer look. NRW is the most densely populated federal state, and in 2015, NRW hosted 20% of the total number of refugees in Germany.[81] It is therefore possible that NRW also hosted the highest number of third-country nationals with an order to leave – although it is not possible to verify this, because we have only found national data in this regard on Eurostat. Furthermore, it is remarkable that the investments for the first half of 2015 already exceed the annual investments made in 2012, 2013 or 2014. The cost breakdown provided by NRW shows that investments mainly grew with regard to charter flights, regular flights for forced removals by land, and 'general [Exit] costs' (Deutscher Bundestag, 2016a). This sharp increase can be understood in light of the newly developed approach by NRW called 'Integriertes Rückkehrmanagement NRW' ('Integrated Return management NRW'),

[78] Staff costs and costs related to prior non-police deportation procedures are not included.
[79] The reporting date is 31 of July 2015. Numbers include reimbursments to central immigration offices and costs for deportation by land.
[80] Costs for 2015 show the planned budget, not the actual costs.
[81] Deutsche Welle, 'North Rhine-Westphalia is home to one-fifth of Germany's refugees', 21 September 2015 [WWW-document]. URL https://www.dw.com/en/north-rhine-westphalia-is-home-to-one-fifth-of-germanys-refugees/a-18727863, (accessed 20 May 2020).

which was implemented in 2016 and aimed to strengthen the capacity of NRW municipalities to increase voluntary and forced Exit from Germany (Die Landesregierung Nordrhein-Westfalen, 2016)

On 16 July 2019, the German authorities responded to questions about the theme of forced Exit, asked by members of parliament.[82] In a document called 'Modalitäten von Abschiebungen', they inquired the total costs of forced Exit by air, land, and sea in EU Member States by means of transport and target country between 2013 and 2018 – in legal terms this means the total costs of forced Exit under Dublin Regulation III. The German authorities did not provide a complete answer to this inquiry, but they did provide the total costs security escort for Exit operations, 'Sicherheitsbegleitung bei Rückführungen'. It is not clear what the breakdown of these costs are, which federal states received what amount of the budget, and whether these budgets only include transfers or forced exits under the Dublin III Regulation or whether they also include forced Exit to third countries, outside of the EU.

Table 14. Security escort for removal operations in Germany

Sicherheitsbegleitung bei Rückführungen (Security escort for Exit operations), specified in millions €1.	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**
	3,298	2,674	4,173	5,001	5,388	8,21

(Deutscher Bundestag, 2019)

On page 15 of this document, the German authorities point out that they have no knowledge of the total national costs of forced Exit in the period 2013-2018. They do indicate that in 2018, the highest costs for a chartered aircraft flight as part of a single forced Exit was EUR 11,148, - (from the federal state of Bavaria to Russia target country was Russia). The highest costs for a chartered aircraft flight as part of a collective forced Exit amounted to EUR 462,685, -. The migrants aboard were deported to Pakistan. The federal states involved were Berlin, Brandenburg and Hesse.

Overall, even though the Federal Government of Germany does not gather and present data on forced Exit in a consistent or cohesive way, the data that is available online does at least provide an indication of the investments in forced Exit on federal and state level. At the moment of writing (September 2020), no comprehensive disaggregated data on the investments in forced Exit is available.

4.3.3. Investments in forced return: Frontex, the Netherlands and Germany in comparative perspective

The investments in forced Exit and return proceedings in Frontex, the Netherlands and Germany give a glimpse into how costly Exit governance, and how investments in return procedures grew steadily over the past decade. Across the EU, these investments go into ministries (immigration and/or repatriation services), (aliens) police, armed forces, transport services, airline companies, Frontex, and private contracts with security personnel and NGOs. The exercise of gathering data on these investments is overly time consuming. If there are financial reports, they often have to be connected to the more substantive yearly reports of an institution or organization to make sense of the budgets or cost breakdown. In the Netherlands and Germany, there is some access to data on investments, but due to a lack of cost breakdown and missing data, these data are not fully transparent. Similar to

[82] These questions were asked by the following members of parliament: Stephan Thomae, Grigorios Aggelidis, Renata Alt, other MPs and the FDP parliamentary group.

the Eurostat data on forced return, it is difficult to make a comparison between the Netherlands and Germany, simply because the available data on investments is based on different indicators (the Netherlands provides some insight into the costs of personnel working on return, while Germany provides more general numbers without a breakdown of the costs).

4.4. Unclear legal framework for 'hot returns' (Entry/Exit)

It is at the borders of EU Member States where Entry and Exit governance meet. So-called 'pushbacks', 'border rejections' or 'hot returns' of third-country nationals may occur when a third-country national does not meet the conditions for regular Entry, crosses borders irregularly, is apprehended by border authorities or police, and pushed-back across the border or forcibly removed to another country. This practice raises questions about the legal framework and human rights obligations of EU Member States towards irregular migrants.

One pressing issue has been highlighted by our colleagues in deliverable 1.2, and concerns the practice of pre-emptively issuing deportation and detention orders for persons who are refused Entry in Brussels Airport or for persons who are deemed unlikely to receive international protection or refugee status in Lesvos. In addition to the pre-emptive deportation order, this is also problematic because Entry procedures at the border often differ from regular procedures as Entry decisions are often taken by private authorities of air carries or public border and migration enforcement authorities (Jeandesboz et al., 2020: 86-91). The border procedure at Brussels airport provides an illustrative example, where police officers take admissibility decisions because there is no representative of the Immigration Office present at Brussels Airport. Only if and when a third-country national requests asylum, the Immigration Office decides from a distance – albeit solely based on the report written by the police officer (ibid., p.91). Pre-emptive deportation orders and decisions based on the judgement of police officers or private authorities are a concern because it impedes on the legal certainty and predictability of Entry and Exit into the EU.

Another pressing issue is the contested legality of 'hot returns' at EU borders. In 2019, a domestic court in Italy ruled in the Vos Thalassa case that Italian pushback operations to Libya violated international human rights law.[83] Yet, on 13 February 2020, the Grand Chamber of the European Court of Human Rights (ECtHR) ruled that 'border rejections' can be made by Member States as long as there are alternative mechanisms of Entry.[84] In this judgement, the alternative Entry mechanism mentioned by the ECtHR referred to the possibility to request asylum at border-crossing points and embassies. Yet, whether these are effectively – and internationally – monitored for accessibility is doubtful. The practice of Moroccan border guards preventing migrants in Melilla to reach border-crossing points – as reported by UN Special Representative Tomáš Boček – is a case in point.[85] Furthermore, access to asylum procedures and international protection in embassies around the world cannot simply be assumed. In the case M.N. and others v. Belgium, the ECtHR even ruled that the Belgian embassy in Beirut was not obliged under international human rights law to grant a family

[83] Vos Thalassa – Diciotti (112/2019), First Instance Court of Trapani (GIP), 23 March 2019, https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/GIP-Trapani%20%281%29.pdf.
[84] ECtHR, ND and NT v Spain, 8675/15 and 8697/15 (13 February 2020), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-201353%22]}.
[85] As was reported by UN Special Representative Tomáš Boček in: "Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, to Spain, 18-24 March 2018 [SG/Inf(2018)25]", https://www.ecoi.net/en/document/1443311.html#CLEAN_Toc521315632.

international protection visa.[86] This means that in practice there are no alternative mechanisms available for third-country nationals seeking international protection and legal Entry into the EU (ibid.: 164).

Therefore, the legality of border rejections without effective access to an asylum procedure is a contested issue, also amongst (dissenting) judges at the ECtHR. In another case about border rejections in Slovakia, three ECtHR dissenting judges that the absence of an embassy procedure indicated how Slovakia had "not provided sufficient access to means of legal entry". These judges concluded:

> "It is vital that the limited scope of the Grand Chamber's judgment in *N.D. and N.T. v. Spain* be respected. An overly broad interpretation of the judgment would damage the 'broad consensus within the international community' concerning compliance with 'the Convention guarantees, and in particular … the obligation of non-refoulement' (see *N.D. and N.T. v. Spain*, […], § 232)".

While the obligation of non-refoulement is a hard obligation, the practice of 'hot returns' and border rejections continue to occur at all EU borders.[87] The Border Violence Monitoring Network (BVMN), an independent Network of NGOs and associations in the Balkan regions and in Greece, has also stressed how Member States, such as Greece, Hungary and Croatia have increased the use of violence against migrants over the past few years.[88] Such practices raise serious questions about the legal framework to address potential violations of international and European human rights law.

4.5. Conclusion

In this chapter, to the extent possible, we have gathered and examined current data on forced return and provided context to the figures. We cannot present a fully-fledged comparative analysis on the effectiveness and feasibility of forced return in this deliverable because the data is based on different calculative models, a considerable amount of data is missing and because several aspects of return procedures are untransparent.

We did find general low return rates; a consistent gap between the number of persons issued with a return decision and the number of persons who have forcibly left the EU as a consequence of this return decision. Furthermore, we found growing investments in the operations of the Exit model, but a low cost-effectiveness of return procedures. With regard to Frontex, we also found that their organizational budget has been steadily growing. Yet, various concerns with regard to legal safeguards for returnees in Frontex operations as well as in EU readmission arrangements, and with respect to 'hot returns', are reason to first evaluate current return procedures before expanding on

[86] ECtHR – M.N. and others v. Belgium, Application no. 3599/18, 5 May 2020, https://www.asylumlawdatabase.eu/en/content/ecthr-%E2%80%93-mn-and-others-v-belgium-application-no-359918-5-may-2020.

