Ineffective but Advantageous.

Factors Contributing to the Maintenance of Ineffective Policies:
Case Study of the Independent Unsupervised Return Policy in the Netherlands

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Abstract

This research study investigated the reasons behind the maintenance of ineffective policies, by examining the Dutch case of the Independent Unsupervised Return Policy. Semi-structured interviews were conducted with 19 officials from the policymaking, policy execution, municipal and assisting levels. The analysis explored the reasons for policy ineffectiveness and showed that the maintenance of ineffective policies results from several factors. The first factor is ineffective interaction and the inability to agree on a common policy between the different levels of involved authority. The second factor is the inability to make changes to the policy due to high political costs, as well as the risk of losing economic and political advantages delivered by the current policy. The third factor is the absence of policy learning, which is required for policy change. The final factor relates to the lack of authority and limited margin of manoeuvre stemming from the rule of law and the European legal framework, as well as the perceived lack of resources and political support needed to initiate change. This research study concludes that, the advantages delivered by the ineffective policy are more important than the policy's overall effectiveness.

Keywords: ineffective policies, symbolic policies, return policy, multi-level governance, policy learning, policy change, government inaction.

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Definitions

Absconding An act by out-of-procedure migrants in which they disappear from the overview of authorities.

Accelerated procedure A period of 24-48 hours in which the migrant has to leave the Netherlands.

Assisted return Migrant return with the assistance of organisations such as IOM or the Dutch council of refugees.

Departure term A period of 28 days in which a migrant either has leave the Netherlands in an independent manner or appeal on the negative decision on the asylum/residence permit application.

Deportation system The organisations, processes and procedures within the immigration system concerned with the return of migrants, who do not have the right to stay in the Netherlands, to their country of origin (DT&V, KMar, AVIM, IOM, COA).

Deportability The situation in which migrants are removable

Dublin regulation Regulation adopted across the EU in 2003, in order to determine which country is responsible for examining an asylum request. This usually refers to the country of first entry.

Forced return/ deportation Returning immigrants involuntarily to their country of origin or the country responsible for their asylum claims, using coercive methods

Immigration system The organisations, processes, and procedures responsible for implying the admission, immigration and integration policies (IND, the Dutch Council of Refugees and, the municipalities).

Independent Unsupervised return The term is taken from Leerkers et al. (2010), who used it instead of "Voluntary Unsupervised Return" term, to emphasise the involuntariness of migrant return. Independent unsupervised return is an indemonstrable form of return, in which out-of-procedure migrants are ordered to return to their countries of origin or the countries responsible for their claims, without any supervision from the government.

LVV A joint project between the national government and the municipalities of Amsterdam, Eindhoven, Groningen, Rotterdam and Utrecht, established in

	2019 aiming to provide the basic needs and find a sustainable solution for the out-of-procedure migrants.
No-fault permit	A residence permit issued in case of migrant's inability to leave the Netherlands through no fault of their own.
Non-deportability	A situation in which migrants are not removable.
Out-of-procedure migrants	The term is taken from (Kalir, 2017) to describe migrants who have exhausted all the legal means and procedures to obtain a residence permit in the Netherlands. This definition is not limited to the rejected asylum seekers but includes all migrants who have exhausted such procedures. The term is also used in practice by a minority of practitioners.
Rejectees	Immigrants whose asylum or residence applications are rejected and are ordered to return to their country of origin.
Return order	Usually included in the negative decision on asylum or residence permit application, in which the departure term is determined for the migrant to return to their country of origin.
Sustainable return	The return of migrants to their country of origin with a perspective on development for the returnee (Geraci & Bloemen, 2017)
Voluntary return	The autonomous return of migrants to their origin countries

List of abbreviations

AVIM   Vreemdelingen Politie (Aliens Police)

AZC   Asiel Zoekers Centrum (Asylum Seekers Reception Centre)

COA   Centraal Orgaan voor opvang van Asiel Zoekers (Central Agency for the Reception of Asylum Seekers)

DGM   Directoraat Generaal Migratie (Directorate General for Migration).

DT&V   Dienst Terugkeer en Vertrek (Repatriation and Departure Service)

DV&O   Dienst Vervoer en Ondersteuning (The Transport and Support Service)

ECHR   European Court of Human Rights

ECSR   European Commission for Social Rights

EMN   European Migration Network

IOM   International Organisation of Migration

IND   Immigratie en Naturalisatie Dienst (Immigration and Naturalisation Service)

KMar   Koninklijke Marechaussee (Royal Military Police)

LVV   Landelijke Vreemdelingen Voorzieningen (National Arrangements for Aliens)

MOB   Met Onbekende Bestemming (Left to Unknown Destination)

TCN   Third Country National

VNG   Vereiniging van Nederlandse Gemeenten (The Association of Dutch Municipalities)

VW   Vluchtelingen Werk (The Dutch Council for Refugees)

Chapter 1: Introduction and background information

For the purpose of this study, effective policy is defined as policy which is able to achieve desired goals and outcomes and ineffective policy is defined as a policy which fails to achieve the desired outcomes (Nagel, 1986). Policy ineffectiveness is a focal point in public policy literature. Many studies have focused on evaluating policies' effectiveness, examining the causes of ineffectiveness and researching how to avoid or limit those causes. At this stage, a thorough review of the available literature has not revealed a study on why ineffective policies are maintained. This study will do a deep dive into migrant return policies, which are susceptible to ineffectiveness and failure. This study aims to uncover why ineffective policies are maintained, by studying the Dutch case of the Independent Unsupervised Return Policy. Due to its proven ineffectiveness since the year 1997 (IOM, 2004) and being the factor responsible for the major efficacy gap between the objectives and the outcomes of the overarching return policy (Kos et al., 2015; Leerkes & van Houte, 2019), the Independent Unsupervised Return policy was selected as a case study for this research as it is an interesting example of an ineffective policy that has been maintained unchanged over the long term.

Return has become a buzzword in migration studies over the last three decades. Returning migrants to their home country when they do not have the right to stay, is considered a legal activity of the state and the ultimate form of immigration control (Gibeny & Hansen, 2003), derived from the state's territorial sovereignty (Gammeltoft-Hansen, 2013; Debono et al., 2015; Gammeltoft-Hansen & Tan, 2017) and core function of providing physical and symbolic security (Leerkes & van Houten, 2020), performed against those who physically challenge the state's authority, by residing unlawfully in its territory (Joppke,1998).

When the guest workers appeared to be staying permanently in Europe, governmental and societal concerns around migrant return emerged in the 1970s (Castles, 1986). As a result, Immigration policies became more restrictive, in order to curb the number of migrants and asylum seekers wanting to enter Western European countries. Migrants' social rights and benefits were limited, and return programmes were specifically established for economic migrants, who came to work in the expanding industries in the

European countries since the 1950s (Black & Gent, 2006). When the assimilation of foreign workers was no longer assumed to be in the long-term interest of the European countries, focus on return has emerged (Martin & Miller, 1980; Hansen, 2002). Thus, returning migrants to their countries became a key focal point for the European countries, later leading to what is known as the "Deportation Turn" across Western countries (Gibney, 2008). After the September 11 terrorist attacks in the US, debates around immigration became more radical (Bloch & Schuster, 2005) where specific categories of immigrants were perceived as potential terrorists and border controls were further tightened (Debono et al., 2015) which increased the focus on return (IOM, 2004).

The assumed misuse of asylum procedures by economic and family migrants strengthened the European Union's stance on returning migrants. This led to more restrictive policies and the establishment of partnerships with international organisations to facilitate migrants return, such as the IOM in 1991 (IOM, 2022). Additionally, national organisations were established to implement those policies, for example, the Dutch Repatriation and Departure Service in 2007 (EMN, 2007). Almost a decade later, the high numbers of incoming asylum seekers in 2015 and 2016 led the Netherlands to adopt the "Integral Migration Approach" in 2018, which is a six-pillar agenda that emphasises "combatting illegal residence and stepping up returns" as its fourth pillar. This approach is assumed to achieve a "well-managed migration" that is aligned with the needs and the capacities of the Dutch society (Ministry of Justice and Security, 2018; Rijksoverheid, 2022) (see Appendix I).

The increased focus on migrant return globally makes the research presented in this study societally relevant, while the need for more research into the ongoing maintenance of ineffective policies makes this research scientifically relevant.

1.1 Background information on migrant return

There are two categories of migrant return, the assisted "voluntary" return (repatriation) and the forced return (deportation). Although there are no homogenous return policies across the EU, the Council of Europe, Commissioner for Human Rights, stated in 2001 that the voluntary return is considered to be the best approach to avoid traumatising both the

returning migrants and the executers of return, as it intends to preserve the migrants' dignity and avoids the use of forceful removal methods (Mommers, 2022).

Erroneously, the Independent Unsupervised Return is classified under the category of voluntary return. However, this research aligns with the work of Leerkes et al. (2010) which identifies the Independent Unsupervised Return as a separate category of migrant return. This reclassification highlights that migrant return is not voluntary. This study therefore follows Morrison's definition of return voluntariness as "*a clear and open choice on the part of the individual to return to the country of origin or stay and integrate into the host society*" (Morrison, 2000; Black et al., 2004)

As an alternative to previous return classification, which include the Independent Unsupervised return under the voluntary return category, this research identifies three categories of return, and classifies the Independent Unsupervised return as a separate category. Firstly, the assisted return or repatriation is the process of returning migrants to the country of origin or resettlement in a third country where permanent residence is guaranteed, with the assistance of intergovernmental and non-governmental organisations like IOM and VW. The rejectees can request assistance with travel documents, flight bookings and reintegration into their country of origin. The IOM offers post-departure assistance, known as reintegration support, which is mostly in-kind assistance aimed at funding income-generating activities, for example, small businesses, start-ups, schooling or rent payments for the first months of stay (IOM, 2022).

Secondly, the forced return or deportation is when the departure term ends and the out-of-procedure migrant does not leave the Netherlands independently, the migrant can be forcibly deported to their country of origin or the country responsible for the asylum claim under the Dublin regulation, or to a third country, where residence permit is guaranteed. In addition to that, the government can enforce measures to ensure that the out-of-procedure migrant leaves the Netherlands, for example, posting a fine that will be refunded after departure at the airport, and detention, where migrants can be detained for a six-month period, extendable to 18 months (Rijksoverheid, 2022).

Forced return requires the migrant's acquisition of a valid travel document and the cooperation of the country of origin to receive its nationals. However, in some cases the

migrant does not possess travel documents, therefore the DT&V and IOM mediate and communicate with the responsible embassy to obtain the needed documents. However, if the country of origin refuses to cooperate, the out-of-procedure migrant would be in a situation known as "no-fault" in which the migrant is unable to leave the Netherlands due to no fault of their own. In that case, the DT&V requires the IND to issue a temporary residence permit for the out-of-procedure migrant known as "no-fault residence permit" (Rijksoverheid, 2022; Repatriation and Departure Service, 2022).

Thirdly, the independent unsupervised return is when the out-of-procedure migrants are required to leave the Netherlands independently within a departure term stated in the Return Order (see Appendix II). The Independent Unsupervised Return is the basis of the return policy in the Netherlands and the Dutch government emphasises that the out-of-procedure migrants need to leave the Netherlands independently on their own initiative.

When reviewing the practical implementation of migrant return, it is clear that the Dutch government gives priority to the independent unsupervised return strategy, which is indemonstrable. Although there are agencies in place, such as the DT&V to achieve the deportation system's enforcement goals of removing migrants who do not have the legal right to stay in the Netherlands, executing returns effectively and humanly, and achieving sustainable return (EMN Netherlands, 2006; 2007; Ministry of Justice and Security, 2020; Inspectie Justitie en Veiligheid, 2021), the government emphasises that migrants who no longer have the right to stay in the Netherlands, should return on their own volition (Rijksoverheid, 2022). Ultimately this indicates that the process of returning migrants to their countries of origin has shifted from being the government's responsibility to being the migrants' responsibility (IOM, 2004).

This research explores and addresses the Independent Unsupervised Return as the main approach towards deportability in the Dutch deportation system. The research is based on statistics from the last fifteen years[1], where the Independent Unsupervised Return approach has the greatest share of the total registered returns, with a yearly average of

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[1] See Appendix III

57,4% [2]. Moreover, it is the recommended manner of return by the Dutch Government (Rijksoverhied, 2022).

The motivation to conduct this research stems from two factors. The first factor is my interest in researching the case study. The second factor is my own experience as a third-country national and as a previous out-of-procedure migrant with multiple return orders in the Netherlands.

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[2] Calculated from the return statistics in the last fifteen years (Appendix III)

Chapter 2: Literature and Theory

2.1 Literature review

This section of the study reviews the state-of-the-art literature on migrant return, policy ineffectiveness and the maintenance of inefficient policies, it aims to highlight what is currently known and to pinpoint the knowledge gaps about the reasons behind the maintenance of ineffective migrant return policies.

2.1.1 Literature on migrant return

Previous studies address the reasons, patterns, factors and effects of migrant return, with a focus on the returnees themselves and the factors shaping their return motivations, intentions and decisions. Studies over the last three decades, such as those by Gmelch (1980), Cassarino (2004) and de Haas et al. (2015) focused on the return of economic migrants, where the decision to return is related to the individual's economic success or failure. In the context of social structures, family and lifecycles, studies by King (2000) and Black et al. (2004) argued that non-economic factors and motivations for return are more important than economic ones for the migrants. In other words, the pull factors drawing migrants back to their country of origin are more important than the push factors coming from the country of residence.

More recent studies have focused on the assisted and sustainable return programmes, studies by Polit (2005) and Black and Gent (2006) honed in on the consequences of assisted return policies and designed a typology of the returnees based on their prospects, opportunities, aspirations and capabilities, which was later used in further studies by Kuschminder and Koser (2015) and Strand et al. (2016).

In the context of immigration policy evolution, several studies addressed return from a legal approach, indicating that the states' coercive measures and practices such as detention are against the rule of law (Brand, 2013). De Haas et al. (2018) illustrated that while some policies became less restrictive (for example integration policies), return policies, migrant detention and border controls became more restrictive, which increases the state's coercion and the migrants' deprivation from social and economic rights.

Additionally, studies have hypothesised that the "voluntary" aspect of the return is not truly present. These studies show that human rights violations have resulted from the implementation of return policies and discuss whether the voluntary return policy has a real voluntary nature or not. These studies suggest that "voluntary" return is often the only viable option available to migrants, amongst less viable options such as "irregular" stay and exclusion or forced deportation (Leerkes et al., 2010; Leerkes & Kox, 2017; Mommers, 2022).

A key focal point in recent studies has been the approaches towards return in the EU Member States. Leerkes and van Houte (2019) investigated the deportability and non-deportability of the rejected asylum seekers in Europe. The study flagged the existence of an efficacy gap caused by the differences between the numbers of those migrants who are ordered to return, and the numbers of migrants who actually return. In other words, not all migrants who are ordered to return to their country of origin successfully return. The study analysed approaches towards deportability and non-deportability and identified four ideal types of deportation systems, based on a combination of forced and assisted "voluntary" return rates, where the Netherlands was classified as a total regime that combines high rates of both approaches to return (Leerkes & van Houte, 2019). In a follow up study, Leerkes and van Houte (2020) also classified the Netherlands as a thick enforcement regime, which means that the Netherlands is a country where strong interests and sufficient enforcement capacities exist.

A study by Sager and Öberg (2016) similarly focused on the "Deportability Continuum", this continuum shows that the migrants become more or less removable, as the risk of deportation increases or decreases depending on factors such as enforcement policies, gender and race. Versions of this continuum also appeared in similar research by Kalir and Wissink (2016) and Andreson (2019).

The bulk of literature reviewing the emotional effects of return, investigates the impacts of return on migrants' emotional and psychological well-being, indicating that return is experienced to be more difficult than the initial migration (Ghanem, 2003; Vathi & Duci, 2015; Lietaert et al., 2017). Adding another facet to literature, Kalir (2019) focused on the duality between compassion and repression in the return process and the emotional challenges facing employees of organisations or governments involved in deporting

migrants, for example, case managers from the DT&V suffered emotional stress during the deportation of migrants.

Criticism of migrant return policies in the EU

A common thread in literature reviews the return policies in the EU and criticises the extent to which the return policies are humane and voluntary, highlighting the difficulty to distinguish between voluntary and involuntary return (Gibney & Hansen, 2003; Blitz et al., 2005; Webber, 2011; van Houte et al., 2016; Mommers, 2022). This is particularly apparent in the Netherlands where the out-of-procedure migrants are either forcibly returned or exposed to hardships by socially, economically and judicially excluding them and limiting them to their bare life existence, in case of refusing or being unwilling to cooperate on return (Leerkes & van Houten, 2020).

A second line of criticism is concerned with the problematised discourses and the frames employed in addressing migrant return, where migrants are considered as matters out of place, who need to be returned back to where they are assumed to belong and be familiar with (Hammond, 1990; Hvidt & Kjertum, 1999 in Ghanem, 2003). Migrants, particularly those who are classified as refugees, are often seen as social or physical threat and unmanageable danger and are assumed to have a "polluting power" in the host society (Schinkel & Schrover, 2011). Due to the perceived danger, the return of migrants, especially refugees, is often thought to be the ideal solution by governing bodies in power (De Genova et al., 2018).

2.1.2 Literature on policy ineffectiveness and policy failure

Previous research on policy ineffectiveness and policy failure has focused on two areas. Firstly, the reasons why policies fail (Mueller, 2019), secondly, the reasons why governments do not act on certain problems (McConnell & 't Hart, 2019). Studies focusing on the first area explored the ineffectiveness of policies and offered explanations for the factors causing failure, such as unfitting and ineffective policy design (Howlett & Rayner, 2018; van Geet et al., 2021; Mukherjee et al., 2021). Unfitting policy design is the term given to policies where the outcomes do not align with the intended goals, or where the means to achieve those goals do not align with the goals. Other studies by Hudson et al. (2019) focused on the implementation gaps caused by the absence of effective policy measures and the partial

implementation, while McCluskey et al. (2004) focused on efficacy gaps caused by the mismatch between the goals and outcomes and Freeman (2001) explored discursive gaps caused by the discrepancies between the discourses and the practices.

Lahav and Guiraudon (2006) and Czaika and de Haas (2013) justified the existence of these gaps, by the confusion between the policy discourses, policy on paper, policy implementation, and policy impacts. Moreover, McConnell (2014) and Ripoll-Servant (2019) stated that the high costs of initiating reform and the lack of the required resources to solve the problems are reasons causing the various gaps. A study by McConnell (2010) highlighted three possible reasons for policy ineffectiveness: issues at the programme level, process failure or political issues. Howlett (2012) emphasised that these causes of ineffectiveness can be avoided by deep policy learning, which entails higher levels of policy advisory based on data, research, information and better management of knowledge.

Studies that researched the second area, focus on why governments do not act on a certain problem or policy. Dye (2012) considered the government's lack of action as a public policy itself, explaining that public policy is what the government decides to do or not to do. While Cantekin (2016) argued that in specific circumstances, doing nothing can be a good public policy, particularly when dealing with wicked problems or intractable controversies. This argument was further developed by McConnell and 't Hart (2019) and termed "Government Inaction", when governments and policymakers do not act towards a societal issue.

A limited number of studies have focused on the ineffectiveness and failure of migration policies. Castles (2004) defined policy failure as the inability of policies to achieve their stated objectives. He justified immigration policy failure with three sets of factors. The first set is concerned with the social dynamics of the migratory process, the second is concerned with globalisation, transnationalism and North-South relationships, while the third is concerned with the political system.

2.1.3 Literature on maintenance of inefficient policies

For the purpose of this study, efficiency is defined as the ability to achieve desired goals with the least amount of resources, while effectiveness refers to an absolute level of goal attainment, regardless of the amount of used resources (Pennings & Goodman, 1977;

Ostroff & Schmitt, 1993). This section of the research will review studies concerned with policy inefficiency that offer explanations for why inefficient policies (those policies that do not meet the goal of reducing the amount of resources required to achieve their goals) are maintained.

A narrow stream of research suggests that inefficient decisions are made and maintained by governments and politicians as a by-product in the context of electoral rivalry. Dur (2001) explained that politicians maintain inefficient decisions and policies, due to the undesirable consequences and risks that aborting inefficient policies will have on their popularity to the voting constituents. The removal of policies due to inefficiency, can signal to voters that a politician or political group is incompetent or has made a mistake, which damages their reputation and reduces the chance of re-election (Dur, 2001). Further investigation showed that policy reforms can lead to confusion about the identity of political winners versus losers. For example, if a party or politician where to adopt a reform agreeing with a more efficient strategy from another party, it might portray the governing party or politician as a loser and the competent one as a winner (Fernandez & Rodrik, 1991). Moreover, political parties are often unwilling to propose reforms as these reforms might be in favour of the rival party's policies (Howitt & Wintrobe, 1995), which risks alienating the voter base. Thus, instead of abolishing policies and running the risk of signalling incompetency, politicians rather opt to maintain inefficient policies (Gustafsson, 2019).

2.2 Gaps in the literature and relevance of research

There is a limited amount of literature addressing the ineffectiveness and failure of immigration policies, and a clear absence of studies that explicitly address the maintenance of ineffective policies. Therefore, this research aims to contribute to the literature on maintaining ineffective policies, by studying the Dutch Independent Unsupervised Return policy as an example of an ineffective policy, to explore the reasons for why governments maintain ineffective policies that fail to achieve their stated goals. Moreover, there is a need to add to the literature addressing the Independent Unsupervised return as a separate category of migrant return and as the dominant approach towards deportability in the overarching Dutch return policy. To date, there is an obvious lack of research regarding the reasons for maintaining the ineffective Independent Unsupervised Return policy.

The increased political and social focus on migrant return has in turn increased the importance of highlighting effective and ineffective policies, not only in the Netherlands but also across the European Union, giving this research strong social and practical relevance. For example, in the Dutch parliamentary debate which took place on the 9th of March 2022, regarding "aliens and asylum seekers", the new State Secretary for Asylum and Migration was confronted with questions about the intended plan for achieving effective deportations. Moreover, the New Pact on Migration and Asylum which was proposed in 2020, highlights the ineffectiveness of the current return policies across the EU, as approximately only a third of migrants whose applications for international protection are refused, return to their country of origin (European Commission, 2020). This emphasises the need to better understand those ineffective policies and the reasons for maintaining them, so that more effective return policies can be implemented.

2.3 Theoretical framework

This section is dedicated to reviewing the theories that tackle policy change. To date, this study has not found any published research on theories that explicitly address the continued maintenance of ineffective policies. However, there are theories that tackle policy change and the factors that undermine it. In order to explore the possible factors that act as obstacles to policy change and the reasons why ineffective policies are maintained. This section elaborates and builds on four sets of relevant theories. Firstly, Multi-Level Governance, which is concerned with the interaction between the various levels of authority, in a complex policy context, which require the involvement of multiple actors. Therefore, it is applicable to the return policy context where multiple actors are involved. Secondly, Path Dependence, which explains the continuity of policies and the inability to change them, explaining how policies become less effective in achieving their stated objectives over time. Thirdly, Policy Learning, which explains policy change and how policy effectiveness can be increased. Finally, Government Inaction, which explains why governments do not act on initiating and implementing change.

2.3.1 Multi-level Governance and the maintenance of ineffective policies

Multi-level governance theories argue that the governance of complex problems and issues demands the engagement of various actors from multiple levels of authority (Hooghe &

Marks, 2001; Scholten, 2013). These diverse levels of authority or governance need to be aligned in order to define common and collective goals, for effective interaction and coordination (Bache & Flinders, 2004; Saito-Jensen, 2015). Thus, for effective multi-level involvement the various levels need to have common grounds and aligned goals.

Bache and Flinders (2004) argue that the interaction and coordination between the different actors can enhance the autonomy of the state, even though that state is no longer the only nor the central actor. Hooghe and Marks (2001) have classified multi-level governance theories into two categories. The first category assumes the dispersion of authority to a limited number of levels and actors, while the second category assumes that there is a large number of specialised and intersecting actors who function under flexible jurisdictions. This research is focused on the first category of theories, where multi-level governance refers to a vertical hierarchical structure in which very few actors have decision-making and policymaking powers and focuses on the interaction between the various levels of governance and their policies' outcomes (Fairbrass & Jordan, 2001).

Scholten (2013) argues that in practice multi-level governance does not necessarily lead to effective coordination or interaction between the various levels. This is due to the differences between the involved levels' agendas, problem definitions, policy framing, preference of policy measures and ideas about the workable solutions. Thus, multi-level governance is more likely to result in a top-down approach towards policymaking and implementation, where few levels have decision-making and policymaking powers and higher authority than the other levels. This top-down approach undermines collaborative policymaking and creates structural and legal constraints that limit the other actors' possibilities to change the policies or implement different policies.

Lack of collaborative policymaking

Collaborative policymaking is the vertical and horizontal engagement of multiple stakeholders in the policymaking process. It occurs when consensus-building processes succeed and sufficient common ground is reached among the stakeholders (Innes & Booher, 2003; Ansell et al., 2017). However, when a top-down approach is implemented, it indicates a lack of collaborative policymaking. This consequently indicates failure to establish common grounds for public problem-solving and leads to difficulties in achieving a constructive

management of the differences that arise between the governance levels' objectives (Hudson et al., 2019).

These differences between the governance levels' objectives and views pose a challenge when dealing with policy issues, as the various levels do not have the same perceptions about the problem and its solution, nor the same amount of power or resources to address it. Eventually, this can lead to policy decoupling at various levels. Scholten (2013) explains that policy or governance decoupling is the lack of effective interaction between the different governance levels involved in the same policy, due to conflicts and contradictions caused by the different interests, problem definitions, ideas for solutions and messages to the target group of the policy, which eventually diminishes the policy effectiveness.

