

THE PROBLEM THAT WON'T SOLVE ITSELF: REPATRIATING EU CITIZENS AFFILIATED WITH ISIL

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Since 2011, the so-called Islamic State, or Islamic State of Iraq and the Levant (ISIL), established a reign of terror in large parts of Syria, Iraq and beyond. Though the territory it controlled was concentrated in these regions, the group was far from a regional phenomenon: around [half of its fighters were made up of foreigners](#), many of whom were Europeans. Since 2011, [4 000 to 5 000 EU nationals](#) travelled or attempted to travel abroad to join terrorist groups, primarily to Syria and Iraq – a phenomenon that, according to [Europol](#), continues today.

While about [30% of these individuals returned](#) from conflict zones, many of whom on their own and outside of official channels, about [2 500 people](#) with links to the European Union (EU) remain in the region since ISIL's military defeat in 2019.

Active repatriation of these individuals by EU Member States remains rare, [focusing primarily on young children](#) and occasionally their mothers, who represent the [majority of detainees](#). Many Member States, including [Germany](#), [France](#), [the Netherlands](#) and [Sweden](#), expressed little to no intention of repatriating the remaining adults, with some [revoking their citizenship](#) to prevent their return, creating grave security and human rights concerns.

In the past two years, the regional political security landscape changed drastically, introducing new considerations for

repatriation. The fall of the Assad regime in Syria presents an opportunity for [greater cooperation](#) between the EU and the Syrian government. The new government concluded an [agreement](#) with the Syrian Democratic Forces that administers camps in northeast Syria to integrate into the state's security apparatus and transfer control over the camps. This refutes arguments put forward by, for example, [France](#), that consular assistance cannot be provided since the relevant camps are not under the control of the Syrian government. However, the transition also created uncertainty around the future of the detention camps. The government's takeover of al-Hol camp, which held more than [40 000 people](#) at the time, was accompanied by significant disorder and reports of [15 000 to 20 000 escapes](#), highlighting the fragility of the current arrangements. At the same time, the conditions in the camps are extremely poor due to overcrowding, inadequate sanitation, (sexual and gender-based) violence and continued radicalisation and recruitment by local terrorist actors. Adding an additional layer of urgency is the recent transfer of thousands of detainees, [including EU citizens](#), to Iraq, where they could face the death penalty.

Domestic political considerations have shaped Member States' approaches to repatriation, although they have rarely been invoked explicitly. Repatriating nationals associated with ISIL has been [politically unpopular](#) across much of the EU, with public opposition often centred on the [use of state resources](#) for individuals who chose to join a terrorist organisation and concerns about the security implications of their return. The contrast with European Muslim-majority countries such as [Kosovo](#), [Albania](#) and [Bosnia and Herzegovina](#), which have repatriated a far greater proportion of their nationals, also prompts questions about whether broader anti-Muslim political rhetoric and the [securitisation of Muslim communities](#) have contributed to

public opposition to repatriation in parts of Europe. While these political dynamics may help explain Member States' reluctance from a political perspective, they do not address the range of practical and legal arguments for non-repatriation put forward.

Member States' reasons for not repatriating

Lack of a legal obligation

The most fundamental argument for Member States' inaction, which has been continuously advanced by the [Dutch](#) government, is that international law does not impose a [general legal obligation](#) to repatriate nationals, leaving the decision largely within the discretion of individual states. However, this discretion is limited by states' human rights obligations, particularly in relation to the [rights of children](#), who [suffer disproportionately](#) under the poor camp conditions, and the prohibition of [torture and ill-treatment](#). The latter is especially relevant regarding the recent transfers of individuals to Iraq, which has already sentenced EU citizens to [death](#) for ISIL membership, a [practice widely recognised as torture](#).

Beyond their human rights obligations, states also have duties under international law to investigate certain international crimes and to fulfil their responsibility to [combat terrorism through prosecution](#). The [European Parliament](#) recognised that ISIL committed genocide against religious and ethnic minorities, triggering calls for Member States to ensure accountability for these crimes. Iraq [lacks procedural safeguards](#), and the Syrian Democratic Forces are not a state actor wherefore they have [no legal obligations to follow international standards](#). The ongoing transition in Syria has [brought most remaining detainees under state authority](#) with a formal judicial system with human rights guarantees, but [significant concerns](#)

[remain](#) regarding judicial independence, capacity and applicable substantive law. Accordingly, neither prosecution in Syria nor the transfer of detainees to Iraq can currently be said to guarantee proceedings meeting international standards, reinforcing the case for repatriation.

Difficulties regarding prosecution

Member States further point to the practical and legal challenges in prosecuting returnees for their potential crimes, noting that investigations and the [collection of evidence](#) outside of their territory are expensive, logistically demanding and often rely on foreign intelligence that might be difficult to use in domestic court proceedings. Again, these are legitimate concerns, considering that improper prosecution would risk both impunity for serious crimes and the release of potentially dangerous individuals without adequate supervision.

At the same time, Member States' capacity to investigate and prosecute crimes committed abroad should not be underestimated. Under international law, they have jurisdiction over certain serious crimes committed by their nationals abroad. Multiple Member States have already successfully prosecuted ISIL members, most recently in Germany, where an ISIL-affiliated couple was convicted [for crimes committed in Syria and Iraq](#). In addition, several countries have [begun using evidence originating from ISIL conflict zones](#) in domestic proceedings, reflecting a growing ability to overcome evidentiary challenges that were previously considered difficult to address.

Non-repatriation does not guarantee proper prosecution either, especially considering the lack of legal safeguards discussed above, the finality of the death penalty in light of accessing witness statements from sentenced individuals and the common [exclusion of other key witnesses](#) from trials in Iraq.

Accordingly, leaving prosecution to local authorities does not necessarily provide a more effective or just alternative to domestic proceedings.

National security concerns

Member States' most prominent reason against repatriation is the security threat that returnees, widely radicalised and possessing military training and combat experience, could pose in their home countries. Several individuals who returned to Europe [have been involved in the terrorist attacks](#) in Brussels and Paris, while some get involved in radicalisation or recruitment activities. While the majority of returnees [have not gone on to commit terrorist offences](#), the risk has made governments reluctant to facilitate returns.

At the same time, leaving nationals in Syria and Iraq is far from neutralising their potential danger. In the absence of effective detention, rehabilitation and deradicalisation structures, camps and prisons have become environments in which extremist networks continue to operate, enabling ongoing radicalisation and [recruitment](#). Concerns have been further heightened by the [resurgence of ISIL](#) in the region and repeated reports of detainees escaping from detention facilities, raising the prospect of experienced extremists rejoining transnational terrorist networks. Even without immediate return to the EU, former fighters can facilitate recruitment and coordination using language skills, knowledge of their countries of origin and existing contacts. From this perspective, non-repatriation does not remove the security risk but merely externalises it, making it an increasingly unsustainable long-term strategy with numbers of potential terrorists rising as recruitment continues among the camps' youth.

Concerns regarding reintegration and deradicalisation

Beyond immediate security and prosecutorial concerns, some Member States have expressed reservations about the challenges associated with the deradicalisation, disengagement and reintegration of returning foreign terrorist fighters and their families. Effective rehabilitation is resource-intensive and requires a long-term, individualised approach that takes into account factors such as [age, gender and experience](#). Long-term surveillance might be required to manage potential security risks, alongside [sustained psychological and social support and multi-agency cooperation](#).

Nevertheless, leaving EU citizens in Syria and Iraq does not present a sustainable solution, considering the continued recruitment and radicalisation among detainees. With a view to the large number of minors left in the region, this practice runs the risk of passing the problem on to the next generation of detainees. Besides facing continued exposure to extremist influences, many children already display signs of ["psychological and physical traumas resulting from their prolonged detention"](#), further complicating their future reintegration.

Experiences from several Member States and countries in the [Western Balkans](#) demonstrate that repatriation can be accompanied by structured systems for prosecution, rehabilitation and reintegration. In this context, criminal proceedings can play an important role, not only in ensuring accountability but also by providing an environment in which authorities are able to assess, monitor and engage with returnees before their eventual release. Rather than eliminating the challenge of reintegration, non-repatriation risks postponing it while increasing the danger that radicalisation will continue unchecked for generations to come.

The EU's stance

The EU acknowledges the security risks posed by returning foreign terrorist fighters in its [2026 counter-terrorism agenda](#) but also affirms that repatriation is tied to issues of national security and consular assistance, which are [exclusive competencies of the Member States](#). That said, the EU has taken on a clear stance against the death penalty being employed by Iraq, for [moral reasons and for the purpose of criminal investigations](#), and should therefore have a special interest in contributing to the protection of the life of its citizens. Recognising that effective counterterrorism requires close cooperation, the EU has called on Member States to “[work in unity](#)” and assumed a coordinating, supportive and policy-setting role within the limits of its competences that address many of the practical obstacles to repatriation.

These efforts are aimed at facilitating information sharing among Member States, for example through Directive (EU) 2016/681 on the use of passenger name record data or Regulation (EU) 2016/399, which allows for checking persons' potential threat levels at external borders against national or European databases. The EU has also established the Knowledge Hub on Prevention of Radicalisation, which facilitates the sharing of best practices, provides training on the [management of returnees](#) and offers [tailored support](#) to Member States and third countries. Eurojust, Europol, Frontex and the EU Agency for Law Enforcement Training strengthened operational cooperation and provide further training on the “[detection and management of returnees](#)”. Collectively, these initiatives seek to mitigate the security and reintegration challenges that have contributed to Member States' reluctance to repatriate.

The EU has likewise sought to facilitate the prosecution of returnees. It [criminalised travel](#)

[for terrorist purposes](#), thereby enabling earlier criminal intervention at Member State level, and supported UNITAD, the UN agency which collected and digitalised evidence of crimes committed by ISIL, through significant [funding](#). It also [announced](#) to look into the extent to which battlefield evidence collected by Iraqi authorities and UNITAD could be made accessible to Member States, to which effect it signed a [Working Arrangement](#) with Iraq to enhance judicial cooperation and information exchange in [support of Member States'](#) investigations of ISIL-related crimes. By strengthening investigative and prosecutorial capacity, these measures aim to reduce one of the principal practical obstacles identified by Member States in relation to repatriation.

Conclusion

The absence of a general legal obligation to repatriate leaves Member States with broad discretion in determining whether to return their nationals from Syria and Iraq. While concerns relating to national security, prosecution and reintegration are legitimate, inaction does not present an appropriate solution. Repatriation being viewed as an [unpopular](#) domestic decision should not outweigh serious human rights considerations and potential legal obligations deriving from them. Leaving EU nationals in precarious detention facilities neither neutralises the security threat nor reflects the EU's commitment to the rule of law and the protection of fundamental rights. Instead, it has been criticised as effectively [outsourcing](#) responsibility to authorities that are often ill-equipped to ensure secure detention, fair trials or humane treatment.

Many of the individuals who joined ISIL were radicalised before leaving Europe. The foreign fighter phenomenon is therefore not solely an external security challenge but one with important domestic origins, reinforcing the

responsibility of Member States to address its consequences. Repatriation should therefore be continuously considered by the Member States, prioritising cases in which individuals face the highest risks to their physical or mental wellbeing or to those most vulnerable to reintegration into regional terrorist networks. Where sufficient evidence exists, the prosecution of returnees should remain a central objective in order to advance accountability, while also providing authorities with an opportunity to assess, monitor and support their eventual reintegration in a controlled setting.

Although the decision to repatriate ultimately rests with Member States, the EU has played an important supporting role by strengthening judicial cooperation, facilitating the exchange of information and evidence, developing guidance on the management of returnees and building national capacities. These initiatives have

addressed many of the practical concerns that Member States themselves have identified. Repatriation offers a more structured and sustainable approach that respects obligations under international law than indefinite detention in unstable camps does. The EU should therefore continue to invest in training, information-sharing initiatives and operational cooperation among Member States, third countries and non-governmental organisations to support Member States in developing national strategies for their citizens' safe return.

Finally, the issue [extends beyond the specific context of ISIL](#), with EU citizens joining other conflicts as foreign fighters internationally. Developing coherent approaches to repatriation, prosecution and reintegration will therefore not only help resolve the legacy of ISIL but also better prepare the EU and its Member States to respond to future conflicts while upholding the rule of law and contributing to international security.

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