[87] The New York Times, 'Europe's Migration Crisis Has Ebbed. Croatia Wants to Keep It That Way' (24 January 2020) [WWW-document], URL https://www.nytimes.com/2020/01/24/world/europe/bosnia-european-migrant-crises.html (accessed 21 October 2020) and: BBC, 'Greek coast guards fire into sea near migrant boat' (2 March 2020) [WWW-document], URL https://www.bbc.com/news/av/world-europe-51715422/greek-coast-guards-fire-into-sea-near-migrant-boat (accessed 21 October 2020).

[88] For more information, read the reports written by the Border Violence Monitoring Network here: https://www.borderviolence.eu/category/special-reports/ (accessed 21 October 2020).

them. It is also unclear to what extent current returns to third countries are sustainable, although academic research points that re-migration to the EU after a return procedure is not uncommon.

Furthermore, we found that in the Netherlands and Germany, there is some access to data on investments, but due to a lack of cost breakdown and missing data, these data are not fully transparent and difficult to compare. This lack of data has to do with the fact that national authorities are not required to monitor or report on the cost-effectiveness of enforced return. A requirement for national authorities to gather such data would provide useful insights. This would also improve the discussion about the effectiveness of returns, because effectiveness would not only be measured on the basis of a return rate, but also on the basis of cost-effectiveness, the sustainability of returns as well as the legal safeguards provided to returnees.

5. Voluntary Exit

In this chapter, we examine the legal and operational infrastructures of voluntary Exit, including assisted voluntary return (AVR), as well as the data on – and the investments made in – voluntary Exit over the past five to ten years. We also try to relate to the estimated 'success rate' to the European Commission's stated goals on return, the number of re-entering deportees and the peacefulness of procedures.

5.1. Legal infrastructures

Voluntary Exit is an alternative form of return formally taken up in the Return Directive. The Return Directive defines voluntary Exit ('voluntary return' or 'voluntary departure') as "compliance with the obligation to return within the time-limit fixed for that purpose in the return decision" (art. 3.8). The preamble of the Return Directive points out that 'voluntary return should be preferred over forced return and a period for voluntary departure should be granted' and that 'Member States should provide for enhanced return assistance and counselling (...).' Because voluntary Exit implies compliance with an obligation to leave, there is no actual element of (free) choice or voluntariness of such returns (Kalir, 2017).

In that sense, voluntary Exit as taken up in the Return Directive differs from 'voluntary repatriation', as defined by the UN High Commissioner for Refugees (UNCHR), one of the durable solutions alongside reintegration in the host country and resettlement. Essential to the repatriation process is the principle of voluntariness which implies the absence of physical, psychological and material pressure on a refugee.[89] Voluntary Exit may be preferred over forced Exit because it is often linked to an Assisted Voluntary Return (AVR) program, which may include return counselling, logistical support, assistance at the airport, financial return assistance, and/or the possibility to enroll for a special reintegration program.[90] Furthermore, voluntary Exit may also be the preferred option, because the alternative would be pre-removal detention, forced Exit, an entry ban and/or withdrawal of socio-economic support (Majcher, 2020: 548).

In article 9 of the recast of the Return Directive proposed by the Commission in September 2018, the minimum voluntary Exit period of seven days was deleted, which would permit Member States to set the period for voluntary departure at less than a week. In this recast the Commission also proposed several cases in which it would become mandatory not to grant a period of voluntary departure. Other revisions that promoted forced returns over voluntary returns in the recast of the Return Directive can be found in article 13, 16 and 22. With these revisions, opportunities for forced return would increase while decreasing the likelihood of voluntary return, without any assessment of the effectiveness on the return ratio. This shift towards forced returns runs contrary to the principle of proportionality that, in accordance with CJEU jurisprudence, must be part of all return procedures. Furthermore, in an assessment of the proposed Return Directive (recast), the European Parliamentary Research Service points out that 'there is no clear evidence supporting the Commission's claim that its proposal would lead to more effective returns of irregular migrants' (Eisele et al., 2019: 9).[91] The European Parliamentary Research Service also points out that this shift

[89] UNHCR, 'voluntary repatriation' [WWW-document]. URL https://www.unhcr.org/voluntary-repatriation-49c3646cfe.html (accessed 26 May 2020).

[90] These types of AVR programming can for example be found in Norway, Sweden, the Netherlands, Denmark, Belgium and Germany (van Houte and Leerkes, 2019), p. 14.

[91] A similar discussion was held in Germany, where a proposed return law by the Ministry of Interior was criticized by the Federal Minister of Justice, Katarina Barley, because 'it did not necessarily result in an improvement'. Der Spiegel, 'So will Seehofer mehr Abschiebungen durchsetzen' 14 February 2019 [WWW-

towards forced return also runs contrary to practitioners' experiences with regard to effective and sustainable returns (Eisele et al., 2019: 10).[92]

5.1.1. Assisted Voluntary Return (AVR)

Almost all Member States bound by the Return Directive run Assisted Voluntary Return (AVR) programs (European Commission – DG Home Affairs, 2013).[93] In all Member States except for Cyprus, the International Organization for Migration (IOM) carries out AVR programs. Such programs have been implemented by IOM since the 1970s, long before cooperation on voluntary Exit between IOM and EU Member States was a political priority. In 2011, a total of 19 out of 22 countries covered in an EMN study outsources AVR programs to IOM, and in nine country the IOM worked together with other NGOs and local authorities (European Migration Network, 2011). EMN figures in a more recent study in 2015 show that IOM carried out 30 out of 45 AVR programs in 19 of the 21 countries studied that year (European Migration Network, 2016b).

5.2. Investments voluntary Exit

Because there currently is no obligation for Member States to collect data on voluntary Exit and no harmonized procedure for recording data, it is not possible, within the scope and temporal limit of this report, to make a coherent overview of the budgets for voluntary return in the 27 Member States of the EU. Nonetheless, the desk research for this report on Germany and the Netherlands provides a sliver of an insight into the budgets on voluntary Exit, and furthermore shows how difficult it is to gather data on this subject.

5.2.1. Germany

The costs of voluntary Exit programs are not systematically recorded in Germany. On national level the only available budget on voluntary Exit that are systematically recorded is the budget spend on the 'Reintegration and Emigration Program for Asylum-Seekers in Germany' and the 'Government Assisted Repatriation Program' (REAG/GARP). REAG was initiated by the Federal Government and the Länder in 1979 and the GARP followed in 1989. The IOM is responsible for the implementation of these programs and is commissioned by the German Ministry of Interior and funded by the European Union's Asylum, Migration and Integration Fund (AMIF) (Wissenschaftliche Dienste Deutscher Bundestag, 2018: 4). Eligible for funding are asylum seekers-rejected asylum seekers, third-country nationals, and victims of forced prostitution and human trafficking, in case the person does not have the necessary funds to return to his or her country of origin.

Costs covered by the REAG/GARP program are transportation costs, gasoline costs (**250, - EUR**), other travel costs (**200, - EUR** for adolescents and **100, - EUR** for children under the age of twelve). Persons from the Western Balkans can only apply for transportation costs (ibid.: 5).

Since 2017 asylum-seekers and rejected asylum-seekers can apply for the voluntary return program called 'Starthilfe Plus'. Between the start of the program in February 2017 to June 2018, a total of

document]. URL https://www.spiegel.de/politik/deutschland/grosse-koalition-horst-seehofer-legt-abschiebegesetz-vor-a-1253272.html (accessed 27 June 2020).

[92] Another important report to mention in this light is: UNHCR, Return arrangements for non-refugees and alternative migration options, Chapter 9, 2010.

[93] In 2013: Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary Italy, Lithuania, Luxembourg, Latvia, the Netherlands, Portugal, Romania, Slovakia, Spain, as well as Switzerland, the UK and Ireland.

11,618 persons were funded through this program. The program encourages persons to apply while their asylum procedure is still pending. Persons who enroll for the program before the end of the asylum procedure receive **1,200 EUR** while persons who enroll after a rejection receive **800 EUR**.

Since March 2017, the 'Perspektive Heimat' program, funded by the Federal Ministry for Economic Cooperation and Development (BMZ), has granted persons from Albania,
Kosovo, Serbia, Tunisia, Morocco, Nigeria, Ghana, Senegal, Iraq, Afghanistan or Egypt
Return and reintegration support. Considering the intended voluntariness of the return program 'Perspektive Heimat', the choice to include countries such as Afghanistan, Iraq, Tunisia, Morocco, Nigeria and Egypt is not an obvious one, seeing that these countries are not on Germany's 'safe countries of origin' list.[94] In each of the 'Perspektive Heimat' countries, centers were launched to offer education, professional training, and support to enter the local job market. In these countries, the centers are open to all persons interested in the program, by which the German federal government both promotes return and hopes to prevent emigration through strengthening the labor market. Between 2017 and 2020, a total of **150 million EUR** was made available for this program. In that same period, 3,200 people found employment through the program and 14,500 people returned (Wissenschaftliche Dienste Deutscher Bundestag, 2018: 6-7).

The federal government also provides a reintegration program (URA) for Kosovar returnees in a 'return center' in Pristina. The program is implemented in the form of emergency aid, medical treatment costs or the granting of a rent subsidy.

Other than the budgetary costs for the national programs mentioned above, there is no overview of the voluntary Exit programs run by the federal states (the Länder). The reason for this is that the federal states run their own funding schemes and are not obligated to share this on a national level. In addition, each federal state has different regulations on who is able to submit AVR requests. For instance, in Berlin all REAG/GARP applications have to be made through the "Landesamt für Flüchtlingsangelegenheiten" (State office for Refugee related matters) under the authority of the governing regional executive body. On the contrary, in North-Rhine Westphalia independent NGOs, immigration offices, social welfare offices, etc. are allowed to file such requests. Furthermore, in some federal states regional AVR programs are being run by municipalities, diffusing clarity on the responsibility with regard to these programs even further.