Sabatier and Jenkins-Smith (1993) developed the Advocacy Coalition Framework, which suggests that policy change can happen via coordinated activities between different actors who share the same core beliefs and have a common understanding of the problem. However, the governance decoupling caused by different interests and beliefs, along with the top-down approach that undermines collaborative policymaking, and hinders the establishment of common grounds, can lead to an inability to initiate policy change and might eventually lead to the sustained maintenance of the status quo, which can be ineffective policies. Therefore, the maintenance of ineffective policies can arise when a compromise between the various levels and their competing interests occurs, as a result of the inability to reach mutual ground by agreeing on a coherent policy (Freeman 1995; Boswell 2007; Bonjour 2011; Boswell & Geddes 2011; Czaika & de Haas, 2013).

In conclusion, the maintenance of ineffective policies can therefore be explained by the top-down approach created by the multi-level governance which undermines collaborative policymaking and by the subsequent decoupling between various levels of governance which leads to the inability to reach mutual ground and the inability to agree on change, resulting in the maintenance of the current policy unchanged.

2.3.2 Path Dependence and the inhibited policy change

Policy change requires that alterations be made to the established policies or new innovative policies be introduced in place of current policies (Bennett & Howlett, 1992). Policy change can occur through policy learning, or through external factors such as the change in the

governing coalition (May, 1992; Sabatier, 2007). When examining the absence of policy change, Path Dependence Theory explains that it is difficult to change policies because actors tend to avoid or suppress change in order protect the existing situation (Pierson, 2000).

Path Dependence suggests that governments and institutions cannot change policies (their 'path') as the costs of change and adopting other alternatives are too high (Levi, 1997; Greener, 2002). Pierson (2000) argues that policies and institutions are designed to resist change and encourage continuity. Path Dependence theorists such as Hansen (2002) argue that the current capabilities of the institutions are result of choices made in previous stages, these capabilities limit the possible future options, and that Path Dependence encourages the continuity of the existing policy structure.

Path Dependence is applicable when other policy alternatives are available but neglected or proposed and rejected, due to the high costs of change and the advantages delivered by the existing policies (Hansen, 2002). Path Dependence can have a disincentive effect on change. This means that when an alternative option is raised or possible, it is deemed unattractive by policymakers, as changes to the established institutional arrangements can threaten the actors' interests. Instead, policy actors (policymakers and stakeholders) often opt to enhance the attractiveness of the existing policies (Pierson, 2000).

A study by Arthur (1994) illustrated that Path Dependence triggers inflexibility, which means that, how far an institution has gone down a certain 'path', how difficult it is to switch to an alternative. Ineffectiveness might result from the followed path, when the actors have followed it for too long that they are unable or unwilling to make changes to it. Thus, it might achieve fewer outcomes in the long run, especially when compared with other alternatives.

Although policy ineffectiveness and failure might be apparent, gradual improvements via trial and error often do not occur, which eventually results in ineffective policies being left uncorrected for sustained periods of time. Moreover, policy learning is unlikely to occur in the political and policy sphere, which results in public policies ultimately becoming change resistant (Pierson, 2000). In such cases, Path Dependence can explain the policy actors' unwillingness to initiate policy change, as it might threaten their interests or deprive them

from the advantages of the existing policies. In summary, ineffective policies are often maintained unchanged due to the suppression or avoidance of change resulting from Path Dependence.

2.3.3 Policy learning and policy change

There are many definitions of policy learning. Heclo (1974) defined it as the "relatively enduring alteration in behaviour resulting from experience and is conceptualised as a change in the response towards a stimulus". Etheredge (1981) defined it as "the process by which governments increase their intelligence to enhance the effectiveness of their actions". Hall (1988) defined policy learning as "a deliberate attempt to adjust the policy goals or techniques based on the results of the previous policy and on the newly introduced information" (Howlett, 1992). A more recent study by Moyson et al. (2017) defined policy learning as a process based on new knowledge and information from accumulated data about the policy's success, problems and solutions, resulting in changing or maintaining the policy.

These definitions have two common elements. The first is the use of information or experience, and the second is the change of behaviour or response, in order to better achieve the goals and increase effectiveness. Based on that, Howlett (1992) enhanced Heclo's argument that "policy process is a process of learning", by adding that policy change results from and demonstrates policy learning. Policy learning can be evaluated by examining whether it has resulted in policy change. Policy learning is important to avoid and overcome policy failure (Howlett, 2012), while obstructions to policy learning might result in policy failure. Therefore, it is clear that there is a positive relationship between policy learning and policy change, which means that policy learning can help facilitate policy change, while the lack of policy learning often results in the absence of policy change and potential policy failure.

Policy learning requires information or experience related to past policies. Moyson et al. (2017) suggest that knowledge based on information and the accumulation of data about policies, is required. Shortages or the absence of such data can obstruct the dissemination of knowledge and information, which prevents policy learning and indirectly inhibits policy change. Various types of policy learning have been recognised in the literature. Dunlop et al.

(2018) reviewed the categories of policy learning across numerous studies. Their review recognises nine types of policy learning: individual, collective, social, instrumental, political, transfer, convergence, diffusion and lesson drawing.

This research focuses on two types of policy learning. Firstly, Evidence-based policy learning, which is based on knowledge generated from information and data about the policy (Moyson, et al., 2017). Secondly, learning through diffusion, which is described by Berry and Berry (1990; 2007) as learning from regional experiences, where governments do not learn from their own experiences but from other governments' experiences. These two types of policy learning have been selected for their relevance and application to the case study, particularly the policy learning through diffusion as it is applicable to the policy context in the European Union. The indemonstrability of the Independent Unsupervised Return of the out-of-procedure migrants is assumed in this study to hinder the internal evidence-based policy learning, in that case the government would rely on external information about which policies are successful in achieving the desired goals for other governments (Volden et al., 2008; Shipan & Volden, 2008).

2.3.4 Government inaction and the maintenance of ineffective policies

According to McConnell and 't Hart (2019) policy studies are often biased towards researching policy activity and tend to ignore policy inactivity. However, Dye (2012) defined public policy as what the government decides to do or not to do, arguing that government inaction can be considered as a public policy. McConnell and 't Hart (2019) explained that government inaction is when governments and policymakers do not act towards a societal issue and defined it as *"non-intervention by individual policymakers, public organisations, governments or policy networks in relation to an issue potentially within their jurisdiction and where other plausible potential policy interventions did not take place"* (p.648).

McConnell and 't Hart (2019) identified five types of government inaction, firstly, calculated inaction resulting from an aware, strategic or tactical decision not to act, secondly, ideological inaction which is driven by ideological convictions that make decisions to act ideologically out of bounds, thirdly, imposed inaction which is the acceptance that decisions will not obtain support from pivotal actors and institutions, fourthly, reluctant inaction which is the acceptance of the unavailability of appropriate tools and resources,

fifthly, inadvertent inaction that results from bounded rationality constraints and institutional blind spots.

In this research, policy change is considered to be a government action and the absence of policy change when required is a government inaction, in other words, the government did not take any action towards changing the ineffective policy but rather maintained it. Furthermore, this research is concerned with two types of government inaction, the imposed and the reluctant, as they are the most relevant to this case study and are thought to have the biggest explanatory leverage in the context of the Independent Unsupervised Return policy.

Firstly, the imposed inaction, which is caused by the belief and acceptance that decisions or changes will not obtain the needed political support from the powerful or pivotal actors and institutions, such as the parliament. This category of inaction fits the context of highly politicised immigration policies in the Netherlands, where there are many political or societal actors who could use their authority or power to cause "policy paralysis" (McConnell & 't Hart, 2019). This is amplified by the accepted norms in the Netherlands where there is a strong need for consensus regarding policy change (Lijphart, 1999; Sabatier & Weible, 2007).

Secondly, reluctant inaction, which means that there is an accepted perception that the needed resources or tools to address issues (to implement and bring changes into practice) are not available. This category of inaction fits the context of the immigration policies in the EU where the Member States do not have the authoritative tools to initiate policy change. It also aligns with the context of policy change, as change is considered to be a politically high-cost and resource-demanding process (Levi, 1997; Greener, 2002).

This study defines resources as valuable qualities or essential elements needed for the functioning and achievement of benefits and as a means of action or effort to resolve a collective problem (Knoepfel et al., 2011). By this definition, authority can be considered a resource needed for initiating action and change. However, governments no longer have ultimate authority to control immigration, due to the human rights obligations and liberal democratic constraints imposed on them by the rule of law by national, supranational and international institutions (Sassen, 1996; Lahav & Guiraudon, 2006).

2.3.5 Chapter conclusion

This chapter reviewed the available literature relating to migrant return, policy ineffectiveness and the maintenance of inefficient policies. It highlighted the debate around the (in)voluntary nature of migrant return, determined the knowledge gaps about the maintenance of ineffective policies and stated the scientific and social relevance of this research. It introduced four sets of theories that could explain the potential causes for the maintenance of ineffective policies.

This research aims to contribute to the existing literature on return policies and public policy ineffectiveness by examining the Independent Unsupervised Return policy in the Netherlands.

Reasons for maintaining ineffective policies

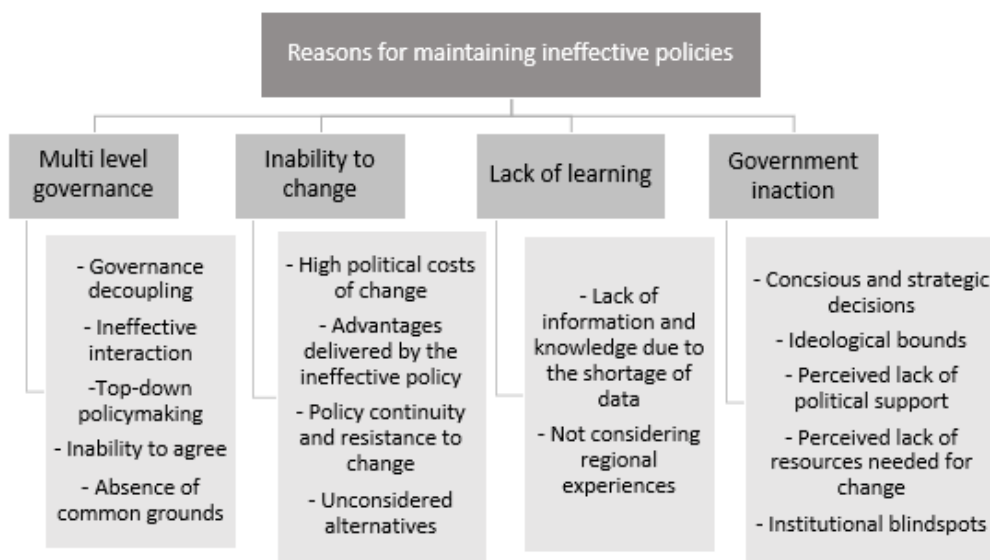| Multi level governance	Inability to change	Lack of learning	Government inaction
- Governance decoupling - Ineffective interaction -Top-down policymaking - Inability to agree - Absence of common grounds	- High political costs of change - Advantages delivered by the ineffective policy - Policy continuity and resistance to change - Unconsidered alternatives	- Lack of information and knowledge due to the shortage of data - Not considering regional experiences	- Concsious and strategic decisions - Ideological bounds - Perceived lack of political support - Perceived lack of resources needed for change - Institutional blindspots

Figure (1) Visualisation of the potential reasons for the maintenance of ineffective policies

Chapter 3: Research Design

3.1 Research question

The Dutch government maintains the Independent Unsupervised Return policy, even though it has proven ineffective. This research will explore the reasons behind the maintenance of this ineffective policy. As outlined by the literature review in the previous section, there are several studies that focus on migrant return and its motives, effects and consequences and on whether the nature of return is voluntary or involuntary. There are also several studies that explore the reasons behind general policy ineffectiveness and how policy failure can be avoided. However, there is an obvious knowledge gap concerning the reasons behind maintaining ineffective policies, particularly migrant return policies.

Therefore, this research aims to add to the existing literature by bridging the gap and discovering what are the factors leading to the maintenance of ineffective policies, by answering the research question of *"Why does the Dutch Government maintain the ineffective Independent Unsupervised Return policy on deportability?"*. In other words, this research is aiming to discover why policy change has not occurred. In order to answer the research question the following sub questions are posed:

I. How does the involvement of multiple levels of governance lead to the maintenance of the ineffective Independent Unsupervised Return policy?

II. Are there alternatives to the current policy and why were not they adopted?

III. What are the political and administrative advantages and disadvantages of the Independent Unsupervised Return policy?

IV. To what extent has policy learning happened, and has it led to policy change?

V. What are the reasons for the government's lack of action towards the Independent Unsupervised Return policy?

3.2 Case selection

This research focuses on the Independent Unsupervised Return policy, as it is the major contributor to the number of registered returns in the Netherlands. This is partly due to the government's stance that migrants, whose asylum or residence applications have been

refused, must leave the Netherlands independently within the departure term[3]
(Rijksoverheid, 2022; IND, 2022; DT&V, 2022).

This research considers the Independent Unsupervised Return as a separate category of migrant return. This differs from other classifications in literature where it is considered as a subcategory of the "voluntary return". Based on chain-wide statistics[4] and statistics from the DT&V and EMN, it is observed that the Independent Unsupervised Return is the biggest component of return figures in the Netherlands over the past fifteen years (see Appendix III). It is responsible for 47-62% of the registered returns with a yearly average of 57,4% (Tweede Kamer der Staten-Generaal, 2013; EMN Netherlands, 2015-2017; Repatriation and Departure Service, 2022).

In contrast to assisted and forced return approaches, the Independent Unsupervised Return is indemonstrable, as it is not known whether the rejectees who were ordered to return have left the Netherlands or not. Logistically, after the expiration of the departure term, the rejectees are registered by the IND as "Left-to-unknown-destination" (IOM, 2004). Thus, over the last fifteen years, the yearly average of the indemonstrable return makes up that 57,4%, which emphasises the existence of the efficacy gap caused by the difference between the numbers of those who are ordered to return and those who demonstrably return (Leerkers & van Houte, 2019).

A report by IOM stated that in 1997, 78,9% of rejected asylum seekers were registered by the IND as "left the country at an external border", while a considerable proportion of the registered 78,9% did not leave but, continued living in the Netherlands with no legal status (IOM, 2004). A study by Engbersen et al. (2007) showed that a considerable percentage of rejected asylum seekers continue staying in the Netherlands. A study by Leerkes et al. (2010) found that around 80% of out-of-procedure migrants in the Netherlands express negative attitudes or no intentions towards returning to their country of origin.

Also, due to the Dublin Regulation these migrants are unlikely to receive residence permits in another EU country and are likely to remain as "irregulars" in the Netherlands or

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[3] The government emphasises that rejectees need to leave independently. Yet, there is no emphasis on the demonstrability of their return
[4] Aantallen ketenbreed vertrek 2007-2012

in another Member State. Kos et al. (2015) validated the existence of a major gap in the Dutch return policy between its ambitions and outcomes, which results in considerable numbers of homeless migrants. A report from APM[5] in 2021 showed that in the year 2019, 23% of the out-of-procedure migrants who were registered as "left to unknown destination", have returned at a later stage to the asylum seekers' reception centres (AZCs). Moreover, APM stated that 22% of those who leave to unknown destination from the AZCs are leaving for the second time. This highlights the policy's ineffectiveness, and that the Dutch government acknowledges it. However, there has been no action towards changing the policy, on the contrary, it is maintained unchanged.

This study will focus on the Independent Unsupervised Return as it is the biggest component of registered return figures in the Netherlands and the factor causing the efficacy gaps, because of its indemonstrability. Due to its proven ineffectiveness since the year 1997, the Independent Unsupervised Return policy was selected as a case study for this research as it is an interesting example of an ineffective policy that has been maintained unchanged over the long term.

3.3 Expectations

Based on the theories introduced in the theoretical framework, this research will explore four posed reasons for the maintenance of ineffective policies. The four reasons include multi-level governance, Path Dependence, lack of Policy Learning and government inaction.

Multi-level governance

Based on the multi-level governance theories, this study expects that *the maintenance of ineffective policies, in the case of the Independent Unsupervised Return policy in the Netherlands, is in part due to the top-down approach to policymaking and the ineffective interaction caused by the decoupling between the various levels of governance.*

The top-down approach in policymaking is prevalent in that the EU holds decision-making and policymaking powers, where its legislation has higher precedency than the national legislation of the member states. This undermines the collaborative policymaking

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[5] Analyseproeftuin Migratie

and the ability to create common grounds to agree on change, leading to structural and legal constraints that limit the national capacity to initiate change or implement policies that do not conform with the supranational policies and legislations, which results in a limited margin of manoeuvre to the signatory Member States, such as the Netherlands.

To prove the decoupling between the various levels, two examples are provided. Firstly, the discrepancies between the EU and the national government, the case law from the ECHR, imposes changes on the Dutch judicial and legislative framework, in case of non-conforming with the EU law. This shows that the Netherlands might have different and stricter enforcement interests than the EU. Yet, the national government defers to the EU and its legislation. A clear example is the ECHR rulings in cases of violations to Article (3) of the European Convention on Human Rights concerning inhumane or degrading treatment, in cases of expulsion from the Netherlands[6].

Another example for the discrepancies is found between the national and local level of authority. The national government's restrictive approach towards the out-of-procedure migrants does not necessarily translate into restrictive practices at the local level. Thus, while the government has adopted the restrictive and exclusionary Aliens Act of 2000 (which terminates the right to accommodation and facilities for the rejected asylum seekers), some municipalities offered the out-of-procedure migrants emergency shelters and basic facilities.

Path Dependence

Based on Path Dependence theory, this study expects that *the maintenance of ineffective policies, in the case of the Independent Unsupervised Return policy in the Netherlands, is due to obstructed policy change, the high political costs of adopting different alternatives and the advantages delivered by the policy.*

The introduction of restrictive regulations in the 1980s concerning the admission and residence of guest workers and their family members was considered to be a policy reform, as it brought major changes to the immigration system, where restriction, return and exclusion became agenda priorities. The changes extended to the collaboration with IOM in 1991, to assist in returning migrants without residence rights to their countries of origin.

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[6] The ECHR ruled that expulsion violates Article (3) of the Convention, in cases such as: Salah Sheekh v. the Netherlands, 2007.

Then, additional legislation has been introduced, such as the exclusionary Linking Act in 1998, the Aliens Act and Aliens Decree in 2000 (which are assumed to have decreased the number of "illegals" in the Netherlands) (Riksoverheid, 2019), the Identification Obligation in 2004, the establishment of the Repatriation and Departure Service as a separate organisation in 2007, and the removal of the minister's and the state secretary's authority to regulate rejected asylum seekers in 2019 (Leerkes et al., 2017; Leerkes & van Houte, 2019).

The choices made in the period following the end of the guest workers system, have started a path of restrictiveness and a right-wing electorate dynamic, where immigration became highly politicised and an arena for political rivalry. The rise of the right wing in Dutch politics initiated a dynamic that turned left-wing parties into conservative ones regarding immigration (Mudde, 2013; van Ostaijen & Scholten, 2014; Kešić & Duyvendak, 2019).

Past decisions affect the current government's capability to switch to a different approach or 'path'. The highly politicised atmosphere and the problematisation of immigration to achieve electoral winnings, have made the political costs of change remarkably high. Moreover, the current situation can be advantageous in terms of portraying the authorities' control, regardless of the fact that the policies used might be ineffective and symbolic (Czaika & de Haas, 2013). Thus, changes might threaten the interests of political actors. In case of introducing a less restrictive policy, the actors' rhetoric and perceptions about immigration might be proven unrealistic, incorrect or unfair, and the actors would lose not only credibility but also parliamentary seats and political power. Therefore, the maintenance of policies is preferred though they are ineffective.

Absence of policy learning

Based on policy learning theories, this research expects that *the maintenance of ineffective policies, in the case of the Independent Unsupervised Return policy in the Netherlands, results from obstructed policy change due to the absence of policy learning*.

When examining the Independent Unsupervised Return policy, it is clear that the return of migrants is indemonstrable, as it is not known whether those who received return orders have actually returned or not, which causes a lack of reliable data and information. Since policy change results from policy learning, and policy learning is based on data, information and knowledge, then the lack of reliable data and information obstructs policy

learning and consequently policy change, resulting in unchanged policies and in the maintenance of ineffective policies.

Imposed and reluctant government inaction

This research expects that *the maintenance of ineffective policies, in the case of the Independent Unsupervised Return policy in the Netherlands, results from imposed and reluctant government inaction*, where imposed inaction indicates a lack of necessary political support from parliament, while reluctant inaction indicates a lack of policymaking and decision-making authority to initiate change. This lack of authority is addressed in what is known as the "liberal democratic paradox", where the government's desire to control immigration and enforce return has increased, but its actual ability to do so has decreased due to the legal constraints and the rule of law (Castles, 2004; Lahav & Guiraudon, 2006; Garcés-Mascareñas, 2019). This can justify the government's inaction and consequently, the maintenance of ineffective policies unchanged

3.4 Operationalisation

This section is dedicated to the operationalisation of the theoretical concepts introduced in the theoretical framework section. The operationalisation of this research follows the structure and order of the research questions, which were used to create the operationalisation table (see Appendix III).

Firstly, governance decoupling was examined. Interviewees were asked about the interaction with the various levels of involved actors. The interviewees from the national policymaking level were asked about their interaction with the EU and their interaction with municipal and assisting levels, while interviewees from assisting and municipal levels were asked about their interaction with the national government and its organisations. The top-down approach was investigated by asking the interviewees whether there is a common goal being achieved by the policy and which level of governance has the most authority to make policies and decisions. Policymakers were asked about the extent to which the Netherlands is independent in making and implementing its own policies regarding immigration and return.

Secondly, path dependence was examined. The interviewees were asked about the availability of alternatives to the current policy and whether any of the alternatives were considered or proposed. To examine whether policy change has occurred, the interviewees were asked about the difference between the return policy earlier and currently, also about the previous regulations' effects on the current return policy. Moreover, they were asked about the policy advantages and disadvantages, the possibility and consequences of adopting different alternatives.

Thirdly, the expected lack of policy learning was examined. The interviewees were asked about the availability of sufficient data to generate information and knowledge on the policy's effectiveness, and whether the Netherlands is imitating regional migrant return experiences from other European Member States and whether the government is sufficiently aware of the policy outcomes.

Fourthly, the expected government inaction was examined by asking the interviewees about the reasons why the government is not acting on changing the current policy and the extent to which the government has the needed resources to implement change and whether such change would encounter political opposition.

3.5 Methods

A case study research design was adopted in order to answer the research question: "Why does the Dutch government maintain the ineffective Independent Unsupervised Return as a policy on deportability?" and to gain a comprehensive understanding of the motives, reasons, advantages and disadvantages of maintaining the policy. Qualitative semi-structured Interviews were conducted as, this method is the most appropriate for the case-study research strategy (Stake, 1995; Yin, 2014) as it provides in depth information, detailed facts and insights to the interviewees' perceptions and experiences. A guide to interview questions was developed from the theoretical framework. However, the interviews also included open-ended questions to allow for new and different insights.

3.5.1 Data collection

Nineteen interviews were conducted with officials from various levels of authority and organisations, in order to establish a comprehensive narrative that explores the reasons

behind maintaining the Independent Unsupervised Return policy from a multi-level perspective. The interviewees can be grouped as follows:

1. The first group consisted of seven national policymakers, where six of them are policymakers who work on drafting return, readmission and migrant-detention policies, while one works on the LVV, in order to understand the motives and factors that play a role in shaping the policies.

2. The second group consisted of two legal consultants from the DGM, to gain more insights into the national and European legal framework of immigration policies.

3. The third group consisted of eight practitioners from the assisting organisations and municipal level (COA[7], VW, NGOs, LVVs) as they have more direct contact with the out-of-procedure immigrants and provide them with guidance and basic needs.

4. The fourth group consisted of a practitioner from the executing level in the Repatriation and Departure Service (DT&V), as they decide on, execute and postpone migrant returns.

5. The fifth group consisted of a practitioner from IOM, as it is a partner in the Dutch immigration chain and provides return assistance.

A total population sampling method was used for the policymakers involved in return policy drafting, as they are limited in number, and it is best suited to gain an in-depth perspective on the policymaking. The researcher has interned in the Directorate General for Migration in the Ministry of Justice and Security preceding the commencement of this research which enabled the contact with the policymakers. Snowballing sampling method was used for the interviews with the assisting and municipal level as the practitioners referred to further contacts. Convenience sampling method was used for the interview with IOM, based on the readiness and availability of the practitioners. The communication with DT&V went through research coordinators, who are responsible for finding suitable interviewees. This method was used as it fits the organisation's rules for interacting with researchers.

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[7] The COA is a national agency under the Ministry of Justice and Security. However, in this research it is included in the assisting level due to its direct contact with, and guidance to the migrants

Interview no.	Interviewee	code
Interview 1	Policy officer: Directorate for Migration policy (AO&T)	i1
Interview 2	Legal consultant: Legal General Affairs	i2
Interview 3	COA	i3
Interview 4	IOM	i4
Interview 5	Policy officer: Directorate for Migration policy (AO&T)	i5
Interview 6	Policy officer: Directorate for Migration policy (TR&N)	i6
Interview 7	COA	i7
Interview 8	DT&V Strategic advice and judicial affairs	i8
Interview 9	Legal Consultant Legal General Affairs	i9
Interview 10	Policy officer: Directorate for Migration policy (AO&T)	i10
Interview 11	Policy officer: Directorate for Migration policy (AO&T)	i11
Interview 12	LVV Groningen	i12
Interview 13	Policy officer: Directorate for Migration policy (AO&T)	i13
Interview 14	Vluchtelingen Werk	i14
Interview 15	Small scale NGO (Rotterdam)	i15
Interview 16	Policy officer: Directorate for Migration policy (LVV)	i16
Interview 17	Municipality Utrecht (LVV)	i17
Interview 18	LVV Eindhoven	i18
Interview 19	Stichting LOS	i19

Table (1) List of the conducted interviews

3.5.2 Data Analysis

This research is largely based on a thematic deductive approach, as deductive codes and questionnaires were formulated based on the operationalisation of the concepts introduced in the theoretical framework. Yet, open codes have been used to include new patterns of information that appeared in the data. