

# ***REGULATION 2024/1349 – THE “RETURN BORDER PROCEDURE REGULATION”***

***“The New Pact will guarantee a fairer and more robust migration system that makes a real difference on the ground (and) will strengthen the effectiveness of the European asylum system, as well as solidarity between Member States.”***

– Nicole de Moor, Belgian Secretary of State for Asylum and Migration

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**Regulation 2024/1349 « establishing a return border procedure, and amending Regulation (EU) 2021/1148 in the context of the refusal of the asylum border procedure»**, provides a *legal framework to streamline, simplify, and harmonise the procedural arrangements of Member States by establishing a return border procedure.*

### **PUBLIC CONCERNED:**

- **Member States**
- **Third-country nationals and stateless persons**
- **Asylum seekers**

### **MAIN ISSUE**

The Regulation 2024/1349 was designed to **ensure the efficiency of the procedural arrangements for the return of third-country nationals and stateless persons whose application for international protection has been rejected** in the asylum border procedure. Although, it creates a **fundamental paradox** between the claim to balance efficiency with rights protection as it codifies the extension of detention periods, a crisis mechanism in order **to prioritize expediency**. Therefore, **human rights issues** linked to the principle of non-refoulement and the right to liberty can be raised.

**Entry into force:**  
20th day following that of its  
publication in the Official  
Journal of the EU

**Full effect:**  
12 June 2026

# LEGAL ENVIRONMENT

## PRIMARY LAW:

- Treaty on the Functioning of the European Union (TFEU) (article 77(2) ; article 79(2)(c))
- Charter of Fundamental Rights of the European Union (articles 1, 4, 8, 18, 19, 21, 23, 24, 47)

## OTHER LEGAL INSTRUMENTS:

- Regulation (EU) 2024/1348 (The 'Asylum Border Procedure').
- Regulation (EU) 2024/1359 (The 'Crisis and Force Majeure Regulation').
- Directive 2008/115/EC (Return Directive).
- Regulation (EU) 2021/1148.
- Regulation (EU) 2024/1351 (Asylum and Migration Management Regulation).
- Directive (EU) 2024/1346 (Reception Directive).



# TERMINOLOGICAL APPROACH

## RETURN

“The movement of a person **going from a host country back to a country of origin, country of nationality or usual residence after spending a significant period of time in the host country whether voluntary or forced, assisted or spontaneous.**” – EU Glossary

## BORDER

The EU's borders are both **external and internal**. According to the **Schengen Border Code** external borders are those **not shared with another Schengen Member States** (including land, river, lake, sea, airports and ports) while **internal borders** are the **parts of Schengen Member States' borders**.

## DETENTION

“In the international protection context, the **confinement of an applicant for international protection** by an EU Member State **within a particular place**, where the applicant is **deprived of their personal liberty.**” – EU Glossary

## DEROGATION

A derogation is a provision in an EU legislative measure which allows for all or part of the legal measure to be **applied differently**, or not at all, to individuals, groups or organizations.

## CRISIS

“An **exceptional situation** of mass arrivals of **third-country nationals** or stateless persons in a Member State by land, air or sea, including of persons that have been disembarked following search and rescue operations, of such a scale and nature.” – Regulation EU 1359

## FUNDAMENTAL RIGHTS

The **basic rights and freedoms** that belong to everyone in the EU. They enforce important principles like dignity, fairness, respect and equality. They are enshrined in the **Charter of Fundamental Rights**.



# GENERALISATION AND EXTENSION OF THE USE OF DETENTION

The Regulation facilitates the continuous detention of rejected applicants for the purpose of removal. It introduces first, a limited legal framework.

**ARTICLE 4(2)** of the Regulation allows detention for a period of **12 weeks** in a place **near external borders or transit zones**.

**Article 5(1)** of the Regulation states the use of detention shall remain as a **last resort measure**.



# GENERALISATION AND EXTENSION OF THE USE OF DETENTION

However the Regulation **generalizes the use of detention** until the departure of the third-country nationals or stateless persons. The main goal being to **prevent the entry into the territory**.

This goal is pushed further by the **new Return Regulation** as irregulars migrants with return decision will be sent to **return hubs in third-countries**.

The **article 5(3)** extends the scope of the use of detention as before the Regulation it was only authorized for third-country nationals who were **denied the entry in the territory** (Directive 2008/115/EC).

**ARTICLE 5(2)** allows Member States to **keep detaining** rejected applicants to **prevent their entry into the territory** during the **preparation of their return**.

**ARTICLE 5(3)** authorizes detention to **prevent any risk of absconding or risk to public policy, public or national security**.

This is also provided by the **new Return Regulation** which aims to establish a **common EU return system**.

# GENERALISATION AND EXTENSION OF THE USE OF DETENTION

The **generalization and normalisation** of the use of detention by the Regulation shows the **new vision of the EU on migration**.

This raises questions regarding the **conformity of the Regulation** with the current jurisprudence of the **European Court of Justice**.

Even though **safeguards** are put in place regarding the use of detention by **articles 4(2) and 5(1)**, it still weakens the **right to liberty** enshrined by **article 6 of the Charter of fundamental rights of the EU**.

In the joined **cases SJV 8<sup>th</sup> nov. 2022** the Court, basing its reasoning on the **article 6 of the Charter**, stated **detention** (first and renewal) was a **serious interference to the right to liberty**.

# DEROGATIONS IN CRISIS SITUATIONS

The Regulation grants the authority to extend the **standard 12-week return period** by an additional **6 weeks** in **crisis situations**. However, this extension is subject to the **principles of 'necessity and proportionality'**.

**In theory**, this is an **exception**, but **in practice**, it has become a **frequently used tool**. Furthermore, rights such as access to legal assistance may be restricted on **security grounds**.

## Access Rights and Security Exceptions

**Article 6(2)** of the Regulation states that Member States can **limit access** of organizations and persons permitted to **detention facilities** for **security, public order reasons, or administrative management**.

## Centrality of Crisis Instruments

Crisis management tools are at the heart of the new legal framework on migration of the EU. This Regulation is part of it.

# DEROGATIONS IN CRISIS SITUATIONS

The Commission often publishes studies, reports, or evaluations on crisis situations. This contributes to establishing a **form of country hierarchy** (e.g., identifying which Member States are most affected or overwhelmed).

This **facilitates the application of specific regulations** by considering their activation as **almost automatic** in qualifying cases.

The priority of the crisis framework is on **restriction, deterrence and control** rather than **solutions** such as integration or addressing root causes. The results enlighten a **securitization of migration** mostly centered on the nation-state and national security rather than on people and human security.



# HUMAN RIGHTS LINKED TO THE PRIORISATION OF EFFICIENCY AND EXPEDIENCY

The Regulation raises concerns about the **respect of fundamental rights**. Some **NGOs** fear the **expedited procedure** limits genuine **access to legal representation**.

Several articles link directly asylum rejection to:

- **Endangering the right to liberty**
- **Expedited removal**
- **Risks of violence**



The **generalisation of the use of detention** leads to **prevent** people of accessing **social rights** and the **right to remedy**.

Another concern is regarding the **right to voluntary return** which can be **denied** if there's a **risk of absconding**. Many safeguards of the **Directive 2008/115/EC** are violated.

# HUMAN RIGHTS LINKED TO THE PRIORISATION OF EFFICIENCY AND EXPEDIENCY

The Regulation also raises concerns regarding the **respect of the non-refoulement principle**.

The **expedited nature** of the removal processes resulting from the Regulation risks to lead to **inadequate assessments of the danger** faced by the applicant.

Finally, the Regulation might lead to **overcrowded retention centers** at the borders



# NEXT STEPS

By 12 September 2024, the Commission must have presented a **common implementation plan** to the Council. By 12 December 2024, each Member State must have established a **national implementation plan** setting out actions and a timeline for their implementation, with completion is required by 1st July 2026.



The Regulation serves as the **final stage of the EU's new asylum framework** and directs individuals who are immediately identified as not needing protection through the legal gateway of the asylum border procedure to be swiftly removed from the country, bypassing standard entry rights and protections, thereby enabling rapid migration control.

# TO GO FURTHER

## SOURCES IN ENGLISH

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“The Interplay between the Schengen Borders Code and the Return Directive: Blurring Lines of Demarcation”, Madalina Moraru’s, 2024.

“Detaining asylum seekers at the borders: De jure and de facto practices under the New Migration Pact”, Noa Paul, *GRITIM-UPF Working Paper Series*, 2025.

“Border Procedure on Asylum and Return: Closing the Control Gap by Restricting Access to Protection?.” Reforming the Common European Asylum System, Vedsted-Hansen, Jens, *Nomos Verlagsgesellschaft mbH & Co. KG*, 2022.

# TO GO FURTHER

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Pacte Européen sur la Migration et l'Asile, *Note de plaidoyer rédigée à l'initiative du Conseil européen pour les réfugiés et les exilés (ECRE), co-signée par Forum réfugiés-Cosi aux côtés d'autres organisations européennes, 2020.*