Eventually, the various funding schemes paired with the lack of a systematic record not only lead to a black box in terms of how much money is being spend on voluntary Exit but also on the number of migrants leaving the country under such programs.

The federal government of Germany has also provided some insight into the budgets reserved for IOM (Deutscher Bundestag, 2016: 7). In a response to parliamentary questions in September 2016, the federal government points out that IOM 'return counselling' is part of a cooperation between the federal state of Berlin and Brandenburg is by no means a national program. The only IOM-funding known to the federal government is the following one, based on a subsidy provided by the Asylum, Migration and Integration Fund (AMIF), which was set up by the European Parliament and the Council for the period 2014-20, with a total of EUR 3,137 billion for the seven years.

[94] Bundesamt für Migration und Flüchtlinge, 'Sichere Herkunftsstaaten' [WWW-document], URL https://www.bamf.de/DE/Themen/AsylFluechtlingsschutz/Sonderverfahren/SichereHerkunftsstaaten/sichereherkunftsstaaten-node.html (14 November 2019).

Table 15. Budget for voluntary return programming in Berlin/Brandenburg*

Projekt	EU-Zuwendung AMIF[1]	Kofinanzierung Land Berlin	Kofinanzierung Land Brandenburg
Rückkehrberatungsstelle Berlin/Brandenburg – Reintegration Vietnam/ Kenia	349.993,08 EUR	156.000,00 EUR	45.859,23 EUR

Source: (Deutscher Bundestag, 2016: 7)
** Table from an official document written by the Federal Government of Germany about their cooperation with the International Organization for Migration (IOM)*

The funding-period for this budget is unknown to the federal government, and no response to our questions about this was provided by IOM in Germany (ibid.).[95]

In another response to parliamentary questions asked in November 2018, the federal government indicates the number of persons that made use of the REAG/GARP programs between 2013 and 2017 and the total budget (including funding by the federal government and federal states): **78.454.955,13 EUR**. However, the federal government does not provide insight into how much budget was allocated every year, making it impossible to see whether there are yearly fluctuations in the budget for 'return programming'. Furthermore, it is unclear from the answer provided by the federal government if this total budget includes all the (additional) return programs of the federal states or not (Deutscher Bundestag, 2018: 114).

5.2.2. The Netherlands

The budget available on assisted Exit in the Netherlands from 2013 to 2022 (forecasts) is known, as table 16 shows.

Table 16. Budgets voluntary (assisted) Exit in the Netherlands (EUR x 1000)

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Rean-program (Return and Emigration Assistance) via IOM	6.600	8.833	6.868	10.346	6.697	5.547	5.744	5.743	5.747	5.757
Additional voluntary exit programs via Dutch NGO's	0	0	0	0	2.221	2.547	3.055	3.055	3.056	3.060

Source: (Ministerie van Justitie & Veiligheid, 2019c: 93, 2017a)

Between 2013-2018, the numbers are based on the financial year reports of the Dutch authorities. Between 2019 and 2022, the numbers are based on budgetary planning, because there is no overview (yet) of the expenses for these years. These are the costs that go to the 'Return and Emigration Assistance' (REAN) program. The International Organization for Migration (IOM) is commissioned by the Dutch Repatriation Services (DT&V) to implement the REAN-program (Ministerie van Justitie & Veiligheid, 2019b: 93). Based on this program, IOM offers practical return support to third-country nationals who have come to the Netherlands with a view to a long-term stay and who want to leave the Netherlands 'voluntarily', but who do not have sufficient resources to organize their own departure. Similar to Germany, the Dutch authorities decided to subsidize additional voluntary Exit programs from 2017 onwards; here too, the subsidies are managed by the

[95] Our WP2 researcher, Janis Gescke, send an e-mail about this topic to IOM Germany in April 2020, but he has not received a reply to date.

Dutch Repatriation Services (ibid.). This is in line with the financial trend to 'step up returns' discussed in chapter 5 (forced Exit), where we saw how the budgets for forced Exit doubled in 2017. More broadly, this budget increase is in line with the 2017 Recommendation of the EC which urged Member States to "have operational assisted voluntary return programs by 1 June 2017" to make returns more effective (European Commission, 2017: point 19).

To sum up, the data figures and investments on voluntary return in Germany and the Netherlands show how investments in voluntary return programming have slightly increased since the 2017 Recommendation by the European Commission. However, the numbers of persons that left Germany and the Netherlands voluntarily remained relatively low in 2018 and 2019. The data also show that voluntary return programming is more cost-effective than forced return, where investments in the operational model have increased exponentially but the number of forced returns has not.

5.3. Data analysis on voluntary exits per year

Even though the European Commission in its 2017 Recommendation urged Member States to set up assisted voluntary return programs by 1 June 2017, the European Commission noted in its proposed recast of the Return Directive that there has been little progress in increasing the effectiveness of returns. The European Commission stated that a decrease in the return rate throughout the EU was observed from 45,8% in 2016 to 36,6% in 2017 (European Commission, 2018b).

Currently, Member States are not obliged to collect data on voluntary returns and there is no harmonized procedure for data collection. Nevertheless, Eurostat and IOM collect some data. The following tables 17, 18 and 19 present an overview of the data on voluntary return base on Eurostat data from 2020. Because not all Member States provide information to Eurostat, we have added as much as possible data on the missing Member States (indicated with a grey color).

Table 17. Voluntary return per European country from 2014-2019

	2014	2015	2016	2017	2018	2019
Austria				4.440	2.480	4.815
Belgium	2.935	3.310	4.725	3.700		2.045
Bulgaria	465	180	870	1.270	380	180
Croatia	830	1.250	940	1.040	895	890
Cyprus						
Czech Republic			265	145	600	455
Denmark	85	170	185	120	60	60
Estonia	175	475	370	495	610	880
Finland						
France	7.110	5.920	4.845	5.935	7.115	4.720
Germany[96]	13.575	35.446	64.614	43.019	34.319	
Greece					4.730	
Hungary	0	210	170	430	30	5

[96] These are the numbers provided by the German Bundespolizei (Deutscher Bundestag, 2019b, 2018d). The years 2014 and 2015 are based on the data provided by the Bundespolizei to our colleague dr. Martin Lemberg.

Ireland		115	160	175	200	255
Italy	980	1.015	1.015	1.805	435	435
Latvia	1.460	695	1.040	1.100	1.365	1.485
Lithuania						
Luxembourg		545	295	305	205	155
Malta	400	285	325	300	305	395
Netherlands[97]	11.550	12.100	18.420	14.850	15.510	14.120
Poland		12.080	17.785	21.305	24.575	24.910
Portugal	450	240	65	5	10	130
Romania	1.795	1.810	1.515	1.380	1.310	
Slovakia	420	670	1.095	1.385	1.665	1.315
Slovenia	85	90	155	150	80	95
Spain	2.855	2.355	905	1.310	830	885
Sweden	4.685	7.285	9.375	7.005	5.965	
United Kingdom						

Source: Eurostat 2020

Voluntary Return refers to the situation in which the third-country national complies voluntarily with the obligation to return (i.e. no enforcement procedure had to be launched) and this departure is confirmed by the information from eg. the border authority or the consulate authorities in the country of origin or other authorities such as IOM or any other organisations implementing a program to assist migrants to return to a third-country. Definition based on Art 3.8 Directive 115/2008/EC.

As table 17 shows, Poland has the highest number of voluntary returns in 2019. Most likely, this high number of voluntary returns relates to high number of border rejections on the Polish land borders (Jeandesboz et al., 2020: 117). Between January and September 2018, the Polish border guard refused 66.288 third-country nationals at the border, and in this same time period in 2019, a total of 58.959 third-country nationals. Persons who are refused at the border immediately receive a return decision and may decide to leave voluntarily. If a third-country national decides to appeal the return decision or if s/he wishes to apply for asylum, the Polish border guard first initiates a detention procedure, which should not exceed 60 days, but can be prolonged to 6 months (ibid.: 117-118). After Poland, the Netherlands counts the second highest voluntary returns, followed by Austria and Germany.

Table 18. Assisted voluntary return per EU country from 2014-2019

	2014	2015	2016	2017	2018	2019
Austria				4.380	6.515	6.160
Belgium	2.970	3.355	3.590	3.105		
Bulgaria	210	90	700	855	630	85
Croatia	0	0	0	0	0	0
Cyprus						
Czech Republic						
Denmark	110	243	531	129	12	
Estonia		50	40	:	45	130
Finland						
France	4.175	4.030	3.315	4.800	6.825	5.265

[97] These are the numbers provided in the yearly report 'Rapportage Vreemdelingenketen' of the Dutch Ministry of Justice and Security. We calculated this number by adding up assisted return and non-assisted return (Ministerie van Justitie & Veiligheid, 2020, 2019d, 2018a, 2017b).

Germany[98]	13.575	35.446	54.006	29.522	15.942	
Greece					4.730	
Hungary	3.745	5.765	675	2.175	1.310	1.415
Ireland		140	180	175	170	265
Italy	0	0	75	465		185
Latvia	95	35	75	65	60	90
Lithuania						
Luxembourg		525	285	285	235	235
Malta		125	70	160	215	200
Netherlands[99]	4.110	4.650	6.490	2.830	3.480	4.460
Poland				505	450	380
Portugal	410	240	65	5	130	
Romania	95	110		100	105	
Slovakia	330	640	430	395	525	390
Slovenia	15	0	60	0	0	5
Spain	889	628	663	534	212	
Sweden				0		
United Kingdom						

Assisted Return refers to the situation in which the third-country national was assisted to return. He/she is the beneficiary of a national or EU MS cooperative program to encourage return and to provide reintegration assistance. The TCN received (i) an in-kind assistance prior to departure (e.g. purchase of plane tickets) and/or (ii) in-cash allowances at the point of departure/upon arrival and/or (iii) an in-kind or in-cash reintegration assistance. Please note that beneficiaries of assisted return programs are mostly TCN who voluntarily return but some may also have been returned by force Definition based on Art 3.8 Directive 115/2008/EC and Asylum and Migration Glossary 2.0.

Source: Eurostat 2020

Interestingly, figure 18 does not show the same order as table 17. Where voluntary return is most common in Poland, assisted voluntary return appears to be more common in the Germany and Netherlands.

Table 19. Non-assisted voluntary return per country in Europe from 2014-2019 according to Eurostat 2020.

	2014	2015	2016	2017	2018	2019
Austria						
Belgium	2.605	2.480	3.765	3.210		
Bulgaria	945	645	515	900	85	545
Croatia	2.150	0	0	2.125	2.210	2.455
Cyprus						

[98] These are the numbers of the voluntary return program REAG/GARP (data: IOM, Assisted Voluntary Return and Reintegration-Key highlights 2015, 2017, 2018).

[99] These are the numbers provided in the yearly report 'Rapportage Vreemdelingenketen' of the Dutch Ministry of Justice and Security. This is the number 'zelfstanding vertrek (aantoonbaar)' which means independent departure under supervision of the state authorities (Ministerie van Justitie & Veiligheid, 2020, 2019d, 2018a, 2017b).

Czech Republic						
Denmark					36	
Estonia		510	465		705	965
Finland						
France	15.350	14.220	10.750	10.865	11.110	12.445
Germany						
Greece					7.760	
Hungary	0	210	105	270	0	305
Ireland		225	405	140	195	290
Italy	5.310	4.670	5.715	6.580		6.285
Latvia	1.455	1.000	1.280	1.210	1.410	1.475
Lithuania						
Luxembourg		20	15	155	50	55
Malta		340	355	310	310	400
Netherlands[100]	7.440	7.540	11.930	12.020	12.030	9.660
Poland				21.705	25.265	25.550
Portugal	415	370	385	315	295	370
Romania	1.995	1.880		1.720	1.620	
Slovakia	360	590	980	1.345	1.590	1.205
Slovenia	825	840	280	250	4.445	9.310
Spain						
Sweden						
United Kingdom						

Source: Eurostat 2020
Non-Assisted Return refers to the situation in which the third-country national is recorded with departure and he/she does not receive a support and assistance from the national authorities.

As table 19 shows, the three countries that count the highest non-assisted voluntary return are Poland, France, Slovenia, and the Netherlands. It is unclear when and how these Member States record a non-assisted departure, mainly in the situation of a (non-registered) departure via land borders within the Schengen Area.

5.3.1. Messy data: Eurostat vs. other official data

The tables on voluntary return, assisted return and non-assisted return seem to present a useful overview of the number of voluntary returns per Member State. However, as these examples below show, comparison remains difficult, because the data is messy. In some countries, persons who leave 'voluntarily' may be counted twice (Germany), in other countries, data on Eurostat do not

[100] These are the numbers provided in the yearly report 'Rapportage Vreemdelingenketen' of the Dutch Ministry of Justice and Security. This is the number 'zelfstanding vertrek (zonder toezicht)' which literally means independent departure without supervision (Ministerie van Justitie & Veiligheid, 2020, 2019d, 2018a, 2017b).

reflect the data taken up in official documentation (Denmark) or provide data on persons who left on their (non-assisted voluntary return), while the authorities are not sure if these persons still reside in the Netherlands or somewhere else (the Netherlands).

The German authorities do not share data with Eurostat. In Germany, the number of voluntary returns is significantly larger than the number of forced returns. According to Mecklenburg-Vorpommern Interior Minister Lorenz Caffier (CDU), the number of AVR returns was this high in 2015 and 2016 because a lot of people from Balkan countries applied for the start-up budgets. In 2018, this group was no longer so strongly represented according to the Interior Minister.[101]

The German authorities do point out that the statistics on voluntary return are not reliable (Deutscher Bundestag, 2019a). The total number on voluntary returns in Germany is a combination of the REAG/GARP program (in 2018: 15.942) and voluntary returns coordinated by Member States (in 2018: 34.319). The latter number may overlap with the number of people who participated in the REAG/GARP program, meaning one person may be counted twice (ibid.: 1). At the same time, there are voluntary returns which are not registered by the authorities at all; in case a person who is obliged to return leaves without assistance (ibid.); this is why there the table on non-assisted voluntary return does not present any data on Germany. This can lead to inconsistencies in the Ausländerzentralregister (AZR/central foreign-nationals register) with regard to the number of persons with a return order 'Ausreisepflichtige Personen').

The data Denmark provided to Eurostat on voluntary return are inconsistent with other official data published by the Danish authorities. For example, on Eurostat, voluntary returns in Denmark amount to a number of 60 in 2018 and 60 in 2019, while in a document published by the Danish Immigration Office, the voluntary returns recorded in 2018 amount to a total number of 36 in 2018 and 69 in 2019 (Nationalt Udlændingecenter, 2020; Styrelsen for International Rekruttering og Integration and Udlændingestyrelsen, 2018: 17). Even though the difference may not be significant, this makes it more difficult to render reliable comparisons.

The Netherlands does not share data with Eurostat. The data presented in the table are based on the reports of the Dutch Ministry of Justice and Security. The terminology on 'return' of the Dutch authorities differ slightly from the terminology on Eurostat. The Dutch authorities record 'independent departure under supervision' (either from detention or with 'alternative supervision measures' such as the duty to report) and 'independent departure without supervision' (Ministerie van Justitie & Veiligheid, 2018: 44). The former comes close to assisted return while the latter comes close to non-assisted return, although nowhere is clear if 'independent departure under supervision' also implies that a third-country national receive reintegration assistance (which would be a condition for assisted return, according to the definition of Eurostat). This complicates comparison to other Member States.

To understand why the Netherlands has relatively high numbers of persons who leave the country non-assisted, it is important to understand how this number is recorded. The Dutch government calculates non-assisted voluntary return on the basis of the number of third-country nationals who are no longer present at their last known address; asylum seekers who are no longer available for the duty to report, and foreign nationals who have received a notice to leave the Netherlands. For all these categories, departure cannot be proven or demonstrated (Ministerie van Justitie & Veiligheid,

[101] See for more information: Göttinger Tageblatt, "Deutlich weniger freiwillige Ausreisen" (22 December 2018) [WWW-document] URL https://www.goettinger-tageblatt.de/Nachrichten/Politik/Deutschland-Welt/Immer-weniger-freiwillige-Ausreisen (accessed 29 June 2020).

2018: 44-45). Therefore, it is unclear the persons recorded within this category are still in the Netherlands or another country.

Spain
In Spain, the numbers provided to Eurostat almost correspond to those provided by the Ministry of Employment for the period 2009-2016, as table 20 shows.[102]

Table 20 Comparison of return data from the Spanish Ministry of Employment and Eurostat for 2014-2016

Year	**Spanish Ministry of Employment 'Social assistance - Number of beneficiaries by country of return and year'**	**EUROSTAT 'voluntary return' [migr_eirt_vol]**
2016	911	905
2014	2.860	2.855
2015	2.352	2.355

Considering that the data from the Ministry of Employment is not as up-to-date (it does not include the years 2017 and 2018), it is likely that these two sources in fact measure the same phenomenon but that the data/methodology was later corrected.

In addition, the Ministry of Employment provides an additional table 21 on 'Voluntary return with APRE assistance'[103] which does not correspond with the numbers on Eurostat on assisted return.

Table 21 Comparison of return data from the Spanish Ministry of Employment and Eurostat for 2014-2016

Year	**Spanish Ministry of Employment 'Social assistance - Number of beneficiaries by country of return and year'**	**EUROSTAT 'assisted return' [migr_eirt_ass]**
2016	83	663
2014	291	889
2015	275	628

However, APRE assistance is meant for legal residents in Spain who want to return to their country of origin, not for irregular migrants. We have not found any data on non-assisted voluntary returns at state level.

Italy
The data provided by the Italian authorities on 2014 and 2015 also do not correspond to the data on Eurostat, neither on voluntary return, nor on voluntary assisted return as table 22 show(Corte dei conti, 2018: 60).

[102] 'Retorno voluntario atención social 2009-2016 (Anualidades y países)', available at: http://extranjeros.mitramiss.gob.es/es/Retorno_voluntario/datos/index.html (accessed 20 October 2020).
[103] 'Retorno voluntario con ayuda APRE', in 'PROGRAMA DE AYUDAS COMPLEMENTARIAS AL APRE. 2009-2016', available at: http://extranjeros.mitramiss.gob.es/es/Retorno_voluntario/datos/index.html (accessed 20 October 2020).

Table 22 Comparison of return data from the Italian Ministry of Interior and Eurostat for 2014-2016

Year	Italian Ministry of Interior 'Rimpatrio volontario assisto' (assisted voluntary return)	EUROSTAT 'assisted return' [migr_eirt_ass]
2014	923	0
2015	411	0

What we can learn from the data that is available in the various Member States is that there are different calculative models for voluntary return, i.e. no harmonized procedure for recording data. Therefore, it is not possible to make a coherent overview of the budgets for voluntary return in the 27 Member States of the EU. Nonetheless, the desk research for this report on Germany, the Netherlands and in Italy provides a sliver of an insight into the budgets on voluntary Exit, and furthermore shows how difficult it is to gather data on this subject.

5.3.2. AVR-programs (IOM)

Data on Assisted Voluntary Return programs are available from IOM. According to figures provided by the IOM, **33,971** third-country nationals left the European Economic Area (EEA) via IOM's AVR-programs in 2018; **50,587** in 2017; **98,403** in 2016; and **55,900** in 2015 (IOM, 2019: 11, 2018: 22, 2016: 32).

Between 2017 and 2018, returns via AVR-programs saw an overall decrease, except for the Netherlands, which saw a considerable increase of 40%, as table 23 shows (IOM, 2019, 2018).

Table 23. Number of IOM assisted voluntary returns from 5 European countries, in 2017 and 2018

IOM-returns via AVR-programs	2017	2018	change
Germany	29.520	15.942	- 46%
Greece	5.660	4.968	- 12%
Belgium	3.670	2.795	- 24%
Austria	3.450	3.469	- 2%
The Netherlands	1.530	2.149	+ 40%

Source: IOM 2018-2019

According to IOM, the decrease of assisted voluntary returns (AVRs) from the EEA and Switzerland must be explained on a country-to-country basis, although they do note some general factors relevant to the decrease, such as lower influx of migrant arrivals and asylum applications and changes in national migration and asylum policies including restrictions in AVRR eligibility criteria (IOM, 2019: 12). The increase in the Netherlands may coincide with additional budgets for AVR-programming since 2017 (see table 14), which created the possibility for smaller NGOs to start their own AVR-programming.

The data provided by IOM on Germany correspond with the data on 'assisted return' in Germany; the data on Greece almost correspond, although Eurostat only provides data for the year 2018; the data on Belgium almost correspond, although data only provides data for the year 2017; the data on Austria do not correspond and the data on the Netherlands do not correspond – in both countries 'assisted return' rates are higher for these years on Eurostat, most likely because these two countries offer additional voluntary return programs.[104]

5.4. Voluntary vs. forced returns

Even though the statistics on voluntary return are hard to compare, the data does show that forced return is more systematically used than voluntary return. This can, for example, be deduced from the year 2017. In 2017, out of 97,325 returns from 23 countries which provide disaggregated data to Eurostat, merely 53,110 (or 55 percent) were voluntary. At the same time, the share of voluntary departures in the total number of all returns has increased in the past years. In 2016, voluntary departures amounted to 54 percent of all returns from the EU countries that provided data to Eurostat and in 2015, to 44 percent.

The Eurostat data show that there are many divergent practices with regard to the use of voluntary return across the EU. In 2017, for instance, in Poland, voluntary returns constituted 96 percent of all the returns; in Latvia, 86 percent; in Austria, 73 percent; and in Sweden, 70 percent. At the other end of the spectrum, the Czech Republic and Hungary, each, allowed 18 percent of returns to be implemented via voluntary return; Norway and Spain, 12 percent each; and Denmark, merely 8 percent. These statistics demonstrate that not all Member States perceive voluntary return a requirement under EU law. This is contrary to the focus of the Return Directive and the Court of Justice of the European Union (CJEU),[105] which stress that voluntary return should be preferred over forced return – in line with the principle of proportionality.

5.5. Conclusion

The recast of the Return Directive favors forced over voluntary return, while there is no evidence that this will increase the effectiveness of returns. At the same time, the shift towards forced returns runs contrary to the principle of proportionality and runs contrary to practitioners' experiences with regard to effective and sustainable returns.

The data figures and investments on voluntary return in Germany and the Netherlands show how investments in voluntary return programming have slightly increased since the 2017 Recommendation by the European Commission, while the third country nationals that left Germany and the Netherlands voluntarily remained relatively low in 2018 and 2019. The data also show that voluntary return programming is more cost-effective than forced return.

The tables on voluntary return, assisted return and non-assisted return are difficult to compare because of messy data, and different calculative models used in Member States.
Even though the statistics on voluntary return are hard to compare, the data does show that forced return is more systematically used than voluntary return. At the same time, the share of voluntary departures in the total number of all returns has increased in the past years. In 2016, voluntary

[104] The Netherlands has several additional 'voluntary return' programs, see this website for more information: https://www.infoterugkeer.nl/terugkeerprojecten/overzicht-projecten/ (accessed 29 June 2020).
[105] CJEU, *Z. Zh. v. Staatssecretaris Voor Veiligheid En Justitie and I. O. v. Staatssecretaris Voor Veiligheid En Justitie*, C-554/13, (11 June 2015), para. 49.

departures amounted to 54 percent of all returns from the EU countries that provided data to Eurostat and in 2015, to 44 percent.

Because there currently is no obligation for Member States to collect data on voluntary Exit and no harmonized procedure for recording data, it is not possible to make a coherent overview of the budgets for voluntary return in the 27 Member States of the EU. Nonetheless, the desk research for this report on Germany and the Netherlands provides a sliver of an insight into the budgets on voluntary Exit, and furthermore shows how difficult it is to gather data on this subject. To better assess efficiency and feasibility, it would be helpful if Member States gather data on voluntary returns in a systematic and harmonized way.

Conclusion

The aim of this report has been to map, compare and analyze different Exit regimes in EU Member States in order to gain insight into the degree to which Exit is efficient and harmonized across the EU. Special attention has been paid to the degree to which current Exit policies and practices ensure legal safeguards to returnees.

Before elaborating in any conclusive manner about our findings, we must first and foremost conclude that what we managed to document and analyze in this report is eclipsed by the amount of data that has not been accessible to the purpose of this study.

1. Quality of data in the governance of Exit
Lack of data, which is detrimental to evidence-based policymaking and to grounded scientific investigation, results from two essential dynamics. First, the EU has no guidelines for Member States concerning the production, maintenance and sharing of relevant data on Exit. More specifically, at this moment, there is no obligation for Member States to collect data on stocks of irregular migrants, pre-removal detention, and forced and voluntary exits. Consequently, different Member States produce different types of data on certain aspects of Exit and not on others. This leads to an extremely partial and impossible to compare set of data when it comes to the situation in each Member State and across the EU. Second, our working assumption has always been that most, if not all, data concerning Exit is non-confidential in character and would thus be readily available for public scrutiny and scientific purposes. In practice, we found that much of the data produced by different Member States and the EU is treated in ways that impede accessibility, even from academic researchers who are funded by the EU to conduct research into this very subject matter.

In this important sense, our findings in this report corroborate one of the main conclusions coming out of WP1 with regard to the relation between migration governance and the quality of data, evidence and knowledge. In the final report of WP1 it has been concluded that research into Entry policies and practices 'has documented multiple instances where available data (including statistical data) is either unavailable, ambiguous or contradictory, and information is either dispersed, unreadily available, confidential or simply absent'.[106] We lament that the same applies to data and evidence-based decisions with respect to Exit policies. For example, while data on the population of irregular migrants throughout the EU can never be completely accurate, chapter 3 has shown that it is also not some flight of fancy, but instead attainable thorough research and coordination between Member States. In other words, the infrastructure can be put in place, but the willingness to use it must be too.

Our recommendation for the European Commission is to put together clear and comprehensive guidelines for the collection and production of statistics and all other data which are crucial for evidence-based policy-making with respect to Exit in all Member States of the EU as well as Frontex and all other EU-led agencies and initiatives. Concomitantly, we recommend the European Commission to organize its awaited implementation assessment before proceeding with the legislative procedure of the recast of the Return Directive. As a first step in advancing any alternatives to existing Exit regimes, we should urgently move to construct an indicator that can measure, monitor and help harmonizing the production of relevant data for assessing Exit regimes in the EU.

[106] See ADMIGOV deliverable D.1.4 p.16.

Notwithstanding the difficulties posed to our report by the lacking data, we have been able to formulate three more conclusions.

2. Pre-removal detention
Facilities for pre-removal detention in some Member States increasingly work with private security companies. It is often unclear what the (legal) responsibilities are or the professional training of such private companies. Because of a lack of transparency and an unclear structure of accountability, it is recommendable to set up a critical assessment with regard to the role of private security companies in the current management and any potential expansion of pre-removal detention facilities. Furthermore, because of the discrepancy between the administrative character of pre-removal detention and its punitive implications, it is recommendable to ensure that the same fair trial guarantees are applicable as those that apply to criminal proceedings.

We thus echo the recommendation put forward in the final report of WP1, prompting the European Commission to establish criteria for the role devised for private companies in the management of pre-removal detention and in Exit policies more generally, and to outline clear and consequential lines of responsibility and accountability for all constellation in which the work of private companies is contracted by Member States and/or the EU. This could and should then contribute to an overall 'privatisation' indicator in measuring the involvement of profit-driven commercial actors in the governance of migration in the EU.

With respect to the length and recurrence of pre-removal detention, we recommend the following: first, to assess whether the maximum of 18-22 months of pre-removal detention is in line with the principle of necessity and proportionality; second, to establish legal and normative criteria to evaluate whether re-detention is proportional and necessary. Herein we recommend reversing the burden of proof for increasing the length of pre-removal detention to policymakers who advocate for such increase. From all available data, we could not establish any correlation, let alone a causal link, between an increase in the length of pre-removal detention and return rates. This is not to say that if such evidence is found, that we believe it should simply lead to a decision to increase the length of pre-removal detention. What we flag here is that without such evidence this move to increase the length of pre-removal detention – against the views of many of the implementers of Exit regimes and with harsh consequences to migrants with no criminal background – strikes us as irresponsible and punitive.

3. Evaluating investment and measuring "success" in the management of Exit
While investments in Exit procedures (on EU and national levels) have increased consistently and substantially in recent years, return rates have not. It stands to reason that an increased investment in Exit regimes is driven by an ambition on the side of the EU and Member States to enhance the effectiveness and efficiency of Exit. Currently, however, there are no agreed – not even proposed – measures along which the EU or Member States should monitor and evaluate any impact of investment on the effectiveness and efficiency of Exit policies and practices.

Theoretically speaking, we can envision five – not mutually exclusive – criteria along which investment in Exit governance might be evaluated:

1. Absolute number of irregular migrants leaving a Member State and/or the EU;
2. Proportion of irregular migrants leaving a Member State and/or the EU out of the total irregular migrant population in a Member State/the EU;
3. The level of deterrence generated with respect to the aspiration of potential irregular migrants to reach the EU or remain in it with an irregular status;

4. A cost-effectiveness calculation of getting irregular migrants to leave – voluntarily or forcefully – a Member State and/or the EU;
5. The ability to protect, in line with the NYD and SDGs, legal safeguards for irregular migrants subjected to return and detention.

Here is what we can conclude with respect to these five criteria. First, and as mentioned already, there appears to be no clear correlation between increased investment in Exit and the total number of irregular migrants leaving a Member State and/or the EU. Second, while the studies referred to in this report on stocks of irregular migrants (chapter 3) cannot paint a detailed picture of the current irregular migration populations in Europe, it is clear that in broad brushstrokes the proportion of irregular migrants leaving the EU is not increasing. Third, while beyond the scope of this report, there is wide evidence in the literature regarding the futility of stricter detention and forced removal measures in deterring potential irregular migrants from reaching the EU or encouraging them to leave once they are in the EU Member States (e.g. Leerkes and Broeders 2010). Similar evidence for this trend has been found in other parts of the world (Golash-Boza 2015; Nevins 2001; Wong 2015).

With respect to a cost-effectiveness calculation of Exit, we must first acknowledge that 'effectiveness' cannot simply be inferred from the ability to enforce removal orders on irregular migrants, but also, crucially, on the durability of Exit. The durability of Exit, in turn, is largely dependent on successful reintegration of returnees (which is the topic of our forthcoming deliverable D2.4. on Sustainable Reintegration Post-Exit) as well as on the prospect of re-entries (as has been examined in WP1). Notwithstanding these greater factors in evaluating the effectiveness of Exit, we were not able to present a fully-fledged comparative analysis on the effectiveness of forced removal and voluntary return in this report because much data is missing, some data is based on different calculative models, and several aspects of return procedures are untransparent. We made an effort to scrutinize all the available data for two Member States where our access to data was most complete: the Netherlands and Germany. As we report in chapter 4, we found that growing investments in the operations of the Exit regimes in these two states resulted in a low cost-effectiveness with respect to return procedures.

Given our examination could only be partial, we conclude that cost-effectiveness is not a feasible criterion to be applied for as long as the data in the field of Exit is lacking in some crucial respects. Having said that, we believe this calls on the European Commission to exercise extreme prudence before investing more budgets and committing more personnel to the enhancement of measures, like pre-removal detention, that are assumed but not proven to increase the effectiveness of Exit policies.

Finally, investment in Exit regimes can be evaluated according to the degree to which it allows the EU and Member States to enhance the protection of human and fundamental rights of irregular migrants subjected to voluntary return or forced removal. Given the importance of this topic, we take it up in our next and last conclusion to this report.

4. Assessing Exit governance in line with the NYD and SDGs

To ensure migration in a safe, orderly and dignified manner, in line with the NYD and SDGs, it is of importance that the European Commission evaluates how legal safeguards for irregular migrants in all Exit procedures can be better protected. Our report indicates two developments that might destabilize rather than reinforce protection in important respects. First, while we currently cannot determine conclusively what the consequences are of increasing funding for Exit regimes, the simultaneous withdrawal of subsidiary protection and the restrictions and even criminalization of humanitarian aid decisively contribute to an environment in which there is no decrease in the irregular migrant population. Consequently, if more people are living in increasingly precarious

situations throughout the EU, the urgency of evaluating the policies put in place to protect these people becomes self-evident. To do so, however, requires in-depth analysis not only of Exit policies, but also of possible unintended consequences of all other related policies (such as withdrawal of subsidiary protection) which might influence ways in which people move within the EU.

Second, the recast of the Return Directive favors forced over voluntary return, while there is no evidence that this will increase the effectiveness of returns. In addition, the organizational budget of Frontex has been steadily increasing, although various concerns have been raised with regard to legal safeguards for returnees in Frontex operations as well as during so-called 'hot returns' and under EU readmission arrangements. Of special concern here is the lack of democratic control in most readmission arrangements, which makes it difficult for lawyers and civil society organizations to support returning migrants and to monitor the Exit process.

Furthermore, since there is no widespread practice of granting temporary protection against detention and forced return to migrants who do not qualify for refugee status and who are unable to return home owing to conditions in their countries (point 53 NYD), we recommend the European Commission to evaluate temporary protection practices across Member States in the EU and to include the outcome in future policymaking. The German practice of issuing a Tolerated Stay Permit (*Duldung*) can serve here as a benchmark for all Member States.

In conclusion, we recommend the construction of an indicator for evaluating the otherwise vague notion of what constitutes proportional and necessary measures in legislating and implementing Exit regimes. Without such indicator, we risk the withering away of legal safeguards in return and detention procedures in light of evermore restrictive policies that are increasingly punitive in their implications and whose effectiveness is not grounded in empirical evidence.

We are cognizant that all of our recommendations, not only this last normative one, are predicated on the existence of a political willingness to critically evaluate current policies and to implement viable changes within the current system.

Bibliography

Amnesty International, 2018. *Geen Cellen en Handboeien! Het beginsel van minimale beperkingen in het regime van vreemdelingendetentie* [online]. Available at: https://www.amnesty.nl/content/uploads/2018/02/AMN_18_05_Rapport-Geen-cellen-en-handboeien_DEF_web.pdf?x68103 (accessed 17 May 2020).

Asylum Information Database, 2018. *Country Report: Germany* [online]. Available at: https://www.asylumineurope.org/reports/country/germany (accessed 15 June 2020).

Clandestino Research Project, 2009a. *Policy Brief: Irregular Migration in Italy* [online]. Available at: https://www.uni-bremen.de/fb12/irregular-migration/countries (accessed 2 June 2020).

Clandestino Research Project, 2009b. *Policy Brief: Irregular Migration in the Netherlands* [online]. Available at: https://www.uni-bremen.de/fb12/irregular-migration/countries (accessed 7 June 2020).

Clandestino Research Project, 2009c. *Comparative Policy Brief: Size and Development of Irregular Migration to the EU* [online]. Available at: https://www.uni-bremen.de/fb12/irregular-migration/european-union (accessed 9 May 2020).

Clandestino Research Project, 2009d. *Clandestino Project: Final Report* [online}. Available at: http://clandestino.eliamep.gr/wp-content/uploads/2010/03/clandestino-final-report_-november-2009.pdf (accessed 12 October 2020).

Clandestino Research Project, 2009e. *Stocks of Irregular Migrants: Estimates for Spain* [online]. Available at: https://www.uni-bremen.de/fb12/irregular-migration/countries (accessed 19 June 2020).

Clandestino Research Project, 2009f. *Policy Brief: Irregular Migration in Slovakia* [online]. Available at: https://www.uni-bremen.de/fb12/irregular-migration/countries (accessed 31 July 2020).

Clandestino Research Project, 2009g. *Policy Brief: Irregular Migration in the U.K*. [online]. Available at: https://www.uni-bremen.de/fb12/irregular-migration/countries (accessed 30 July 2020).

Connor, P., 2016. *Number of Refugees to Europe Surges to Record 1.3 Million in 2015. Pew Research Center* [online]. Available at: https://www.pewresearch.org/global/2016/08/02/number-of-refugees-to-europe-surges-to-record-1-3-million-in-2015/ (accessed 10 September 2020).

Connor, P., Passel, J.S., 2019. *Europe's Unauthorized Immigrant Population Peaks in 2016, Then levels Off: new estimate find half live in Germany and the United Kingdom. Pew Research Center* [online]. Available at: https://www.pewresearch.org/global/2019/11/13/europes-unauthorized-immigrant-population-peaks-in-2016-then-levels-off/ (accessed 5 August 2020).

Corte dei conti, 2018. *Sezione centrale di controllo sulla gestione delle Amministrazioni dello Stato, la "prima accoglienza" degli immigrati: la gestione del fondo nazionale PER le politiche e i servizi dell'asilo (2013-2016)* [online]. Available at: https://www.camera.it/temiap/2018/03/23/OCD177-3509.pdf (accessed 7 May 2020).

Council of the European Union, 2015. *Note from Presidency to Delegations: Return and Readmission Policy* [online]. Available at: https://www.statewatch.org/media/documents/news/2015/apr/eu-council-return-readmission-discussion-paper-7156-15.pdf (accessed 9 May 2020).

Czaika, M., Hobolth, M., 2016. Do restrictive asylum and visa policies increase irregular migration into Europe? *European Union Politics* 17, p. 345-365 [online]. Available at: https://doi.org/10.1177/1465116516633299 (accessed 21 October 2020).

Daems, T., van der Beken, T. (Eds.), 2018. *Privatising punishment in Europe?* New York: Routledge.

Defensor del Pueblo, 2019. *Informe Annual (2018). Madrid* [online]. Available at: https://www.defensordelpueblo.es/informe-anual/informe-anual-2018/ (accessed: 12 June 2020).

Deutscher Bundestag, 2016a. *Antwort der Bundesregierung: Die Praxis der Abschiebungshaft und Fragen zum Haftvollzug* [online]. Available at: https://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf (accessed 14 July 2020).

Deutscher Bundestag, 2016b. *Antwort des Bundesregierung: Zusammenarbeit der Bundesregierung mit der Internationalen Organisation für Migration (IOM)* [online]. Available at: https://dipbt.bundestag.de/dip21/btd/18/096/1809648.pdf (accessed 20 May 2020).

Deutscher Bundestag, 2018a. *Antwort des Bundesregierung: Praxis der Abschiebungshaft seit 2015* [online]. Available at: https://dip21.bundestag.de/dip21/btd/19/058/1905817.pdf (accessed 21 October 2020).

Deutscher Bundestag, 2018b. *Abschiehungen und Ausreisen im jahr 2017* [online]. Available at: https://dipbt.bundestag.de/dip21/btd/19/008/1900800.pdf (accessed 21 October 2020).

Deutscher Bundestag, 2018c. *Antwort des Bundesregierung: Abschiebungen, Rücküberstellungen und freiwillige Ausreisen seit 2013* [online]. Available at: https://dipbt.bundestag.de/dip21/btd/19/058/1905818.pdf (accessed 21 October 2020).

Deutscher Bundestag, 2018d. *Abschiebungen und Ausreisen 2017* [online]. Available at: https://dipbt.bundestag.de/dip21/btd/19/008/1900800.pdf (accessed 21 October 2020).

Deutscher Bundestag, 2019a. *Abschiebungen und Ausreisen im Jahr 2018* [online]. Available at: https://dipbt.bundestag.de/doc/btd/19/080/1908021.pdf (accessed 21 October 2020).

Deutscher Bundestag, 2019b. *Antwort der Bundesregierung: Modalitäten von Abschiebungen* [online]. Available at: https://dipbt.bundestag.de/dip21/btd/19/116/1911676.pdf (accessed 21 October 2020).

Deutscher Bundestag, 2020. *Abschiebungen und Ausreisen im jahr 2019* [online]. Available at: https://dip21.bundestag.de/dip21/btd/19/182/1918201.pdf (21 October 2020).

Die Landesregierung Nordrhein-Westfalen, 2016. *NRW verbessert sein Rückkehrmanagement weiter* [online]. Available at: https://www.land.nrw/de/pressemitteilung/nrw-verbessert-sein-rueckkehrmanagement-weiter (accessed 9 January 2020).

Düvell, F., Hosner, R., 2019. *Wissenschaftliche Einordnung der neuen Schätzungen zur Zahl der irregulären Migrant*inn. DeZIM Institut* [online]. Available at: https://www.dezim-institut.de/fileadmin/user_upload/Presse/Pressemitteilungen/191114_Pew_Kritik.pdf (accessed 21 October 2020).

Eisele, K., Muir, E., Molinari, C., Fernandes, M., Galea, A., 2019. *The proposed Return Directive (recast): substitute impact assessment. European Parliamentary Research Service, Ex-Ante Impact Assessment Unit* [online]. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2019/631727/EPRS_STU(2019)631727_EN.pdf (accessed 21 October 2020).

Esposito, F., Ornelas, J., Arcidiacono, C., 2015. Migration-related detention centers: the challenges of an ecological perspective with a focus on justice. *BMC International Health and Human Rights*, 15(1), 13 [online]. Available at: https://doi.org/10.1186/s12914-015-0052-0 (accessed 21 October 2020).

European Commission, 2007. *Towards a comprehensive European migration policy: cracking down on employment of illegal immigrants and fostering circular migration and mobility partnerships* [online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_07_678 (accessed 21 October 2020).

European Commission – DG Home Affairs, 2013. *Evaluation on the application of the Return Directive (2008/115/EC)* [online]. Available at: https://op.europa.eu/s/omCJ (accessed 21 October 2020).

European Commission, 2014. *Communication from the Commission to the Council and the European Parliament on EU Return Policy* [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52014DC0199&from=EN (accessed 20 October 2020).

European Commission, 2015. *Information note on the support to be provided by Frontex to frontline Member States on the return of irregular migrants* [online]. Available at: https://www.statewatch.org/media/documents/news/2015/jul/eu-com-frontex-role.pdf (accessed 21 October 2020).

European Commission, 2016. *Communication from the Commission to the European Parliament, the European Council, the Council and the European Investment Bank on establishing a new Partnership Framework with third countries under the European Agenda on Migration* [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016DC0385&from=EN (accessed 21 October 2020).

European Commission, 2017a. *Commission Recommendation on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council* [online]. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_commission_recommendation_on_making_returns_more_effective_en.pdf (accessed 21 October 2020).

European Commission, 2017b. C*ommission Recommendation: establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return*

related tasks [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017H2338&from=EN (accessed 20 October 2020).

European Commission, 2018a. *State of the Union 2018: European Commission proposes last elements needed for compromise on migration and border reform* [online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/MEMO_18_5714 (accessed 21 October 2020).

European Commission, 2018b. *Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals* (recast) [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018PC0634&from=EN (accessed 21 October 2020).

European Commission, 2018c. *A stronger and more effective European return policy* [online]. Available at: https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-factsheet-returns-policy_en.pdf (accessed 21 October 2020).

European Migration Network, 2011. P*rogrammes and Strategies in the EU Member States fostering Assisted Return to and Reintegration in Third Countries* [online]. Available at: https://emn.ie/files/p_201103241026332011_EMN_Synthesis_Report_Assisted_Return_and_Reintegration.pdf (accessed 20 October 2020).

European Migration Network, 2016a. R*eturning Rejected Asylum Seekers: challenges and good practices* [online]. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-00_synthesis_report_rejected_asylum_seekers_2016.pdf (accessed 21 October 2020).

European Migration Network, 2016b. *Incentives to return to a third country and support provided to migrants for their reintegration* [online]. Available at: https://emnbelgium.be/sites/default/files/publications/emn_reg_inform_-_in-cash_in-kind_assistance_to_return_june_2016.pdf (accessed 21 October 2020).

European Migration Network, 2018. *The effectiveness of return in EU Member States (2017)* [online]. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_eu_return_study_synthesis_report_final_en.pdf (accessed 21 October 2020).

European Migration Network, National Contact Point Belgium, 2018. *The Effectiveness of Return in Belgium: Challenges and Good Practices linked to EU Rules and Standards* [online]. Available at: https://emnbelgium.be/sites/default/files/publications/web-rapport%20spf%20sep%202018.pdf (accessed 21 October 2020).

European Parliament - Committee on Civil Liberties, Justice and Home Affairs, 2020. *Draft Report on the implementation of the Return Directive (2019/2208(INI))* [online]. Available at: https://www.europarl.europa.eu/doceo/document/LIBE-PR-653716_EN.pdf (accessed 21 October 2020).

EUROSTAT, 2019. *EU legislation on the 2021 population and housing censuses: explanatory notes* [online]. Available at: https://ec.europa.eu/eurostat/web/products-manuals-and-guidelines/-/KS-GQ-18-010 (accessed 20 October 2020).

Frontex, 2019. *Annual Activity Report 2018* [online]. Available at: https://www.europarl.europa.eu/cmsdata/185405/CAAR%202018.pdf (accessed 20 October 2020).

Frontex, 2018. *Annual Activity Report 2017* [online]. Available at: https://frontex.europa.eu/assets/Key_Documents/Annual_report/2017/Annual_Activity_report_2017.pdf (accessed 21 October 2020).

Gkliati, M., forthcoming. Frontex Return Operations and their Human Rights Implications, in: Soysüren, I., Nedelcu, M. (Eds.), *Deportation of Foreigners: EU Instruments, Nation-State Practices and Social Actors' Involvement*. Bern: Peter Lang Editions.

Goeman, M., Schuitemaker, S., 2018. *Je ziet me niet, maar ik ben er wel. Defence for Children* [online]. Available at: https://defenceforchildren.nl/media/2544/20180608_quickscan-_kinderen-in-armoede_a5_web.pdf (accessed 21 October 2020).

González-Enríquez, C., 2009. *Update report Spain: Estimate on irregular migration for Spain in 2009* [online]. Available at: https://irregular-migration.net/ (accessed 3 February 2020). *The website is temporarily offline: request report with author.

Guiraudon, V., Lahav, G., 2000. A Reappraisal of the State Sovereignty Debate: The Case of Migration Control. *Comparative Political Studies 33*, p. 163-195 [online] Available at: https://doi.org/10.1177/0010414000033002001 (accessed 21 October 2020).

Hamburg Institute of International Economics, 2012. *Stocks of Irregular Migrants: Estimates for Germany, Database on Irregular Migration* [online]. Available at: https://www.uni-bremen.de/fb12/irregular-migration/countries (accessed 21 October 2020).

Hamburg Institute of International Economics, 2009. S*tocks of Irregular Migrants: Estimates for Netherlands, Database on Irregular Migration* [online]. Available at: https://www.uni-bremen.de/fb12/irregular-migration/countries (accessed 21 October 2020).

Huddleston, T., Sharif, H., 2019. *Who is reshaping public opinion on the EU's migration policies? ReSOMA* [online]. Available at: https://www.migpolgroup.com/wp-content/uploads/2019/09/Discussion-Policy-Briefs-Public-Opinion.pdf (accessed 20 October 2020).

IOM, 2019. *Assisted Voluntary Return and Reintegration 2018: Key Highlights* [online]. Available at: https://publications.iom.int/books/2018-return-and-reintegration-key-highlights (accessed 21 October 2020).

IOM, 2018. *Assisted Voluntary Return and Reintegration 2017: Key Highlights* [online]. Available at: https://reliefweb.int/report/world/assisted-voluntary-return-and-reintegration-2017-key-highlights (accessed 21 October 2020).

IOM, 2016. *Assisted Voluntary Return and Reintegration 2015: Key Highlights [online]*. Available at: https://publications.iom.int/books/assisted-voluntary-return-and-reintegration-2015-key-highlights (accessed 21 October 2020).

Kleist, N., 2018. 'Trajectories of involuntary return migration to Ghana: Forced relocation processes and post-return life', *Geoforum* [online]. Available at: https://doi.org/10.1016/j.geoforum.2017.12.005 (accessed 21 October 2020).

Kraler, A., Reichel, D., 2011. 'Measuring Irregular Migration and Population Flows - What Available Data Can Tell', *International Migration* 49, p. 97-128.

Larsen, C., Skaksen, J.R., 2019. De illegale indvandrere i Danmark, 2008-2018. The Rockwool Foundation [online]. Available at: https://www.rockwoolfonden.dk/publikationer/de-illegale-indvandrere-i-danmark-2008-2018/ (accessed 21 October 2020).

Majcher, I., 2020. *The European Union Returns Directive and its Compatibility with International Human Rights Law*. Leiden, Boston: Brill Nijhoff.

Majcher, I., de Senarclens, C., 2014. 'Discipline and Punish? Analysis of the Purposes of Immigration Detention in Europe', *AmeriQuests* 11(2).

Mincheva, E., 2010. 'Case Report on Kadzoev, 30 November 2009', *European Journal of Migration and Law* 12(3), p. 361-371.

Ministerie van Justitie & Veiligheid, 2020. R*apportage Vreemdelingenketen 2019* [online]. Available at: https://www.rijksoverheid.nl/documenten/rapporten/2020/05/25/tk-bijlage-rapportage-vreemdelingenketen-2019 (accessed 21 October 2020).

Ministerie van Justitie & Veiligheid, 2019a. *Illegalenschatting 2017* [online]. Available at: https://www.wodc.nl/onderzoeksdatabase/2969-illegalenschatting-2017.aspx (accessed 20 April 2020).

Ministerie van Justitie & Veiligheid, 2017a. *Rijksbegroting 2018* [online]. Available at: https://www.rijksbegroting.nl/2018/voorbereiding/begroting (accessed 21 October 2020).

Ministerie van Justitie & Veiligheid, 2017b. R*apportage Vreemdelingenketen 2016* [online]. Available at: https://www.rijksoverheid.nl/documenten/rapporten/2017/03/21/rapportage-vreemdelingenketen-periode-januari-december-2016 (accessed 21 October 2020).

Ministerie van Justitie & Veiligheid, 2018a. *Rapportage Vreemdelingenketen 2017* [online]. Available at: https://www.rijksoverheid.nl/documenten/rapporten/2018/04/30/rapportage-vreemdelingenketen-periode-januari-december-2017 (accessed 21 October 2020).

Ministerie van Justitie & Veiligheid, 2018b. *Rijksjaarverslag 2017* [online]. Available at: https://www.rijksoverheid.nl/documenten/jaarverslagen/2018/05/16/financien-en-nationale-schuld-2017 (accessed 21 October 2020).

Ministerie van Justitie en Veiligheid, 2019. *Beleidsdoorlichting begrotingsartikel 37.3: De terugkeer van vreemdelingen* [online]. Available at: https://www.rijksoverheid.nl/documenten/rapporten/2019/11/15/tk-bijlage-beleidsdoorlichting-begrotingsartikel-37-3-terugkeer (accessed 21 October 2020).

Ministerie van Justitie & Veiligheid, 2019b. *Rijksjaarverslag 2018* [online]. Available at: https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/jaarverslagen/2019/05/15/algemene-zaken-2018/III%20Algemene%20Zaken.pdf (accessed 21 October 2020).

Ministerie van Justitie & Veiligheid, 2019c. *Rijksbegroting 2020* [online]. Available at: https://www.rijksbegroting.nl/2020/voorbereiding/begroting (accessed 21 October 2020).

Ministerie van Justitie & Veiligheid, 2019d. *Rapportage Vreemdelingenketen 2018* [online]. Available at: https://www.rijksoverheid.nl/documenten/rapporten/2019/05/14/tk-rapportage-vreemdelingenketen-2018-2 (accessed 20 October 2020).

Ministerio del Interior, 2019. *Informe Quincenal: Inmigracion Irregular 2019* (Datos acumulados del 1 enero al 31 diciembre) [online]. Available at: http://www.interior.gob.es/documents/10180/11261647/informe_quincenal_acumulado_01-01_al_31-12-2019.pdf/97f0020d-9230-48b0-83a6-07b2062b424f (accessed 21 October 2020).

Nationalt Udlændingecenter, 2020. *Status på udsendelse af udlændinge fra Danmark* [online]. Available at: https://politi.dk/-/media/mediefiler/landsdaekkende-dokumenter/landsdaekkende/statistikker/udsendelser/2019-december-udsendelsesstatistik.pdf?la=da&hash=2EC4E2653887FF640046D5935E7F995B28E75CDF (accessed 6 April 2020). *This document has recently been taken off the website of the Danish Immigration Services. Request document with authors.

Radermacher, W., Barroso, J.M., Poto, J., Padoan, P.C., Gual, E.F., Reynders, D., Varga, M., Leeftink, B., Landefeld, J.S., 2011. *Statistics for policymaking: Europe 2020 (Charlemagne Building, Brussels). Eurostat* [online]. Available at: https://ec.europa.eu/eurostat/documents/1001617/1014450/All.pdf/b6b3887b-0f10-4c33-9cdc-2348dcd35812 (accessed 31 October 2020).

Rigspolitiet, 2018. *Arbejdspapir: Analyse af opholdslængde for personer på ulovligt ophold Empirisk estimeret udskiftningsrate 2013-2017* [online]. Available at: https://politi.dk/-/media/mediefiler/landsdaekkende-dokumenter/statistikker/ulovligt-arbejde/arbejdspapir-analyse-af-opholdslngde-for-personer-p-ulovligt-opholdpdf.pdf?la=da&hash=C03B2EACB2E36CE42ED891313B16A565EECDC2FF (accessed 21 October 2020).

Rogers, A., Raymer, J., Little, J., 2010. *The Indirect Estimation of Migration, The Springer Series on Demographic Methods and Population Analysis.* Dordrecht: Springer Netherlands.

Schuster, L., Majidi, N., 2015. 'Deportation Stigma and Re-migration', *Journal of Ethnic and Migration Studies 41*, p. 635-652.

Stoeldraijer, L., van Duin, C., Huisman, C., 2019. *Kernprognose 2019–2060: 19 miljoen inwoners in 2039* [online]. Available at: https://www.cbs.nl/nl-nl/achtergrond/2019/51/kernprognose-2019-2060-19-miljoen-inwoners-in-2039 (accessed 20 October 2020).

Styrelsen for International Rekruttering og Integration, Udlændingestyrelsen, 2018. *Tal og fakta på udlændingeområdet 2018*. København [online]. Available at: https://uim.dk/publikationer/tal-og-fakta-pa-udlaendingeomradet-2018 (accessed 21 October 2020).

Suárez-Krabbe, J., Lindberg, A., Arce-Bayona, J., Freedom of Movement (forening), Forskningskollektivet, 2018. *Stop killing us slowly: en forskningrapport om de*

motivationsfremmede foranstaltninger og kriminaliseringen af afviste asylansøgere i Danmark. København: Freedom of Movements Forskningskollektiv.

Van der Heijden, P., Cruyff, M., van Gils, G., 2015. *Schattingen illegaal in Nederland verblijvende vreemdelingen 2012-2013* [online]. Available at: https://www.wodc.nl/binaries/2402-volledige-tekst_tcm28-73349.pdf (accessed 31 October 2020).

Van Houte, M., Leerkes, A., 2019. *Dealing with (non-)deportability: A comparative policy analysis of the post-entry migration enforcement regimes of Western European countries*, UNU-MERIT, Maastricht [online]. Available at: https://www.merit.unu.edu/publications/uploads/1560863056.pdf (accessed 21 October 2020).

Vogel, D., 2015. *Update report Germany: Estimated number of irregular foreign residents in Germany (2014), Database on Irregular Migration* [online]. Available at: https://www.researchgate.net/publication/270755606_Update_report_Germany_Estimate_on_irregular_migration_for_Germany_in_2009 (accessed 20 October 2020).

Vogel, D., Kovacheva, V., 2009. *The size of the irregular foreign resident population in the European Union in 2002, 2005 and 2008: aggregated estimates* (No. Working Paper No.4/2009). Hamburg Institute of International Economics [online]. Available at: https://www.uni-bremen.de/fb12/irregular-migration/working-paper-series (accessed 20 October 2020).

Vogel, D., Kovacheva, V., 2008. *Classification report: Quality assessment of estimates on stocks of irregular migrants. Hamburg Institute of International Economics* [online]. Available at: https://www.uni-bremen.de/fb12/irregular-migration/methodology/quality-assessment (accessed 15 January 2020).

Vogel, D., Kovacheva, V., Prescott, H., 2011. The Size of the Irregular Migrant Population in the European Union - Counting the Uncountable? *International Migration 49*, p.78-96.

Vollmer, B., 2009. *Counting the Uncountable. Data and Trends across Europe* [online]. Available at: https://www.compas.ox.ac.uk/project/clandestino/ (accessed 21 October 2020).

Vollmer, B.A., 2017. 'The Continuing Shame of Europe: Discourses on migration policy in Germany and the UK', *Migration Studies* 5, p.49-64.

Wissenschaftliche Dienste Deutscher Bundestag, 2018. *Programme von Bund und Ländern zur Förderung der freiwilligen Rückkehr von Migranten in ihre Heimatländer* [online]. Available at: https://www.bundestag.de/resource/blob/585714/b8addf1de29f6780701ccc3d62805e58/WD-3-353-18-pdf-data.pdf (accessed 21 October 2020).

Wong, Tom K., 2015. *Rights, Deportation, and Detention in the Age of Immigration Control*. Stanford, CA: Stanford University Press.