

OSCE PA AD HOC COMMITTEE ON MIGRATION
Briefing on Effective and Humane Return Policy
+ Field Visit to Belgium on Returns
(Brussels, 2 April 2019)

FINAL REPORT



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Photo.: Steenokkerzeel Repatriation Centre 127bis, closed family units, Belgium, 2 April 2019.

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I. Introduction



On 2 April 2019, a delegation of six members of the OSCE PA Ad Hoc Committee on Migration, headed by Chair Nahima Lanjri (MP, Belgium) was in Brussels for a policy briefing on proposed reforms to the European Union's so-called 'Return Directive' –which has governed the returns policy of EU Member States since 2008. The Committee members met with representatives of the European Commission and European Parliament, as well as

representatives of international governmental and non-governmental organisations.

The delegation was also briefed on current practice in the field of returns in Belgium and visited a closed return centre in the vicinity of Brussels Zaventem airport.

The visit was hosted by OSCE PA Migration Committee Chair Lanjri.¹ This was the third visit of the Committee to Belgium since its establishment in 2016.

II. Background – The EU Recast Directive on Returns

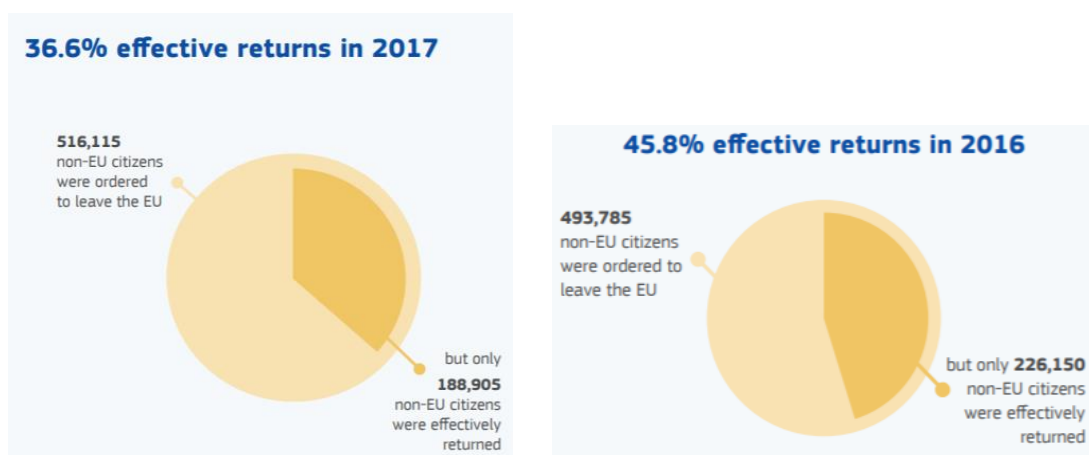
The main piece of EU legislation regulating the return of irregular migrants is *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals* (the so-called EU 'Return Directive'). This Directive sets the common standards and procedures for the effective return of irregular migrants while respecting their fundamental rights and the principle of non-refoulement. At the same, the Directive leaves necessary room of manoeuvre to Member States on how to reach this objective.²

¹ See Annex I for the Programme and List of Participants of this visit.

² A 'directive' is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals. EU countries must adopt measures to incorporate directives into national law (transpose) in order to achieve the objectives set by the directive. National authorities must communicate these measures to the European Commission. Transposition into national law must take place by the deadline set when the directive is adopted (generally within two years). When a country does not transpose a directive, the Commission may initiate infringement proceedings. A directive is different from a 'regulation' which is a binding legislative act and must be applied in its entirety across the EU.

Making returns more effective and stepping up the return rate throughout the EU has been a priority for European institutions in the last years, as stated in the Commission's European Agenda on Migration (2015),³ the EU Action Plan on Return (2015)⁴ and the renewed Action Plan on Return (2017)⁵.

However, while the number of return decisions issued by EU Member States between 2008 and 2017 has remained relatively constant at about 0.5 million a year, the number of effective returns has trailed behind at a yearly rate of 0.2 million.⁶ In 2017, 188,905 of the 516,115 non-EU citizens who had been issued with an order to leave EU territory were returned outside the European Union, representing an **effective return rate of 36.6 per cent**, down from an effective return rate of 45.8 per cent in 2016.



Source: https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-factsheet-returns-policy_en.pdf.

In his 2017 State of the Union Letter of Intent,⁷ Commission President Juncker announced that by the end of 2018 the Commission would present targeted measures to promote a more

³ European Commission, *A European Agenda on Migration*, COM(2015) 240 final, Brussels, 13 May 2015, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

⁴ European Commission, *EU Action Plan on Return*, COM(2015) 453 final, Brussels, 9 September 2015, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication_from_the_ec_to_ep_and_council_-_eu_action_plan_on_return_en.pdf

⁵ European Commission, *On a more effective return policy in the European Union – A renewed action plan*, COM(2017) 200 final, Brussels, 2 March 2017, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_a_more_effective_return_policy_in_the_european_union_-_a_renewed_action_plan_en.pdf.

⁶ <http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-proposal-for-a-recast-of-the-return-directive>

⁷ European Commission, *State of the Union 2017, Letter of Intent to President Antonio Tajani and to Prime Minister Juri Ratas*, Strasbourg, 13 September 2017, available at: https://ec.europa.eu/commission/sites/beta-political/files/letter-of-intent-2017_en.pdf.

effective approach to returns. Consequently, on 12 September 2018, the Commission presented a proposal for a 'recast' of the EU Return Directive.⁸

The proposed recast Return Directive aims to:

- Accelerate and simplify border procedures (no period for voluntary return granted as a rule; shorter time-limit for lodging an appeal, dedicated ground for detention);
- Reduce the time limits for appeals against certain return decision (specific time-limit of five days for lodging appeals against return decisions issued in cases where the return decision is the consequence of a decision rejecting an application for international protection that became final) and restrict the suspensive effect of appeals against return decisions;
- Oblige Member States to set up voluntary return programmes and give them an option to shorten the period for voluntary return;
- Oblige persons subject to a return procedure to cooperate when verifying their identity and acquiring travel documents for the return;
- Introduce a new minimum detention period of at least three months to give Member States sufficient time to successfully prepare, organise and carry out return operations; illegally staying third-country nationals who pose a threat to public order or national security can be detained if deemed necessary; a list of criteria for assessing the "risk of absconding" and detaining returnees is proposed.

The proposal has entered the ordinary legislative procedure in the European Parliament (EP) and the Council of the EU.

At the European Parliament, the Civil Liberties, Justice and Home Affairs (LIBE) Committee is responsible for the proposal. As it was not accompanied by an impact assessment, the LIBE Committee requested the EP Research Service to provide a targeted substitute impact assessment of the proposal.⁹ Judith Sargentini (MEP, The Netherlands) was appointed as rapporteur for the proposal at the LIBE Committee and she presented her draft report on 16 January 2019.¹⁰

The draft report proposes 120 amendments among which:

- a. A revised definition of the risk of absconding and the deletion of the criteria listed by the Commission's proposal to assess whether such a risk exists;

⁸ *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)*, COM(2018) 634 final, Brussels, 12 September 2018, available at: <https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=COM:2018:634:FIN>.

⁹ European Parliamentary Research Service, *The proposed Return Directive (Recast), Substitute Impact Assessment*, February 2019, available at:

[http://www.europarl.europa.eu/RegData/etudes/STUD/2019/631727/EPRS_STU\(2019\)631727_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/631727/EPRS_STU(2019)631727_EN.pdf).

¹⁰ European Parliament, Committee on Civil Liberties, Justice and Home Affairs, *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)*, Rapporteur: Judith Sargentini, 2018/0329(COD), 16 January 2019, available at: http://www.europarl.europa.eu/doceo/document/LIBE-PR-632950_EN.pdf?redirect

- b. The introduction of an obligation imposed to Member States to provide information to returnees on the return procedure, their rights and obligations and a substantive reframing of the obligations imposed to returnees in return procedures;
- c. The extension of the time limit for voluntary return to 30 days and the limitation of the circumstances under which Member States can shorten that time limit or can refuse to grant a period of voluntary return to third country nationals;
- d. Measures aiming to strengthen fundamental rights safeguards in return decisions and operations (e.g. independent monitoring of return operations);
- e. A ban on detention of children and families with children and several additional safeguards to be respected by Member States when deciding on the possible return of unaccompanied children and families with children;
- f. The compulsory inclusion of reintegration support in national programmes for voluntary return;
- g. Measures granting automatic suspensive effect to appeals against return decisions and deleting the five days time limit proposed by the Commission to lodge appeals against return decisions when the person had already been denied international protection;
- h. The deletion of the new ground for detention of returnees proposed by the Commission (risk to public policy, public security and national security) and the limitation of the detention period of returnees to a maximum of three months, that could be extended for six months more under certain circumstances;
- i. The deletion of the return border procedure.

The deadline for tabling amendments expired on the 7th February 2019. 654 amendments were tabled. At the Council, the Justice and Home Affairs configuration welcomed the proposal in its meeting of 12 October 2018 and the text is now being discussed at technical level.

The areas in which further discussions are still needed relate, *inter alia*, to the possibility of returning migrants to a safe third country other than the country of origin or transit, the mutual recognition of return decisions issued by other EU countries, and the return border procedure.

III. Policy Briefing “Promoting Effective and Humane Returns” (Brussels, 2 April 2019)

A. The recast EU Return Directive: Towards a stronger and more effective European Return Policy

The representative of the European Commission gave an introductory presentation on the ‘recast’ EU Return Directive, providing an overview of how the proposed amendments to the 2008 EU Return Directive¹¹ seek to address the challenges faced so far in implementation, with a particular focus on measures related to vulnerable categories of migrants, detention and border procedures. He also addressed the measures to reform the European Border and Coast Guard Agency (Frontex).

The Commission’s recast proposal presented on 12 September 2018 has its roots in a long process which started at the peak of the migration crisis in 2015. The Commission subsequently developed two action plans and handbooks on returns in 2015 and 2017, which included recommendations on how to make returns more effective.¹²

Despite all these initiatives, return rates were decreasing. Two main categories of obstacles to implementing returns were identified:

- *External obstacles:* Levels of return depend on co-operation between the EU, Member States and countries of return. However, this area is not covered by the Return Directive. Since 2015, there have been efforts to streamline migration issues in dialogue with third countries, with a focus on countries with high rates of arrivals and poor rates of returns. The Commission has thus far concluded 23 readmission agreements (binding) and arrangements (non-binding) with third countries.
- *Internal obstacles:* These internal obstacles are the focus of the Return Directive and include:
 - The way in which provisions have been transposed into national legislation has led to difficulties, e.g., ineffective rules for preventing so-called ‘secondary movements’¹³ /absconding;
 - weak links between asylum and return procedures;

¹¹ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, 16 December 2008, available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>.

¹² See the 2017 ‘Return Handbook’ which provided Member States with common guidelines, best practices and recommendations to be used by the competent authorities when carrying out return-related tasks (Commission Recommendation (EU) 2017/2338 of 16 November 2017). The first version of the ‘Return Handbook’ was adopted in October 2015. The Handbook did not create any legally-binding obligations upon Member States.

¹³ ‘Secondary movements’ occur when refugees or asylum-seekers move from the country in which they first arrived to seek protection or permanent resettlement elsewhere. Such secondary or onward movements are often done in an irregular manner. The objective of the current instruments of the Common European Asylum System is to limit secondary movements of applicants for international protection between EU Member States.

- lack of co-operation of Third Country Nationals (TCNs)¹⁴;
- belated issuance of return decisions;
- lack of follow-up on return decisions;
- limited co-ordination of information between child protection authorities, migration authorities and judicial authorities; etc.

The Commission representative then outlined the main changes proposed to the Directive:

- 1. Border procedures:** Member States are to establish accelerated procedures for persons whose asylum applications are rejected at the border. FRONTEX and the European Asylum Support Office (EASO) will play an important role in these procedures.
- 2. Procedures for ordering and implementing return decisions:** return decisions must immediately follow an asylum decision or a request to extend the person's legal status. Member States are asked to set up a national IT system to monitor return decisions.
- 3. Voluntary departures:**
 - Member States are to streamline rules on when to grant possibility of voluntary departure. A period for voluntary departure should not be granted if there is a risk of absconding or in the case of an asylum claim which has been dismissed as 'manifestly unfounded'. In other cases, a period of (up to) 30 days shall be granted.
 - Member States must also set up voluntary return programmes. These programmes, according to the Commission representative, are the preferred option as they are less expensive and codify good practice.
- 4. Obligation to co-operate with the competent authorities**
- 5. Addressing absconding:**
 - A list of criteria for assessing the risk of absconding will be included in EU law.
 - A new rule has also been introduced for rebuttal of the presumption of the risk of absconding.
 - Each Member State shall set a **maximum** period of detention **of not less than** three months **and not more than six months**. This period can be prolonged by 12 months maximum. The rationale for introducing a minimum period of detention of three months is that certain Member States had shorter periods which were not sufficient for obtaining the necessary replies from third countries such as requests for travel documents. This does not exclude the possibility of release before the three months have elapsed if there are no grounds for detention.
- 6. Appeals:** An effort has been made to reinforce the link between asylum and return procedures. In case of a negative asylum decision confirmed by a judge, only one level of appeal should be granted, unless new elements have appeared. This is in line with judgments of the European Court of Justice and the European Court of Human Rights. A

¹⁴ A 'Third Country National' refers to any person who is not a citizen of the EU and who is not a person enjoying the EU right to free movement, as defined in Art. 2(5) of the Regulation (EU) 2016/399 (Schengen Borders Code).

return decision may be suspended only if there is a risk of breaching the principle of *non-refoulement*. The suspensive effect will not be granted automatically but only by decision of a judge.

As of the date of the briefing (2 April), the negotiations on the recast Directive were ongoing. The Commission representative expected the European Council to reach an agreement with the European Parliament by the end of the Romanian presidency of the Council of the EU (30 June 2019). The original plan had been to adopt the recast Directive by the date of the European Parliament elections.

In the ensuing **discussion**, a member of the Migration Committee asked which issues were the most difficult to negotiate. Reminding the delegation that actual negotiations between the European Council and European Parliament had not yet started, the Commission representative pointed to three issues which were likely to be 'hot':

1. **Border procedure**¹⁵: this is the necessary corollary of the border asylum procedure. Detention in the context of the border procedure. A TCN may be detained in the context of a border procedure for a maximum period of four months. The LIBE Committee Rapporteur has proposed deleting the border procedure entirely.
2. **List of criteria for assessing the risk of absconding**: there are different views concerning these criteria, with some Member States wanting to add criteria while others would like to delete the list entirely. Some Member States also invoke the principle of subsidiarity and want to establish their own list.
3. **Duration of detention**: the European Parliament wants to delete the provision calling for a maximum detention period of at least three months, and replace it with a three month maximum limit on detention, which could be prolonged by a further six months.

In response to the question regarding which countries were the most affected by decreasing effective rates of return, noting that the decrease in return rates could be due to differences in reporting, the Commission representative referred to Pakistan, Bangladesh as well as a number of West African countries where the response rate is an issue.

Responding to a question on how to improve co-operation with Third Countries, the representative reiterated that this question is not addressed by the recast Directive. Rather, it tries to induce the cooperation of Third Country Nationals (TCNs).

The question of how to ensure legal safeguards was also raised. According to the Commission representative, the main legal safeguards are built in the Directive itself, ensuring that return

¹⁵ This refers to the new provision in the recast which sets out special rules for asylum seekers whose cases have been rejected at border posts or in transit zones.

decisions will not be enforced if there is a risk of breaching the principle of *non-refoulement*. He also underlined that there is the right to appeal once. He also explained that an appeal will be suspensive only if there is a real risk of *refoulement* or in case of a serious health condition. Furthermore, if the situation in the country to which the TCN must be returned has changed then the application must be assessed again.

One member also questioned why a maximum period for voluntary return of 30 days had been proposed. The Commission representative drew attention to the provision according to which the period for voluntary departure could be extended in the case of children attending school or if the person wishes to participate in an Assisted Voluntary Return Programme.

B. Panel 1 - General Principles Guiding Return Policy

The session with the representative of the European Commission was followed by a panel on general principles guiding return policy with representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and the non-governmental organization Save the Children.

1. Detention (UNHCR)

The UNHCR representative first commented on several aspects of the proposed recast Return Directive. He then focused on the issue of detention within the context of returns, more specifically alternatives to detention (ATD), presenting an overview of UNHCR's policy and strategy in this area, also outlining some key challenges to the effective implementation of ATDs and why states should adopt them by highlighting positive examples of ATDs.

- **The Recast Return Directive**

The main issues which the UNHCR representative highlighted concerned the obligation to prevent refoulement and to provide humane, dignified returns. Sustainability, he stressed, is best assessed in the case of voluntary returns.

Focusing on the provisions concerning the period of detention (minimum detention period of at least three and at most six months with the possibility of extension of up to 12 months, he noted that detention could add up to 22 months and not 18 months if one also includes the possibility of detention of up to four months as part of the border procedure.

The list of 16 criteria for assessing the risk of absconding is overly broad. Furthermore, the link between the lack of financial resources and the risk of absconding is not justified. This list of criteria is likely to lead to an increase of pre-removal detention. Detention, he stressed, should only be imposed following an individual assessment and be necessary and proportional.

- **Alternatives to Detention**

(1) UNHCR Policy and Strategy with respect to Alternatives to Detention

The UNHCR representative reiterated that **seeking asylum is not an unlawful act**; asylum-seekers and refugees should therefore not be penalised for exercising this right. He also stressed that, under international human rights and refugee law, detention is and must remain an **exception** to the right to liberty and freedom of movement.

Furthermore, **children should not be detained** for immigration-related purposes, irrespective of their legal/migratory status or that of their parents, as detention is never in their best interest. Rather, they should benefit from appropriate care arrangements and community-based programmes. UNHCR is concerned about the growing use of immigration detention, particularly of children.

Turning to ATDs, he stressed that they can only be applied when a **ground for detention** exists. Liberty and freedom of movement for asylum-seekers are always the first options. A number of other factors should influence the decision whether to detain or to assign an ATD, such as vulnerability, compliance with previous measures, existing ties with the asylum country.

Promotion of ATDs and support to governments is among the key objectives of both UNHCR's Detention Guidelines (2012)¹⁶ and Global Strategy "Beyond Detention".¹⁷ The three main goals of the strategy are: (a) to end the detention of children; (b) to ensure that alternatives to detention are available in law and implemented in practice; and (c) to ensure that detention conditions, where detention is necessary and unavoidable, meet international standards.

(2) The broader associated contexts

ATDs need to be implemented within the framework of a **functioning and holistic asylum system** in order for them to be effective. Revitalizing EU asylum and migration policies therefore needs to remain a priority at EU level.

(3) What UNHCR means by "Alternatives to Detention"

ATDs refer to any legislation, policy or practice that allows asylum-seekers to reside in the community subject to a number of conditions or restrictions on their freedom of movement. ATDs must not become alternative forms of detention, nor be imposed where no conditions on liberty are required.¹⁸ They should respect the principle of **minimum intervention** and pay close attention to the situation of particularly **vulnerable** groups.

¹⁶ UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <https://www.refworld.org/docid/503489533b8.html>.

¹⁷ UNHCR, *Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seeker and refugees, 2014-2019*, 2014, available at: <https://www.refworld.org/docid/536b564d4.html>.

¹⁸ UNHCR *Beyond Detention Toolkit: Guiding Questions for the assessment of Alternatives to Detention*, May 2018, available at: <https://www.refworld.org/docid/5b1e662d4.html>.

(4) Key common challenges and why to use ATDs?

Many governments are facing similar challenges in managing the consequences of irregular stay or entry on their territory. Why to use ATDs will depend on the following:

- a) **Context:** Whether a particular ATD works and is suitable in a specific country will depend *inter alia* on the security, social, political and legal context. Authorities have a wide array of alternatives from which to select the most appropriate for the particular context and needs.
- b) **Compliance:** One challenge for all States is that of national security and knowing who is on one's territory. Particularly harsh or arbitrary detention practices can undermine, rather than enhance, security by encouraging people to live clandestinely. Alternative approaches, on the other hand, can encourage contact.
- c) **Capacity:** No country has the capacity to detain the irregular migrant population on a large-scale. Differentiated approaches and an array of options to manage migration effectively are needed.
- d) **Procedures:** Successful ATDs are premised on individuals engaging constructively with asylum and migration processes. Well-functioning screening and assessment procedures, registration and documentation systems, including proper birth and other civil registration, and access of asylum-seekers to those systems, are all essential.
- e) **Training:** Clear guidance and training is required for the police and immigration authorities. This will allow for better case-by-case determination of the possible necessity and proportionality of any decision to detain or the most appropriate ATD in the individual case. It will also enhance the identification of persons with specific needs and facilitate appropriate referrals to service providers.
- f) **Absconding:** A 2011 UNHCR-commissioned study of 13 ATDs in different countries around the world found that the rate of absconding was between 1 and 20 per cent, with 10 of the 13 projects enjoying cooperation rates above 94 per cent.¹⁹ Furthermore, while there is no evidence that detention deters onward movement from countries of transit, there is some evidence to suggest that asylum-seekers are less likely to move on when ATDs allow them to meet their basic needs and do not put them at risk of detention or *refoulement*.²⁰
- g) **Harmful:** The harmful physical and psychological effects of detention are very well-documented; this has been one of the motivations for exploring alternatives.

¹⁹ UNHCR, *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, April 2011, available at: <https://www.refworld.org/docid/4dc935fd2.html>.

²⁰ International Detention Coalition, *There are Alternatives: A handbook for preventing unnecessary immigration detention*, 13 May 2011, available at: <https://www.refworld.org/docid/4f0c14252.html>

- h) **Cost:** Empirical evidence demonstrates that ATDs are considerably less expensive.²¹ Using ATDs can also assist states in preventing or reducing cases of wrongful or arbitrary detention, thereby also avoiding costly litigation.

(5) Why ATDs work in practice

There is sufficient research and good practice to be able to **draw lessons** on why ATDs **work in practice**.

The **five key ingredients** are when asylum-seekers and other migrants:

- i) are treated with dignity, humanity and respect throughout the immigration procedure;
- ii) are provided with clear and concise information about rights and duties under the ATD and consequences of non-compliance;
- iii) are referred to legal advice including on all legal avenues to stay;
- iv) can access adequate material support, accommodation and other reception conditions;
- v) are offered individualised ‘coaching’ or case management services.

Other useful features of ATDs include:

- i) close working partnerships between government and civil society;
- ii) holistic approaches to alternatives – approaches that apply from beginning-to-end of the asylum/migration process as well as covering all facets of an individual’s life;
- iii) context-specific.

UNHCR has also published two options papers on open reception and ATDs which document more than 30 good examples of ATDs.²² Features of the successful alternatives include:

- a) **Deposit or surrender of documentation**
- b) **Reporting to the designated authorities at periodic intervals**, e.g., with the assistance of new technologies (reporting by telephone utilising biometric voiceprint technology in the case of low risk individuals)
- c) **Designated or directed residence**. This is one of the most commonly used measures, often in conjunction with reporting.
- d) **Alternatives based on bail or bond**: These typically require a financial deposit that may be forfeited in the event of absconding. Individuals may also be released to the ‘guardianship’ of a citizen or legal resident, or even to a charity or church

²¹ In the Toronto Bail Program, the ‘saving’ was 167 CAD per person per day, which amounts to 60,995 CAD per person per year in detention. International Detention Coalition, *There are Alternatives: A handbook for preventing unnecessary immigration detention*, 13 May 2011, available at: <https://www.refworld.org/docid/4f0c14252.html>.

²² UNHCR, Options Paper 1: *Options for governments on care arrangements and alternatives to detention for children and families*, available at: <https://www.refworld.org/docid/5523e8d94.html> and Options Paper 2: *Options for governments on open reception and alternatives to detention*, available at: <https://www.refworld.org/docid/5523e9024.html>.

- e) **Community supervision and case management:** There are a wide range of open reception practices in which individuals and families are released into the community, with a degree of supervision, case management and other support and guidance.

In conclusion, the UNHCR representative commended the efforts of a number of European states to limit the use of administrative detention and to provide for alternative measures in their national legal frameworks. He also reiterated that **ATDs make sense** in terms of security, efficiency of migration and asylum systems, while also treating people with dignity and humanity and encouraged further learning from state practice as well as strategic investment in developing and testing successful models. Better and more transparent data collection and analysis of statistics on detention and ATD is also needed. UNHCR together with its partners stands ready to assist the EU and Member States to develop their policies.

2. Assisted Voluntary Return and Reintegration (AVRR) (IOM)

Built on IOM's long-lasting experience and anchored in international law, IOM's **Framework for Assisted Voluntary Return and Reintegration (AVRR)**²³ seeks to contribute to the 2030 Agenda for Sustainable Development²⁴ and to the Global Compact for Safe, Orderly and Regular Migration²⁵ by guiding decision-makers and practitioners in the design and implementation of AVRR-related policies and programmes; and proposing a roadmap to address voluntary return and reintegration in a holistic way, calling for the adoption of coordinated measures, policies and practices between stakeholders responsible for migration management and development at the international, national and local levels.

The Framework lays out the key principles that in IOM's view need to be adhered to in order to support dignified voluntary returns and sustainable reintegration. The document also proposes **six concrete objectives** which are applied throughout the voluntary return and reintegration process. Illustrated through concrete activities, these principles and objectives underpin IOM's commitment to facilitate orderly, safe, and responsible migration and to contribute to migrants' socioeconomic well-being.

The IOM representative highlighted in particular target 10.7 of the UN Sustainable Development Goals (SDGs)²⁶ as well as target 10.2 on social, economic and political inclusion,²⁷

²³ International Organization for Migration, *A Framework for Assisted Voluntary Return and Reintegration*, 2018, available at: <https://eea.iom.int/publications/framework-assisted-voluntary-return-and-reintegration>.

²⁴ See <https://sustainabledevelopment.un.org/post2015/transformingourworld>.

²⁵ United Nations, *Global Compact for Safe, Orderly and Regular Migration*, Resolution adopted by the General Assembly on 19 December 2018, A/RES/73/195, available at: https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195.

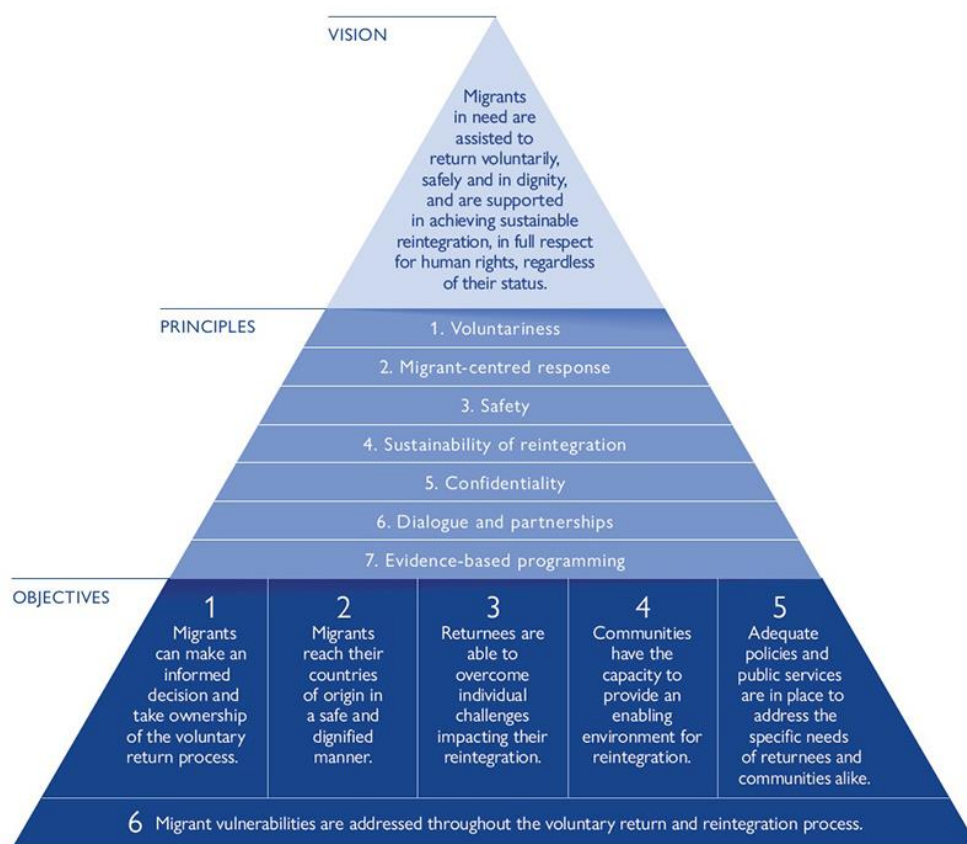
²⁶ SDG 10: "Reduce inequality within and among countries" includes Target 10.7 "Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies", See: <https://sustainabledevelopment.un.org/sdg10>.

²⁷ Target 10.2: "By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status". See: <https://sustainabledevelopment.un.org/sdg10>.

target 17.9 on capacity-building²⁸ and target 17.17 on public, public-private and civil society partnerships²⁹.

Regarding the Global Compact for Migration, the AVRR Framework aims to contribute in particular to Objective 1 on the collection and utilization of accurate and disaggregated data as a basis for evidence-based policies; Objective 3 on the provision of accurate and timely information at all stages of migration; Objective 4 on ensuring that all migrants have proof of legal identity and adequate documentation; Objective 12 on strengthening certainty and predictability in migration procedures for appropriate screening, assessment and referral; and Objective 13 on detention as a measure of last resort and working towards alternatives.

IOM's AVRR Framework Model



Source: IOM, *A Framework for Assisted Voluntary Return and Reintegration*, 2018, available at: <https://eea.iom.int/publications/framework-assisted-voluntary-return-and-reintegration>

²⁸ SDG 17 "Strengthen the means of implementation and revitalize the global partnership for sustainable development" includes Target 17.9 "Enhance international support for implementing effective and targeted capacity-building in developing countries to support national plans to implement all the sustainable development goals, including through North-South, South-South and triangular cooperation". See: <https://sustainabledevelopment.un.org/sdg17>.

²⁹ Target 17.17: "Encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships". See: <https://sustainabledevelopment.un.org/sdg17>.

The IOM representative then focused on how the recast echoes in the seven AVRR principles:

1. **Voluntariness:** any decision must be taken in the absence of physical or psychological pressure and must be an informed decision, requiring the availability of timely, unbiased and reliable information.
2. **Migrant-centred response:** AVRR puts the migrant's rights and needs at the forefront. Individual assessments should be undertaken to provide tailored support, in a gender- and age-sensitive manner. This is particularly important for migrants in vulnerable situations.
3. **Safety:** IOM always advocates for the temporary suspension of AVRR if the security situation does not allow for the provision of support upon arrival.
4. **Sustainability of reintegration:** reintegration can be considered sustainable when returnees have reached levels of economic self-sufficiency, social stability within their communities and psychosocial well-being. IOM supports community-level reintegration, which requires the involvement of development actors, Ministry of Foreign Affairs, and funding instruments.
5. **Confidentiality:** IOM always seeks to respect the privacy of returnees through strict safeguards for handling personal data. For example, when they already have the necessary travel documents, the countries of origin are not notified.
6. **Dialogue & partnerships:** Co-operation between a variety of actors – governmental and non-governmental – at the international, regional, national and subnational levels is required to enhance the range and quality of return assistance available to migrants, avoid duplication of efforts and foster the sustainability of reintegration processes.
7. **Evidence-based programming:** systematic and continuous data collection, monitoring and evaluation have to be established throughout the AVRR process to understand the impact of AVRR interventions. Feedback mechanisms should also be in place to allow migrants to express their views on the assistance received in a confidential manner.

A number of concerns regarding the proposed recast Return Directive were also highlighted:

- Voluntary returns: The proposed changes might limit opportunities for migrants to return voluntarily and make it more difficult for them to enrol in AVRR programmes whereas voluntary returns need to take precedence over forced returns.
- Individual assessment: The recast does not allow for assessing the individual circumstances of each case.
- Assessment of vulnerabilities: possible negative impact on vulnerable migrants.

3. Protecting the Best Interests of the Child and Reintegration Support to Child Returnees (Save the Children Brussels)

The representative of Save the Children presented the report “From Europe to Afghanistan: Experiences of Child Returnees”³⁰ which assesses the impact on children of being returned from Europe to Afghanistan. Through interviews with individual children, their parents or guardians, and with governmental and non-governmental actors, it builds a picture of children’s material, physical, legal and psychosocial safety during the returns process. Returns processes implemented by EU member states and Norway are examined to analyse where European governments are failing to provide appropriate support.

The study, carried out in the spring of 2018, found that the processes and support necessary to ensure sustainable returns for children are not in place. Nearly three-quarters of the 57 children interviewed did not feel safe during the returns process. Over half reported instances of violence and coercion; nearly half arrived in Afghanistan alone or were escorted by police. On arrival, the children received little or no support, and only three had a specific reintegration plan. While 45 children had attended school in Europe, only 16 were attending school in Afghanistan. Ten children said attempts had been made to recruit them to commit violent acts, while many others spoke of discrimination, insecurity and sadness. Of the 53 children who completed questionnaires, only ten neither wish nor expect to re-migrate in the next year. The representative of Save the Children also reported that some of the children had never even been to Afghanistan or did not have any family there.

Save the Children has urged the EU and Norwegian governments to halt the return of children to Afghanistan until the security situation has improved and all the necessary safeguards are in place to ensure that children’s rights, as enshrined in the UN Convention on the Rights of the Child. Other recommendations include determining what the children themselves want, help them envision what will happen after their return, providing them child-friendly information as well as language training; making them feel more safe during the return process by working together with Frontex. Co-operation with the third country is also key.

The representative of Save the Children emphasised that the **best interest of the child must be the central consideration**; sometimes, the best interest of the child is to stay in the country.

Concerns were also expressed that the proposed recast Return Directive would result in families with children being detained, as the list of criteria for absconding applies to everyone. In conclusion, acknowledging the pressure for politicians to return irregular migrants, the representative underlined the need to ensure that returns are **efficient**.

In the ensuing **discussion**, members questioned why children were being returned to Afghanistan. Many were indeed being returned as they had turned 18 and had ‘aged out’. However, a study on best practice carried out by the European Migration Network had

³⁰ Save the Children, *From Europe to Afghanistan: Experiences of Child Returnees*, 2018, available at: <https://resourcecentre.savethechildren.net/library/europe-afghanistan-experiences-child-returnees>.

recommended that foster families be allowed to keep them after they turn 18, for example if they are in the process of training for a job which no nationals of the country can fill. The IOM representative also underlined that IOM advocates a specific support scheme for minors who ‘age out’, including vocational training.

It was also stressed that age determination procedures should be holistic and include a psychological assessment. Informing migrants about their rights can also help prevent false age claims.

One member referred to positive achievements in the area of returns when there is good cooperation with the third country (e.g. Morocco). The importance of carrying out **family tracing** before the return was also underlined, although one member also noted that this was not always the solution in the case of children sent ahead by families in search of a better future. The weakness of family reunification processes in the EU and the need to harmonize procedures between Member States was also highlighted.

The representatives of the international governmental and non-governmental organizations were also asked whether they had the possibility to **influence the recast debate process**. Meetings have indeed been held with the LIBE Committee rapporteur; however, they noted that it was more difficult to influence the process within the Council.

C. Panel 2 - Return Policy: The Case of Belgium

The second panel focused on practice in the area of returns in Belgium, with a focus on procedures for unaccompanied minors as well as families with children, with representatives of the Belgian Federal Migration Centre, the IOM Country Office for Belgium and Luxembourg and the NGO “Minors in Exile”.

1. Overview of Belgian Return Policy (Belgian Federal Migration Centre - Myria)

The representative of the Belgian Federal Migration Centre (Myria)³¹ presented an overview of Belgian return policy, as well as latest developments and recommendations in the areas of administrative arrests, detention and return.

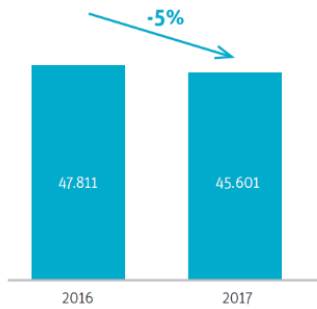
- **Administrative arrests**

Belgium has experienced a slight drop of 5 per cent in the number of return decisions in 2017 compared to the previous year (the statistics for 2018 were not yet available).³²

³¹ MYRIA is an independent public institution with three mandates: promoting the fight against trafficking and smuggling of human beings; informing the authorities about the nature and extent of migratory flows; and protecting the fundamental rights of foreign nationals. Myria is also the Belgian independent National Rapporteur on trafficking in human beings. Since 2008, Myria has been the contact point in Belgium for the European Migration Network (EMN). For more, see: <https://www.myria.be/en>.

³² Belgian Federal Migration Centre (Myria), *Retour, détention et éloignement des étrangers en Belgique, Droit de vivre en famille sous pression*, MyriaDoc8, December 2018, p.7, available at : https://www.myria.be/files/181205_Myriadoc_de%CC%81tention_2018.pdf.

Légère baisse du nombre de décisions de retour délivrées



Of the 45,601 return decisions issued in 2017, 42 per cent followed an administrative arrest. 11 per cent of return decisions were issued to EU citizens.

A total of 30,757 administrative arrests were carried out in 2017, of which 51 per cent were ordered to leave the country. Only 12 per cent were detained while 23 per cent were released.

Recent events such as the case of the Sudanese migrants in the autumn of 2017³³, have resulted in a change in practice by the Belgian Immigration Office.

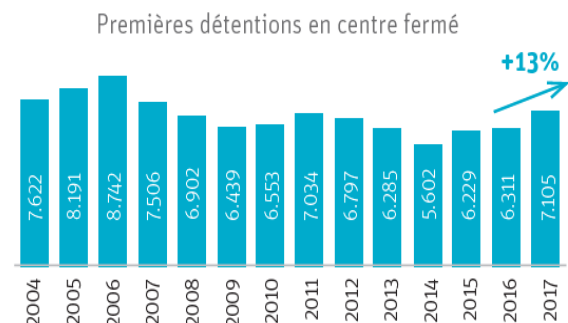
Myria recommends the following on additional guarantees for migrants in detention:

- That the right to be heard is respected on an individual basis;
- That vulnerabilities are taken into account to a greater extent;
- That the right to be informed about the reasons for the detention is respected and carried out in a language the foreigner can understand;
- That the right to assistance by a lawyer during an administrative arrest is respected

• Detention

Belgium has experienced a 13 per cent increase of the population in detention centres from 2016 to 2017.³⁴

In 2017 there were 609 places in closed centres in Belgium. The plan is to increase capacity to 1,066 places by 2021. The Myria representative emphasised that migrants should benefit first from alternatives to detention.



³³ In 2017, the Belgian State Secretary for Asylum Policy and Migration invited Sudanese officials to review the status of some irregular migrants. These migrants were questioned in the presence of Belgian authorities but some did not have interpreters. Although their lawyers warned that they could face persecution or ill treatment if sent back to Sudan, ten persons were in fact sent back. After their repatriation, it surfaced that at least three of them had been ill-treated by Sudanese authorities upon arrival. According to Amnesty International, this constituted an infringement of the principle of *non-refoulement*. In December 2017, the Belgian authorities temporarily suspended returns to Sudan pending an inquiry by the Office of the Belgian Commissioner General for Refugees and Stateless Persons (CGRS) into whether Article 3 of the ECHR on *non-refoulement* had been violated. The CGRS found that returns could be resumed provided that the protection need of each person was assessed on its merits beforehand. The CGRS report, published on 8 February 2018, is available at: <https://www.cgra.be/en/news/report-sudan>.

³⁴ Belgian Federal Migration Centre (Myria), *Retour, détention et éloignement des étrangers en Belgique, Droit de vivre en famille sous pression*, MyriaDoc8, December 2018, p.10, available at: https://www.myria.be/files/181205_Myriadoc_de%CC%81tention_2018.pdf.

The three leading nationalities of detainees in 2017 were Albanians (12 per cent), Moroccans (3 per cent) and Afghans (3 per cent), showing the influence of transit migration.

In Belgium, there are two types of **alternatives to detention (ATDs)**:

- **Home residence:** available since 2014, it is rarely used in practice due to lack of resources (a convention must be signed and an agent of the Immigration Office must be assigned). In 2017, 118 families were contacted but only 15 signed the convention, and two were returned.
- **Open return facilities:** available since 2008, used only for families with children, following a judgement by the European Court of Human Rights that closed facilities were not appropriate for children. According to Myria, they should also be an option for adults without children. In 2017, a total of 567 persons resided in such facilities: 171 families consisting of 327 children and 240 adults. Of these 567 persons, 29 per cent were released, 37 per cent were returned and 34 per cent left the facilities (absconded).

A significant recent development has been the opening of new closed family units in August 2018 enabling the **detention of families with children** for a period of 14 days with the possibility of renewal once, for a total maximum detention period of 28 days.³⁵ Nine families had been detained thus far in those units, with one family staying more than 50 days with a break of three days in an open facility.

The Myria representative also recalled the 2017 decision of the Committee on the Rights of the Child which stated that “children should never be detained for reasons related to their or their parents’ migration status and States should expeditiously and completely cease or eradicate the immigration detention of children.”³⁶

Myria put forth the following recommendations concerning detention:

- Provide the necessary time at the **intake interview** as well as a **second interview** upon arrival at the closed center in order to ensure that all the information is given and understood, in a language the person understands;
- Systematic distribution of information sheets for detainees according to their profiles;
- Systematic use of interpreters;
- Introduction of a specific **interview prior to removal**.

³⁵ The Royal Decree of 22 July 2018 amending the previous Royal Decree on Closed Centres of 2 August 2002, provided for the possibility of opening family units within closed detention centres. A number of such family units were set up in centre 127bis near Brussels airport.

³⁶ Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, available at: <https://www.refworld.org/docid/5a12942a2b.html>.

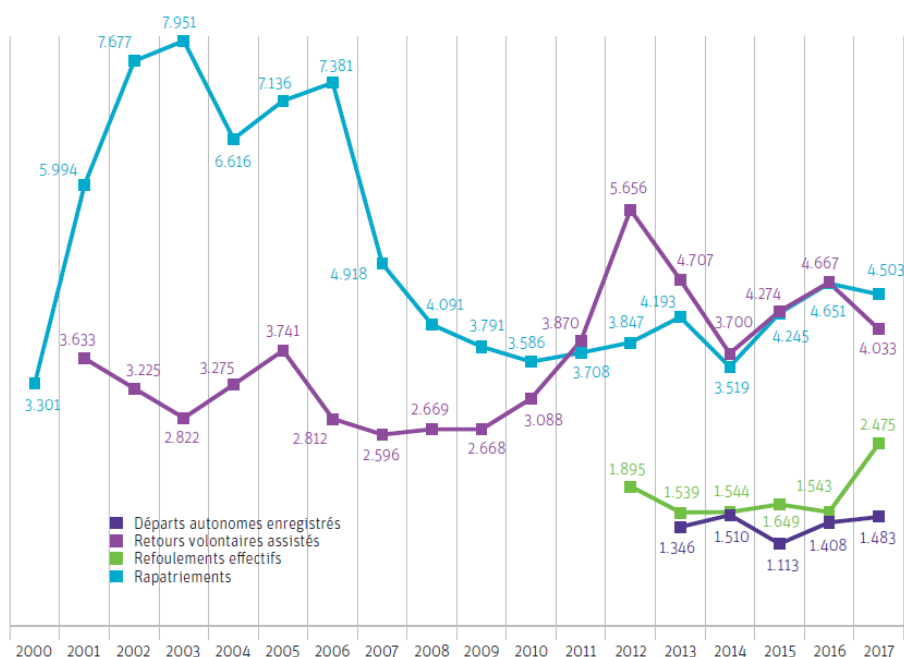
[**UPDATE:** On 4 April 2019, the Belgian Council of State ruled to suspend the 22 July 2018 Royal Decree which permitted the detention of families with children.³⁷ The case was submitted by a coalition of Belgian NGOs and called for the urgent suspension of the Royal Decree due to the irreversible damage inflicted on children, with particular regard to centre 127bis.]

- **Return decisions**

The Myria representative presented the main trends regarding returns: ³⁸

- In 2017, there was a **decrease in both forced returns** (4,503 in 2017 compared to 4,651 in 2016) **and voluntary returns** (4,667 in 2017, compared to 4,033 in 2016), despite a 35 per cent increase in the budget for forced returns between 2014 and 2017. There was, however, a significant increase of returns at the border (2,475 in 2017, compared to 1,543 in 2016).
- The most common nationalities in 2017 were: Albanian (614), Moroccan (440) and Romanian (334). EU citizens (793) accounted for 18 per cent of forced returns.

Returns in Belgium



³⁷ European Database of Asylum Law, “Belgium: Council of State rules to suspend Royal Decree permitting the detention of children,” 4 April 2019, see: <https://www.asylumlawdatabase.eu/en/content/belgium-council-state-rules-suspend-royal-decree-permitting-detention-children>. The applicants alleged, *inter alia*, that the facilities and infrastructure of centre 127bis were inadequate for families, the best interests of the child were not taken into account, and that detention was not used as a means of last resort. The Court established that centre 127bis failed to respect the rights under Article 8 of the ECHR, particularly with regard to the access of staff to the rooms, and the requirements under the Convention on the Rights of the Child that the child is consulted before any decision concerning them is adopted. The Court also found that the family units in centre 127bis exposed children to significant noise pollution due to its location close to the runway of Brussels airport.

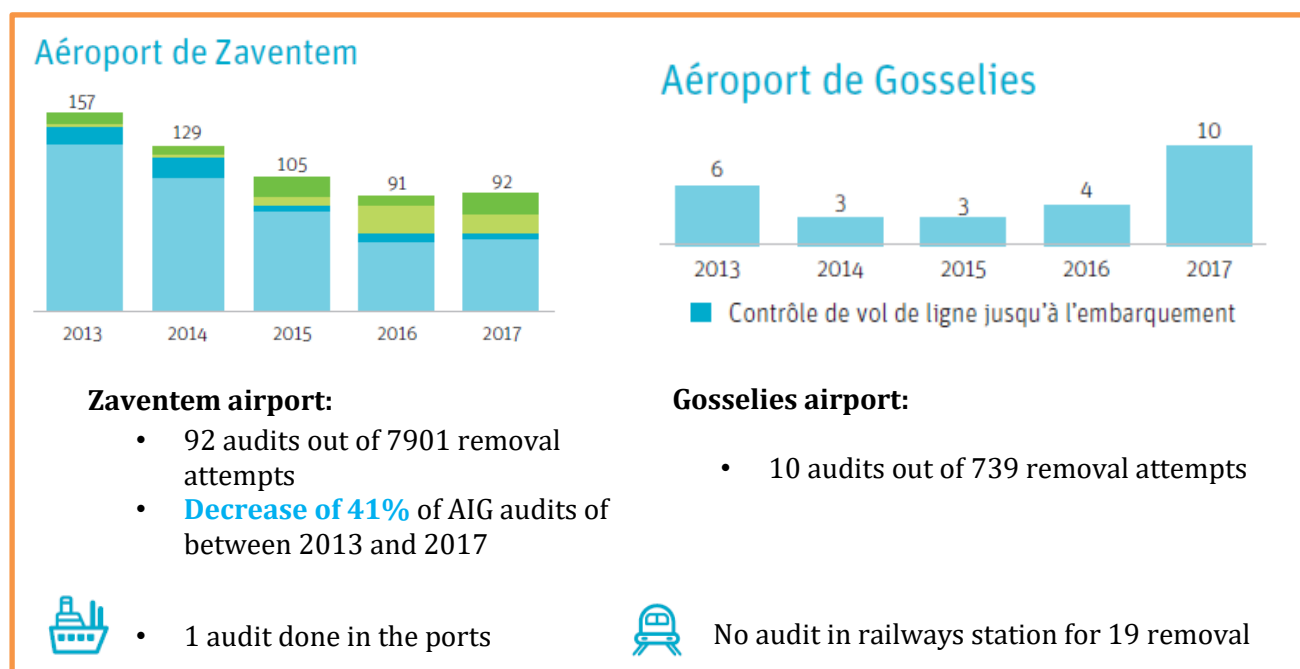
³⁸ Belgian Federal Migration Centre (Myria), *Retour, détention et éloignement des étrangers en Belgique, Droit de vivre en famille sous pression*, MyriaDoc8, December 2018, p.12, available at : https://www.myria.be/files/181205_Myriadoc_de%CC%81tention_2018.pdf

She also noted that no additional budget had been allocated for ATDs and their evaluation.

- In 2018, there were 3,980 forced returns, representing a decrease of 12 per cent, 2,216 returns at the border representing a decrease of 10 per cent, and 3,127 voluntary returns representing a 23 per cent decrease.
- In 2018, of the 3980 forced returns realized, 2,842 were returned to their country of origin (71 per cent), 792 were returned to the country of first entry under the Dublin Agreement (20 per cent) and 346 by bilateral agreement (9 per cent). 89 per cent of returns were carried out by plane and 11 per cent by road.

Belgium also carries out monitoring of forced returns. In 2017, the removals of 282 people were monitored by the General Inspectorate of the Federal Police and the Local Police (AIG). However, there has been a 41 per cent decrease in audits between 2013 and 2017 at Zaventem Brussels Airport, with only 92 audits in 2017.

Monitoring of forced returns in Belgium (AIG)³⁹



Recent developments include the new Public Order Law of April 2017 which provides more options for withdrawing residency permits from certain categories of foreigners.

A temporary **Commission for the evaluation of return policy** was also created in February 2018. Myria welcomed the creation of this Commission, which follows a longstanding recommendation by Myria. However, according to Myria, its first interim report lacked clarity as to methodology and mission; complete statistics as well as budgetary data. Myria also noted

³⁹ Belgian Federal Migration Centre (Myria), *Retour, détention et éloignement des étrangers en Belgique, Droit de vivre en famille sous pression*, MyriaDoc8, December 2018, p.16, available at : https://www.myria.be/files/181205_Myriadoc_de%CC%81tention_2018.pdf

that it mainly provided a theoretical analysis of legislation and included only a few hearings. The Commission does not appear to have made any field visits or observed removal processes.

MYRIA's recommendations regarding returns were as follows:

- **more transparency** regarding the identification procedure, AIG monitoring and recommendations, coercive measures, and the special needs programme
- **a legal framework for the Fit to Fly**
- improvement of the **complaints system** in case of misconduct towards migrants;
- development of a surveillance system via **video recordings** during the return process;

In conclusion, Myria presented the following recommendations for ensuring a more humane and effective return policy:

- Better support and enabling a relationship of trust before the removal
- Better monitoring of the return process
- More guarantees and information to migrants
- More transparency

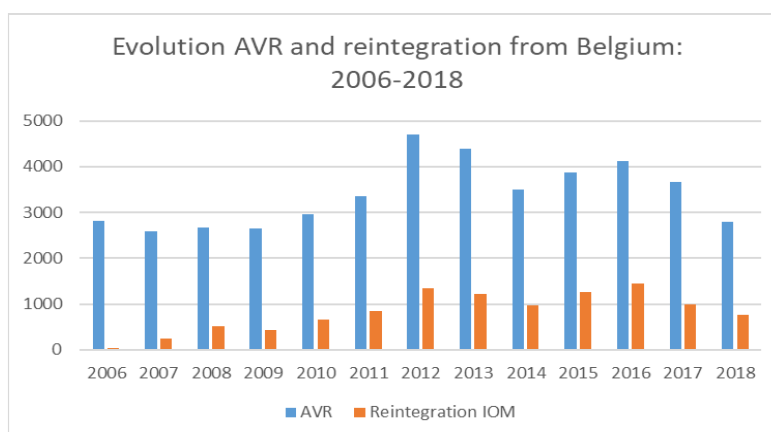
2. Assisted Voluntary Return and Reintegration (IOM Country Office for Belgium and Luxembourg)

The representative from IOM's Country Office for Belgium and Luxembourg presented an overview of IOM's Assisted Voluntary Return and Reintegration (AVRR) programmes in Belgium. IOM has been implementing a migrant-centred approach since 1974. They will not return migrants to countries on the suspension list such as Somalia. IOM also provides support in countries of origin and tries to provide sustainable reintegration assistance.

The IOM representative also touched upon **IOM's special programme for persons with medical needs** which is implemented together with the Belgian Federal Agency for the Reception of Asylum-Seekers (FEDASIL). He underlined the uniqueness of the Belgian case where IOM cooperates with FEDASIL rather than the Immigration authorities and enables better level of cooperation with both migrants and NGOs.

IOM operates under full **confidentiality**: all data related to migrants are encrypted to ensure that they are protected. Returns are anonymous so they will not get an entry ban. IOM also carries out **monitoring and evaluation** of returns.

On average, IOM assists with about 3,000 returns every year from Belgium and has carried out over 80,000 returns since 1984. In 2018, 762 out of 2,795 persons returned (27 per cent) benefitted from reintegration assistance as part of IOM's AVRR programmes rather than simply Assisted Voluntary Return (AVR).



AVR(R) per year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
AVR	2811	2593	2669	2659	2957	3358	4694	4388	3495	3870	4117	3670	2795
of which IOM Reintegration	44	251	510	435	659	840	1353	1229	975	1262	1457	989	762
% with reintegration	1.6	9.7	19.1	16.4	22.3	25	28.8	28	27.9	32.6	35.4	26.9	27.3

Source: IOM Country Office for Belgium and Luxembourg

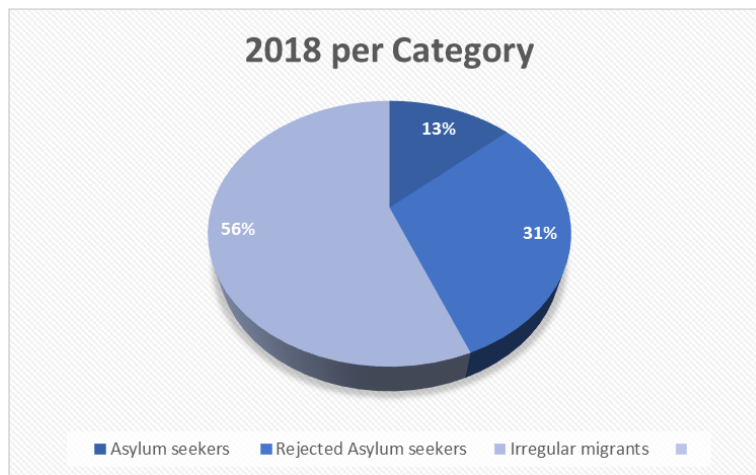
The top ten destination countries for voluntary returnees from Belgium in 2018 were: Ukraine (545 persons), Georgia (430 persons), Romania (367 persons), Brazil (329 persons), Iraq, Albania, Armenia, North Macedonia, Mongolia and the Russian Federation.

Voluntary Returns from Belgium per continent (2018)

Voluntary Returns per Continent	2018
Africa	213
Asia	911
Europe	1280
Latin America and the Carribean	391
Northern America	0
Oceania	0
Grand Total	2,795

Source: IOM Country Office for Belgium and Luxembourg

Voluntary Returns per Category, Sex and Family Composition (2018)



Voluntary Returns Per Category	2018
Asylum Seekers	374
Rejected Asylum Seekers	854
Irregular Migrants	1567
Grand Total	2795

Man



1865 (67%)

Woman



930 (33%)

Single



1727 single

Families



1068 persons with family members

Referrals per type of partner	2018
Non-Governmental Organizations	1148
Federal Agency for the Reception of Asylum Seekers (FEDASIL)	1254
Immigration Office	37
Red Cross Centres	297
IOM	59
Grand Total	2795

Source: IOM Country Office for Belgium and Luxembourg

The top ten countries for the 762 persons returned with IOM reintegration assistance (AVRR) in 2018 were: Georgia (160 persons), Iraq (113 persons), Albania (49 persons), North Macedonia (36 persons), Armenia (34 persons), Ukraine (29 persons), Serbia (21 persons), Lebanon (17 persons), Philippines (17 persons), Russian Federation (17 persons).

3. Return Houses (NGO “Platform Minors in Exile”)

The representative of the NGO “Platform Kinderen op de Vlucht” (“Platform Minors in Exile”)⁴⁰ focused on one type of alternative to detention: **return houses** which are open facilities aimed at families with children exclusively.

Introduced in 2008, there are currently five sites in Belgium, with 6-7 houses in each. The setting is open and there are no security staff but one parent must always be present and there is a curfew. The legal basis for return houses is provided by Article 74.8, §1 of the Belgian Immigration Act and Royal Decree of 14 May 2009 executing the Immigration Act.

The **positive aspects** of the open return houses is that they offer a creative solution in an open setting. They ensure the respect of children’s rights, as children can move freely and attend school. Coaches are also offered to help families.⁴¹

The NGO representative also highlighted a number of **areas for improvement**, underlining the importance of viewing ATDs as a process to be regularly reviewed and improved.

More means should be allocated to return houses, as done in the case of closed facilities. Better support and assistance for families in the form of case management is also needed. Other areas for improvement included working on trust and empowerment, access to school, vulnerability screening. Alternatives that are less coercive should also be developed.

In conclusion, it was noted that return houses have the potential to be a successful ATD if:

- they receive more funding
- they are evaluated and improved
- less coercive ATDs are used before
- they are used as a last step of the waterfall system

Governments, and local, national and international NGOs must work together to improve ATDs. In the **discussion**, members of the Migration Committee touched upon a number of issues, including for example how much information on the conditions in the country of origin is given

⁴⁰ Platform “Minors in Exile” is a Belgian bilingual platform consisting of 50 member organizations and observers. Established in 1999, it aims to coordinate the activities of professionals working with unaccompanied foreign minors as well as minors accompanied by their parents but who are in a precarious or irregular situation. See: <http://www.kinderenopdevlucht.be/nl/>

⁴¹ The families are supervised by Aliens Office ‘coaches’ tasked with lending support to a family with a view to finding a lasting solution: either a right of residence or a return with dignity. The coach acts as an official intermediary between the Belgian authorities and all the other stakeholders involved in the supervision of the family members but is required to notify the authorities should a family disappear from the return house.

during the return process and what kind of information was needed in order to motivate families to return. They also asked whether EU citizens also benefitted from AVR programmes. The IOM representative stressed that IOM also supports migrants from the new EU Member States, e.g. members of the Roma minority from Romania and Slovakia. However, in these cases, no (financial) reintegration assistance is provided, only administrative support. The information provided by IOM is very objective as they do not seek to motivate voluntary return but to inform. IOM would furthermore not engage in the return of a minor without ensuring that there is family to receive the minor. Finally, the IOM representative emphasized that IOM does not engage in forced returns.

Another question related to whether other countries also had similar open return houses for families, and whether this ATD could be recommended. The representative of Platform Minors in Exile noted that it was difficult to compare ATDs from country to country and that an alternative has to be developed for a specific country. He also underlined that return houses were rather coercive already and that ways of engaging at an earlier stage should be explored.



The **European Alternatives to Detention Network**⁴² was mentioned as a useful resource. It was also noted that the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) promotes ATDs and looks at ways of using parts of models.

⁴² The "European Alternatives to Detention (ATD) Network" is a group of European NGOs which aims to reduce and end immigration detention by building evidence and momentum on engagement-based alternatives. The Network brings together NGOs running case management-based alternative to detention pilot projects in four countries (Bulgaria, Cyprus, Poland and the United Kingdom) with regional-level organizations. See: <https://www.atdnetwork.org/>.

IV. Meeting with MEP /LIBE Committee Rapporteur Judith Sargentini

In an informal meeting with MEP Judith Sargentini, LIBE Committee Rapporteur for the European Parliament's proposals concerning the recast EU Return Directive,⁴³ members of the Ad Hoc Committee on Migration had the opportunity to hear the Rapporteur's views on the proposed reforms and to exchange views on the controversial areas.



The Rapporteur underlined that she could not give the official position of the European Parliament and that these were her own opinions. Among the main points emphasised was why develop a recast when the original Return Directive has not been fully implemented. The need to also work further on the EU's asylum policy which is intrinsically linked to returns policy was also stressed. The

Rapporteur also noted that proposed EU legislation should be accompanied by an impact assessment. However, this is never done in the case of asylum and migration policies, as it is claimed that there is not sufficient time. The European Parliament therefore had to commission its own substitute impact assessment for the proposed recast Return Directive.

One of the assumptions that the European Commission is working on is that returns are low because Member States do not know where illegally staying Third Country Nationals are; so that if they are placed in detention, this will enable them to increase returns as this will prevent absconding. The Rapporteur disagrees with this approach, emphasizing that **voluntary returns are key**: states should instead ensure that people are willing to return and to focus on voluntary returns which enable people to arrive back in their country of origin with their heads up high. Furthermore, she underlined, forced returns are not appreciated by countries of origin. They are also very expensive (they usually involve 2-3 officials boarding a flight). Voluntary return should be possible at all stages, also when a person has been placed in detention.

The **list of criteria for evaluating the risk of absconding**, used to justify detention: this list is long and open to further additions, e.g., lack of documentation, lack of financial resources, etc. Furthermore, it does not help to assess the real risk of absconding. The Rapporteur is working on a closed list which would e.g. include non-cooperation.

⁴³ 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), Rapporteur: Judith Sargentini, 2018/0329(COD), 16 January 2019, available at: http://www.europarl.europa.eu/doceo/document/LIBE-PR-632950_EN.pdf?redirect

The Rapporteur is also proposing **case handlers** to better inform migrants about the situation in the country where they are as well as in their country of origin.

The **five-year entry ban** to be imposed on returnees is also problematic as it makes it impossible for people to come back legally.

The proposed **border procedures** entail that new arrivals can go straight into detention. At the same time, no procedure for asylum applications at the border has been agreed between the European Commission and the European Parliament.

The Rapporteur would also like to transform the proposed Article 7 on the **obligation to co-operate** into an **obligation to inform** on the return procedure.

Children, it was stressed, should never be placed in detention, and therefore the closed family units should not be necessary.

In the **discussion**, the issue of alternatives to detention was raised and the Rapporteur stressed that forced returns were necessary as people would not return voluntarily if there was no prospect of forced return. The difficult issue of **non-removeable migrants** was also raised. This is beyond the scope of the recast. The importance of detaining foreigners with a criminal record separately from migrants in criminal facilities was also underlined.

V. Belgium Field Visit

On the afternoon of 2 April, the delegation of the Migration Committee was transferred to Steenokkerzeel repatriation centre 127bis ('centre 127bis') where they were first extensively briefed by Belgian officials on return policy, including voluntary returns, as well as the role of closed detention centres.

The briefing was then followed by a visit to Centre 127bis. Centre 127bis is one of five Belgian immigration detention centres (total capacity: 559 places), all managed by the Belgian Immigration Office. The centre has 80 places, plus 28 places in four new family units, in use since August 2018.

1. Belgian Return Policy, including alternatives to detention

An advisor from the Belgian Immigration Office's Identification and Removal Section first provided an overview of Belgian return policy, including alternatives to detention.

Overview of Return Policy in Belgium

- **Voluntary return**, he stressed, is the first priority of Belgian return policy, which is based on the principle 'voluntary if possible, forced if necessary'. In every reception centre, the possibility of voluntary return is presented, as part of the 'return path'. If necessary, an

extension of one month of the return decision is granted in order to prepare voluntary return.

The Belgian Federal Agency for the Reception of Asylum-Seekers (FEDASIL) is responsible for voluntary returns (see below), while the Immigration Office can act as an operational partner (e.g. can book air tickets for the non-assisted voluntary returnees). The main partners for implementing AVRR are IOM and Caritas. In addition, there is a network of local operational partners (municipalities, Red Cross, NGOs, etc).

The **SEFOR** ('sensitize, follow up, return') procedure is used to stimulate voluntary return prior to detention. **Coaching at home** is used in the case of families with minors, so that they can stay in their own house whilst preparing to return (under certain conditions, e.g. of a contract with an international organization). Coaching in open centres is provided to irregularly staying families living in reception infrastructures and who are followed up by Fedasil and an international organization, leading to a delay of the return decision to prepare for voluntary return.



- **Detention** is practised for as short a period as possible. The **maximum period of two months** can be prolonged only if: steps for identification/return were taken within seven working days after the detention decision; and there is a reasonable possibility of identification/return.
 - A prolongation of **two months** can be granted by administrative decision.
 - In exceptional cases, a prolongation of **one additional month** can be granted following the decision by the minister (State Secretary) and automatic control by the court to assess the legality of detention.
 - In very exceptional cases, if there is a concern about public order or national security, a monthly prolongation may be granted by the minister, for a **maximum of 8 months**.
 - If the irregular migrant refuses the forced return, a new detention decision for another two months may be imposed. Detention may not surpass **18 months** overall.

There are currently five specific centres in Belgium for immigration detention purposes. Actual capacity is 573, with a maximum capacity of 613. In addition, there are 29 open family units.

The Immigration Office representative underlined that forced return is more expensive than voluntary return and that furthermore, detention is more expensive than non-detention.

- **Detention and vulnerable cases:**
 - **Unaccompanied minors** are never detained and never returned forcibly.

- **Families with minor children** are not immediately detained in closed centres, with the exception of arrival, or the night prior to being returned, or in the case of families who have not respected the rules and conditions of stay in ATDs.
- **Pregnant women:** no escorted forced return from 24 weeks of pregnancy or earlier if complications.
- **Medical situations:** before detention, as assessment is made on the basis of the person's file.
- **Victims of human trafficking:** a special procedure is applied.

If a person is not removable (e.g. 7 months pregnant) or not identifiable, they are released.

Persons with special needs (medical, psychological problems) can receive special assistance during detention, during the return operation as well as after return (re-integration assistance). Extra care is provided to "problematic persons" through a multidisciplinary approach in detention centres, with an effort to speed up the identification and return process.

- **Alternatives to Detention: (Open) Family units**

- Established in 2008, these return houses are community-based individual houses or apartments, used in case of administrative decision of detention.
- There are currently 29 such units available in five sites; they are completely equipped and furnished. Additional units are planned.
- Return officers from the Immigration Office assist the families with the preparation of return, legal questions, logistical matters, etc.
- These units are sponsored by the EU's return fund and are operated in co-operation with IOM as well as local authorities and NGOs.

- **Preparation of return (Removal Unit)**

Returns are carried out through a tiered procedure:

- Voluntary Return
- Assisted Voluntary Return
- Assisted Voluntary Return and Reintegration

Returns can take place

- without an escort (return without resistance)
- with an escort (until transit or destination)
- via a special flight in cooperation with Frontex, provided that the country of origin agrees.

- **Effective returns**

- In the case of an escort are ensured by providing a police escort, a humanitarian escort (social worker, doctor, psychologist, trusted person) or a combination of both.

- Police escorts are usually provided only until the airport of destination, whereas humanitarian escorts are made-to-measure and can accompany the returnee until the home or hospital in the country of origin.
- **Follow up and post-return measures include:**
 - A case-by-case approach: extra monitoring after arrival, linkage with special needs and requesting feedback from partners in the country of origin.
 - In case of special needs: ensuring necessary funding and follow up of the costs as well as evaluating effectiveness for future cases.
- **Monitoring:** Belgium also carries out a specific monitoring of forced returns by the General Inspection of the Police, from departure from the centre until arrival in the country of origin. There is also ad hoc monitoring by other organizations (embassies, NGOs, immigration liaison officers) post-return.
- **Statistics**

Category/Year	2014	2015	2016	2017	2018
Forced return in third country + EU nationals	2586	3107	3080	3001	2842
Refusals at border	1544	1649	1543	2475	2115
Forced return of Third Country Nationals in other EU Member States	933	1138	1571	1502	1138
(Assisted) Voluntary Return	3664	4187	4667	4033	3122
Total	8727	10081	10861	11011	9217

Source: Belgian Immigration Office (ibz) (as of 2 April 2019).

Alternatives to Detention for Families with Minor Children – The Belgian Approach

The representative of the Immigration Office then focused on alternatives to detention for families with minor children.

a. Historical perspective

Belgian Immigration Legislation foresees the same rules for families with minor children who are in an irregular situation, who have been refused entry at the border or who are applying for asylum at the border, as for every other person, meaning that detention in a closed centre is possible. Over the past years, a number of measures have been taken to adapt Belgium's detention policy for families with children.

Around the turn of the century, it was customary to detain only the head of the family (usually the father); the family members were invited to present themselves at the airport on the date

of removal so that they could be removed together. However the other family members absconded in many cases. On 15 May 2001, it was decided to detain the families as a whole.

Circular Letter of 29 April 2003 of the Interior Minister foresees that families with school age children, who are in an irregular status, can stay until the end of the school year under specific circumstances if they receive an order to leave the country valid from the Easter holidays.

b. Alternatives to detention

In response to criticism concerning the detention of families with minor children, the Belgian Government commissioned a study on alternatives which was presented to Parliament on 25 April 2007 with the objective to reduce or avoid the detention (period) and to identify the families who should return prior to the organization of the removal.

- *Upon invitation:* In February 2008, the Immigration Office started to invite families who were in an irregular situation to present themselves for an interview in Brussels in order to discuss the possibilities of return to their country of origin. This initiative was not successful: only 13 % of the invited families presented themselves and no return could be organized. The initiative was abandoned in July 2008.
- *Family Units:* The government then decided that, from 1 October 2008, families with children who are already present on Belgian territory, should no longer be detained in closed centres; only families refused entry at the border would remain detained in closed centres. Individual houses and apartments were provided for the temporary accommodation of these families. They could be formally “detained” in the family units but have in practice have certain liberties of movement. These family units received a specific status under the Royal Decree of 14 May 2009.
- It was furthermore decided that from 1 October 2009 families with children, arriving at the border and who would not be removable within 48 hours after arrival, should also be brought to the family units.
- On 20 July 2011, a law voted by the Chamber of Representatives allowed for some irregular families with children to stay in their own private houses under certain conditions. The law entered into force and was included in article 74/9 of the Immigration Law. The Royal Decree which foresees the rules and criteria, was published on 17 September 2014.
- The families placed in the family units receive a removal decision under the same articles in the law as persons, detained in the closed centres. In a strictly legal sense these families remain detained, but there are practical differences. Since the family units are open, the families can leave the houses under specific rules, in order to e.g. visit their lawyer, take their children to school, buy groceries or participate in religious celebrations. Visits are allowed.
- Supporting officers (coaches) are appointed by the Immigration Office to accompany the families during their staying in the family units. These civil servants collect all

necessary information for the further identification of the families, inform them about about legal procedures and assist them in their preparation of their return

- The coach will first of all propose an (assisted) voluntary return scheme. They also inform the families that – as an ultimate measure – the Immigration Office could decide to detain the family in a closed centre if the family does not cooperate to return or if the rules of the family units are not respected (if they abscond).
- All educational, medical, logistical, administrative and nutritional costs are covered by the Immigration Office. There are however some limitations: there is a weekly budget per family for logistical and nutritional costs and medical costs are only reimbursed if the physician has been contacted by the coach.
- One element of success has been the transparent communication about the family units with the media and NGOs. There are regular meetings with NGOs who may visit the family units on a weekly basis. The families can also contact NGOs at their own initiative.
- Since the Belgian initiative is innovative, the family unit scheme benefits from funding from the EU Return Fund and the EU Asylum, Migration and Integration Fund.
- As of 20 March 2019, 28 family units (out of 29) are operational (1 house is out of commission). They can in theory accommodate a total of 168 persons (adults and children) and 22 babies. In practice, each family unit normally accommodates only one family (large or small). Plans to open additional family units are in progress.
- On 27 February 2012, article 74/9 of the immigration law of 15 December 1980, which had been voted on 20 July 2011, came into force. This legislative change foresees that, **in principle, families with minor children should not be detained**. These families have the possibility to stay in their own **private houses** (if they have rented one) pending their return. (Note that the family units are also legally considered as detention). Exceptions are possible (linked to public order or living conditions). The Royal Decree of 17 September 2014 defined which categories of families will be allowed to remain in their houses and under which circumstances.
- Families staying in their private houses must be coached “on neutral grounds” (e.g. offices of the municipality), or at the Immigration Office (after having been invited for an interview) through the same process as in the family units. Since the number of coaches is limited, the focus is on families living in the larger cities where the Immigration Office has operational liaison officers; only a couple of hundred families have been handled through this procedure due to lack of staff. The first families were coached at home at the end of 2014.

c. Family Units as ‘best practice’

The family units have been visited by numerous delegations from international organizations, NGOs, as well as other countries, including third countries. The concept of the family units has also been presented as an example of ‘best practice’ at a number of international forums.

d. Statistical Overview

There has been an annual increase in the number of families staying in the (open) family units:

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Number of families	9	58	66	137	153	159	218	161	144	169	183

In 2018, 183 families entered the family units. Around half of them were single parent families. The average period of stay is **25 days**. There are, however, big differences from family to family, as some stay much longer due to asylum procedures (which take on average 6 to 8 weeks or even longer, if there are multiple procedures), while others abscond or depart very quickly. Since June 2015, the family units are also used as open return centre for families in an irregular situation, as foreseen by the reception decree of 24 June 2004 which foresees that minor children (accompanied or not) can apply for reception until the organization of their return, in order to respect their rights and to avoid an extra vulnerability.

e. Evaluation



A rather positive evaluation of the family units has initially been made by both government and civil society. This however does not mean that everything is functioning as foreseen.

The number of families returned from detention centres was higher prior to the introduction of family units in absolute numbers (bigger capacity; 103 families departed between January and December 2008). The percentage of departing families was also higher (70 %).

Accommodation conditions for the families are more adapted now to daily family life. The family units also help to ensure that children are living in the same circumstances as before receiving a decision of “detention”.

A rather positive result has been achieved for those families who respect the regulations: around 60 to 65 per cent returned to the country of origin or obtained a temporary or permanent right to stay. Only a minority (less than 10 per cent) were released from “detention” because their return could not be organized.

At the same time, the rate of absconding was high (35 to 40 per cent). Most families abscond very quickly (within hours or a few days after arrival) or just after having been informed that a return will actually take place.

A worrying trend is the **increase in the rate of absconding**: from 20 per cent on average in 2009, with a peak of 41 per cent in 2014, to 37 per cent on average in 2017. Only in 2018 was a small decrease in the rate observed (33 per cent).

In the same period, the **relative number of departures decreased**: from 39 per cent in 2016, to 32 per cent in 2017, to 24 per cent in 2018).

The Immigration Office has also experienced a change in the nationalities of families arriving at the border. Whereas in 2009 they were mostly coming from Africa, the nationalities are now more diverse (Russia, Albania, Serbia, Iraq, Syria, China, Afghanistan, Sri Lanka, Turkey, Venezuela). Almost none of the families arrive directly from their country of origin; some have already stayed several weeks, months or years in third countries. It is possible that there has been some “publicity” about the fact that families are no longer detained in Belgium.

It is therefore important that the specific family houses within the area of closed centres act as a **deterrent** in order to avoid bogus asylum seekers and border cases. These “closed” family houses are also used if families do not respect the rules in the “open” family units. The existence of such “closed” family houses could serve as a deterrent in order to motivate families not to abscond. Hopefully, these family houses will then only have to be used in exceptional cases.

Regardless, families will not be put in a closed environment if they have pending suspensive procedures or if travel documents have not been obtained.

The duration of stay in a closed area is limited to a maximum of 14 days (+ an extra 14 days if necessary, after having informed the competent Minister) in order to organize the return.

An effort is made to provide **accurate and comprehensive information** to those families who are already on the Belgian territory **from the beginning of their procedures** (asylum claim, request for residence permit) to avoid that families with children find themselves in a precarious situation on Belgian territory and in order to prepare them for all possible scenarios – return or integration – depending on the immigration decision.

Due to the considerable increase in the number of families since the family units were established, it has been necessary to invest in training more coaches. There are currently nine coaches, up from four in 2008, as well as a dedicated psychologist.

Even taking into account the staff increase, **the costs of the “open” family units remain lower than those of detention centres**. The average daily cost of a person in a family unit is EUR 95 to 100, whereas the average cost of staying in a detention centre is between EUR 180 and 200.

f. Conclusion

- In conclusion, the representative of the Immigration Office noted that the experience of family units has enabled the Immigration Office to rethink its methodology for the organization of sustainable returns of families with minor children in irregular status.
- The individual approach (coaching) has allowed for a more in depth analysis of the individual cases and provided the opportunity to obtain new information necessary for an objective case evaluation.
- It has helped identify a number of situations where a temporary or permanent residence permit should be granted.
- The relatively small number of family units in comparison to the potentially large number of families staying irregularly on Belgian territory means it is a drop in the ocean.

- A **comprehensive case management approach** with co-operation between the various agencies responsible for decision making and the reception of families is necessary. The principle objective of the case management model is to prepare families (and individuals) for all possible immigration outcomes, whether return or legal stay and thus preparing the family for all possible scenarios. This information should be given as soon as possible in the reception centres in order to avoid “detention” in a family unit. This information scheme (“**return path**”) has been partially implemented over the past years in reception centres.
- Information and coaching provided to families staying in rented private housing also needs to be reinforced, along with additional staff (extra coaches).
- The **detention of families will remain necessary in exceptional cases**, for a period as short as possible, in order to tackle abuses, to reduce the risk of absconding and to effectively remove those who do not want to depart voluntarily. The existence of family houses in a closed environment will hopefully be an incentive for families not to abscond from the open family units, in order to avoid detention.

The representative of the Belgian Federal Agency for the Reception of Asylum-Seekers (FEDASIL) outlined the work of her agency in the area of voluntary returns.

She presented the “**return path**” which is implemented in reception centres, according to which applicants for international protection are informed throughout their path about the possibility of voluntary return. There are return desks in Brussels, Antwerp, Ghent, Charleroi and Liege as well as a toll-free number.

The **return counselling** provided by Fedasil and its stage specific design was also explained. The presentation also covered **post-arrival implementation** which covers administrative support in safe countries as well as reintegration aid to guarantee a new start in the country of origin, e.g. to further one's education, to repair one's house, start a small business, help to look for a new job. Assistance is also provided to vulnerable groups such as unaccompanied minors, sick persons, victims of trafficking. Reintegration assistance is provided by IOM and Caritas.

There is also a type of **return for persons with a medical condition**, providing medical escorts and continuity of care (Adapted Medical Assistance After Return –AMAAR programme).



Fedasil collects **feedback from returnees and service-providers** in order to understand factors of success and factors which increase the risk of absconding. In 2015-2016, Fedasil implemented an **online reintegration monitoring tool** as a pilot project which included a survey in which returnees were asked whether they wanted to migrate again. 71 per cent responded “no”, against 22 percent “maybe” and 7 per cent “yes”.

Fedasil also provides **training modules on voluntary return and counselling** for return counsellors.

3. The Role of Closed Detention Centres

The Director of Steenokkerzeel repatriation centre 127bis addressed the role of closed detention centers with a focus on Centre 127bis. The current capacity of the five detention centres in Belgium is 559 + 28 places, including **repatriation centre 127bis** which has a capacity of 80 places + 4 family units (28 places).

The mission of Centre 127bis is to: (1) detain the aliens accommodated in the Centre who are awaiting either an authorization to enter the territory, to reside there, or their removal from the territory; (2) provide them with psychological and social assistance and prepare them for possible removal; and (3) urge them to comply with a removal decision that might be taken. The theoretical capacity of Centre 127bis is 120 residents divided into sections (40 residents per section). There is also a room for visits by partners as well as three isolation rooms. A fourth section with 40 additional places is due to be opened in the future.

Before September 2018, the residents consisted of persons to be returned under the Dublin procedure, persons in an irregular situation, families with minor children in family units, overnight residents from other centres/prison due to the proximity of Brussels airport, and a centre for Joint Return Operations.



Since September 2018, only three categories of persons are detained here:

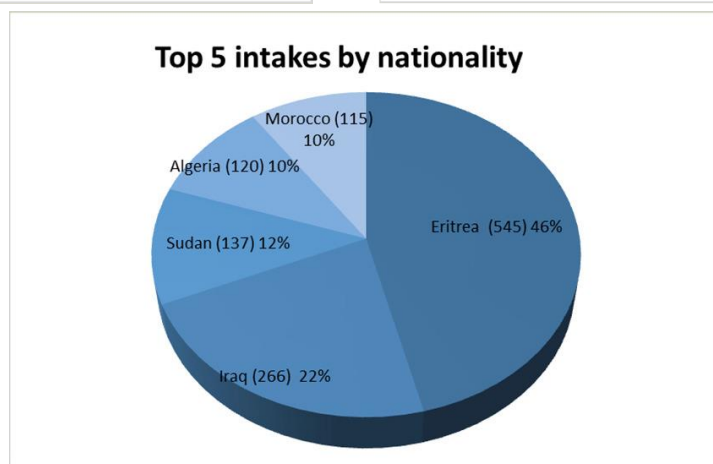
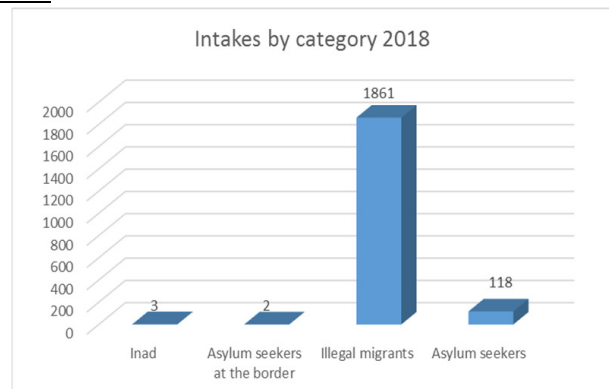
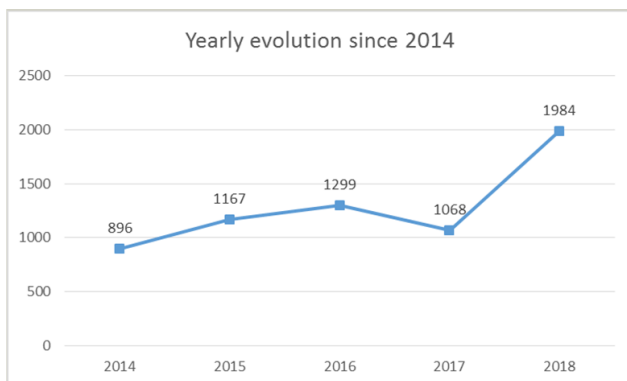
- Transit migrants
- Families with minor children in family units
- Overnight residents from other centres/prisons

Residents have the following rights:

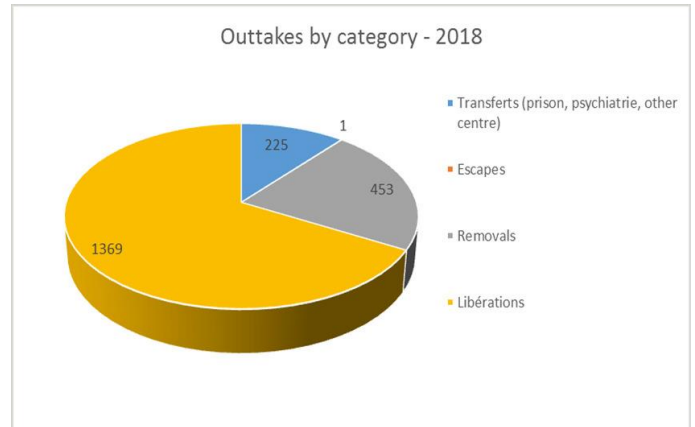
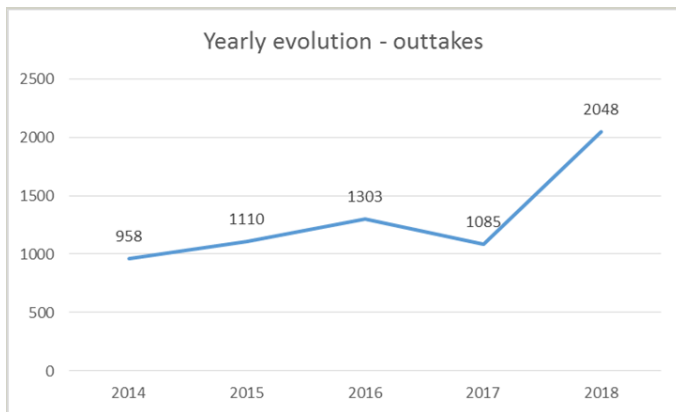
- The right to be informed
- The right to legal assistance
- The right to medical and psychological assistance
- The right to communication, including free access to the internet twice a week and visiting arrangements.
- The right to comfort of living and hygiene
- Follow-up on residents, including complaints procedure

Extra support is provided to residents with special needs during the return process, on condition that return is to the country of origin (not for Dublin procedures) and the resident belongs to a vulnerable group.

Intakes

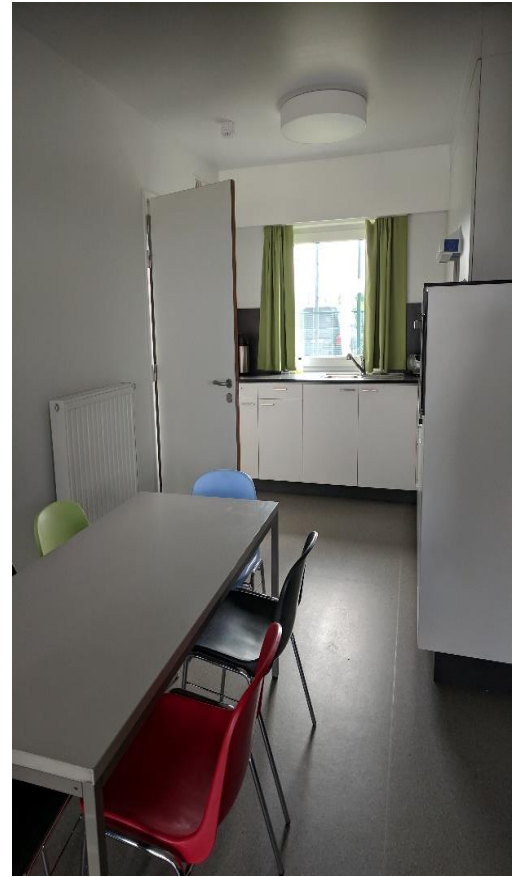


Outtakes



The briefing was then followed by a **field visit to Centre 127bis**. The Centre was unoccupied at the time of the visit by the delegation of the Ad Hoc Committee on Migration.





VI. Debriefing

In a short debriefing at the end of the visit the members of the Ad Hoc Committee drew attention to many important points that became apparent during the visit. One member underlined the importance of returns being carried out with **dignity**.

The principle applied in Belgium of **‘voluntary if possible, forced if necessary’** was also noted.

Another member remarked that the greatest problem with respect to returns is when asylum procedures last too long, and families have integrated. To this the Chair noted that in Belgium, in such cases, then a request for regularisation can be made.

One member also expressed the view that only families with children should be given financial support, so as to encourage returns of other categories.

The importance of access to education for children was also stressed.

The Chair also proposed to draft a resolution for debate at the upcoming Annual Session of the OSCE Parliamentary Assembly focussing on the one hand on return policy and on the other on integration policies for those who are granted the right to stay.

ANNEX I

FINAL PROGRAMME

Ad Hoc Committee on Migration Briefing on Promoting Effective and Humane Returns + Belgium Field Visit (Brussels, 2 April 2019)

Tuesday, 2 April

08:30-08:45 Welcome and briefing by the Chair, Nahima Lanjri

08:45-09:45 **“The recast EU Return Directive: Towards a stronger and more effective European return policy”**

Mr. Mauro GAGLIARDI, Policy Officer, Irregular Migration and Return,
European Commission Directorate-General Migration and Home Affairs (DG-
HOME) (*venue: Belgian House of Representatives*).

09:45-10:00 *Coffee break*

10:00-12:15 **“Promoting an Effective and Humane Return Policy”**
(*venue: Belgian House of Representatives*).

10:00-11:15 Panel 1: General principles guiding return policy

- Mr. Alexander DE CHALUS, Policy Officer, UNHCR Brussels - *Detention*
- Ms. Laurence HUNZINGER, Senior Regional Migrant Assistance Specialist,
IOM Regional Office for the EU, Norway and Switzerland – *A Framework for
Assisted Voluntary Return and Reintegration*
- Ms. Karen METS, Senior adviser on children on the move, Save the Children
Brussels – *Protecting the Best Interests of the Child and reintegration support
to child returnees*

11:15-12:15 Panel 2: The Case of Belgium

- Ms. Carolina GRAFÉ, Policy Officer Detention and Removal, Belgian Federal
Migration Centre (MYRIA) – *Overview of Belgian Return Policy*
- Mr. Valon HALIMI, Head of the Migrant Assistance Unit, IOM Country Office
for Belgium and Luxembourg – *Assisted Voluntary Return and Reintegration*
- Mr. Rob KAELEN, NGO “Platform Kinderen op de Vlucht” (Platform Minors in
Exile) – *Return houses*

12:30-14:00 *Working lunch* with the participation of Ms. Judith SARGENTINI (MEP, The Netherlands), Committee on Civil Liberties, Justice and Home Affairs (LIBE), “The proposals of the LIBE Committee for the recast directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals”
(venue: *Maison des Parlementaires*)

14:00 *Transfer by bus to Steenokkerzeel*

Belgium Field visits

- 14:30-15:15
- Overview of Belgian return policy, including alternatives to detention, Mr. Geert VERBAUWHEDE, Advisor, Belgian Immigration Office, Identification and Removal section
 - Voluntary returns, Mr. Joris KENNIS, Belgian Federal Agency for the Reception of Asylum-Seekers (FEDASIL)
 - The role of closed detention centers, Ms. Brenda MELIS, Director, Steenokkerzeel repatriation centre 127bis

15:15-16:15 Visit of Steenokkerzeel repatriation centre 127bis, with comments on operational management, Brenda Melis
The Steenokkerzeel centre is one of five Belgian immigration detention centres (total capacity: 559 places), all managed by the Belgian Immigration Office. The centre has 80 places, plus 28 places in four new family units, in use since August 2018.

16:15-17:00 De-briefing and end of programme.

ANNEX 2

LIST OF PARTICIPANTS

Members of the Ad Hoc Committee on Migration:

1. Ms. Nahima Lanjri (Belgium), Chair
2. Ms. Margareta Cederfelt (Sweden)
3. Lord Alfred Dubs (United Kingdom)
4. Ms. Sylvie Goy-Chavent (France)
5. Mr. Roman Haider (Austria)
6. Mr. Kyriakos Kyriakou-Hadjjiyianni (Cyprus)

Guests:

7. Ms. Nusrut Nisa Bahadur, Policy Adviser on Civil Liberties, Justice and Home Affairs to MEP Judith Sargentini, European Parliament
8. Mr. Alexander de Chalus, Policy Officer, UNHCR Brussels
9. Mr. Mauro Gagliardi, Policy Officer, Irregular Migration and Return, European Commission Directorate-General Migration and Home Affairs
10. Ms. Carolina Grafé, Policy Officer Detention and Removal, Belgian Federal Migration Centre (MYRIA)
11. Mr. Valon Halimi, Head of the Migrant Assistance Unit, IOM Country Office for Belgium and Luxembourg
12. Ms. Laurence Hunzinger, Senior Regional Migrant Assistance Specialist, IOM Regional Office for the EU, Norway and Switzerland
13. Mr. Rob Kaelen, NGO "Platform Kinderen op de Vlucht (Platform Children on the Move)
14. Mr. Allan Kaval, Journalist, *Le Monde*
15. Mr. Joris Kennis, Voluntary Return Unit, Belgian Federal Agency for the Reception of Asylum Seekers (FEDASIL)
16. Ms. Maria Giovanna Manieri, Greens/EFA Adviser on Asylum and Migration, European Parliament
17. Ms. Brenda Melis, Director, Steenokkerzeel repatriation centre 127bis, Belgian Immigration Service
18. Ms. Karen Mets, Senior adviser on children on the move, Save the Children Brussels
19. Mr. Pablo Rojas-Coppari, Migration and Freedom of Movement Advisor, OSCE Office for Democratic Institutions and Human Rights (ODIHR)
20. Ms. Judith Sargentini (MEP, The Netherlands), European Parliament
21. Mr. Nanda Troost, Press Officer for MEP Judith Sargentini
22. Mr. Geert Verbauwheide, Advisor, Belgian Immigration Service

PA/Parliament Staff:

23. Ms. Farimah Daftary, Programme Officer, OSCE PA International Secretariat
24. Ms. Corinna Lensch, Research Assistant, OSCE PA International Secretariat
25. Mr. Fabrice Hugot, French Senate
26. Mr. Roeland Jansoone, Belgian Chamber of Representatives

ANNEX 3

RESOLUTION ON

EFFECTIVE MIGRATION GOVERNANCE BASED ON PROMOTING INCLUSIVE SOCIETIES AND DIGNIFIED RETURNS⁴⁴

1. Acknowledging the challenges, including security concerns, associated with mass migration for countries of origin, transit and destination and the difficult decisions that must be made by OSCE participating States receiving migrants and refugees,
2. Underlining the importance of implementing comprehensive integration policies to ensure that those who are granted the right to stay are fully integrated, with a view to building inclusive societies and to ensure that both migrants and the receiving societies benefit,
3. Emphasizing that an effective and humane return policy is one of the main pillars of a comprehensive migration policy, and that it is not only necessary in order for States to be able to show generosity and solidarity towards those in need of protection, but that it can also have a deterrent effect and discourage irregular migration, thereby saving lives,
4. Noting with concern the decline in the rate of effective returns of non-EU citizens from the European Union to third countries, from 45.8 per cent in 2016 to 36.6 per cent in 2017, and welcoming the initiative of the European Commission to revise (“recast”) the Return Directive (Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals) with a view to increasing the effectiveness of the EU’s return policy in full respect of fundamental rights,
5. Emphasizing that the principle of *non-refoulement* is a principle of customary international law which applies also to States that are not parties to the 1951 Refugee Convention,
6. Concerned by the continued practice of detaining asylum seekers in violation of the right to seek asylum, separating families, as well as of “pushbacks” of asylum seekers at borders, and furthermore concerned about the slow progress in reuniting separated children with their families,
7. Dismayed that in a number of OSCE participating States, rejected asylum seekers, including families with minor children, are being detained for extended periods of time, with no durable solution in sight, and with serious implications for their mental health as well as for the children’s access to adequate education,

⁴⁴ Annex to the Luxembourg Declaration and Resolutions Adopted by the OSCE Parliamentary Assembly at the 28th Annual Session, Luxembourg, 4-8 July 2019, available at: <https://www.oscepa.org/documents/annual-sessions/2019-luxembourg>.

8. Recalling OSCE commitments and previous Parliamentary Assembly Resolutions in the field of migration governance and integration, in particular the Resolution on Ensuring a Coherent, Shared and Responsible Governance of Migration and Refugee Flows (2017), as well as the Resolution on Minors on the Move: The Role of the OSCE and the OSCE Parliamentary Assembly in Building an Effective Protection Framework (2018),
9. Welcoming the adoption of the Global Compact for Safe, Orderly and Regular Migration, and recalling in particular objective 21, in which States Parties agree to “co-operate in facilitating safe and dignified return and readmission, as well as sustainable reintegration,” objective 13 to “use migration detention only as a measure of last resort and work towards alternatives,” as well as objective 16 to “empower migrants and societies to realize full inclusion and social cohesion”,
10. Noting expert opinions, such as that of the Rapporteur of the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament, which underline that returns carried out within the framework of assisted voluntary return and reintegration programmes are not only the best means of ensuring that migrants return in a safe and dignified manner and also the preferred method of return by countries of origin, but are also more cost-effective and sustainable in the longer term,
11. Commending the important work carried out by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in promoting the exchange of good practices in the field of migrant integration, and encouraging OSCE participating States to make use of the ODIHR’s expertise in assessing, formulating and implementing migration policies and legislation,
12. Noting the positive effect of multi-stakeholder involvement in labour market integration policies, such as the tripartite co-operation between government, trade unions and employers’ organizations, co-operation between the public and the private sectors to promote migrant entrepreneurship, as well as the key role which local government actors play in promoting integration,

The OSCE Parliamentary Assembly:

13. Calls upon OSCE participating States to ensure that persons who are not entitled to asylum are returned with dignity and with full respect for their fundamental rights and freedoms and for the principle of *non-refoulement*;
14. Calls for an immediate end to family separation practices and the deportation of parents without their children, and for every effort to be made to reunite children with their parents or to place them in homes with family members;
15. Encourages OSCE participating States to adopt comprehensive action plans in the field of returns and to base policy on the principle of “voluntary if possible, forced if necessary”, carrying out forced return only as a last resort;
16. Stresses the importance of ensuring a clear link between asylum decisions and return procedures by swiftly notifying rejected asylum seekers of the outcome of their application or appeal, and clearly informing them, in a language that they understand, of the consequences of this decision and the options available to them;

17. Calls upon OSCE participating States to expand their support for assisted voluntary return and reintegration programmes, such as those implemented by the International Organization for Migration;
18. Strongly recommends that OSCE participating States grant a sufficient period for voluntary departure of at least 30 days to comply with a return decision, unless exceptional circumstances warrant a shorter period or the irregular migrant requests it;
19. Furthermore urges OSCE participating States to consider extending the period for voluntary departure or to postpone forced returns to allow children to finish the school year;
20. Urges OSCE participating States to move families with minor children to closed facilities only as a measure of last resort and only when a forced return is feasible and in the final stages of the return process, in order to minimize the period of detention as well as its impact on the child's mental well-being and disruption to the child's education;
21. Furthermore urges OSCE participating States to refrain from detaining rejected asylum seekers together with individuals convicted of a criminal offence;
22. Appeals to OSCE participating States to always implement alternatives to detention in the case of unaccompanied minors and to prioritize such alternatives in the case of families with minor children;
23. Encourages OSCE participating States to continue to grant basic minimal services, including accommodation, to rejected asylum seekers with minor children until the order to leave the territory expires;
24. Recommends that OSCE participating States provide the possibility of applying for regularization or consider granting a special status for a specific period of time to rejected asylum seekers who cannot return or be returned through no fault of their own ("no fault" cases) in exceptional cases, such as on humanitarian or medical grounds or in the case of an unreasonably long asylum procedure;
25. Encourages OSCE participating States to adopt effective return monitoring systems, consisting of following up on orders to leave the country as well as post-removal follow-up on each individual case of forced return in order to ensure that the returned migrant has not been subjected to inhuman or degrading treatment or punishment, and relying, in the case of EU Member States, on the forced return monitors of the European Border and Coast Guard Agency (Frontex);
26. Reiterates its appeal to the OSCE and its participating States to adopt measures to ensure greater intra-institutional cohesion, co-ordination, information sharing and impact with respect to migration and refugee flows, through the establishment of a high-level task force on migration supported by a network of focal points throughout OSCE bodies, field missions and institutions, as well as the Partners for Co-operation;
27. Reiterates in particular its appeal to OSCE participating States to harmonize their lists of "safe countries of origin" for which accelerated asylum procedures and, in principle, swift removals, are applied;

28. Furthermore encourages OSCE participating States to exchange examples of good practice in the field of returns, for example by developing a “return path” consisting of a step-by-step individual counselling path offered to asylum seekers whereby they are prepared for return early on in the asylum process and which includes information on voluntary returns in a language that they understand, at multiple stages in the asylum process, and also to provide the option of voluntary return to migrants in detention, unless there is sufficient evidence to believe that the individual poses a genuine threat to the security of the country;
29. Also encourages OSCE participating States to contribute to a more effective evaluation of return systems by collecting and sharing disaggregated data on forced returns and voluntary returns and on the sustainability of returns, including access to reintegration assistance upon return to the third country;
30. Underlines the importance for OSCE participating States to continue to pursue formal readmission agreements with countries of origin, as co-operation with third countries is an essential element of achieving a sustainable, dignified and effective return policy;
31. Urges receiving countries to adopt integration programmes for recognized refugees such as mandatory introduction programmes designed to promote a quick and efficient introduction of refugees to the labour market by activating and enhancing skills and providing language training;
32. Encourages OSCE participating States to draw upon examples of good practice in the area of labour market integration of migrants, such as fast-track procedures to speed up the entry of skilled migrants into professions characterized by a labour shortage, as well as measures to promote migrant entrepreneurship through microloans;
33. Highlights the importance of facilitating the recognition of foreign degrees and qualifications of refugees in the absence of formal documents, as well as harmonizing procedures between OSCE participating States to ensure that new entrants to the labour market are not employed below their qualification level and that they can continue their education at the appropriate level;
34. Encourages OSCE participating States to facilitate multi-stakeholder involvement in labour market integration policies as well as to promote participation at all levels of government, especially of local government actors, in the design, implementation and evaluation of integration policies;
35. Encourages OSCE participating States to fulfil their obligations under international law and invest in development strategies, including strategies to achieve the Sustainable Development Goals, with the aim of eliminating the adverse circumstances that drive people to leave their countries of origin – including wars, violence and protracted conflicts – and building peaceful and inclusive societies.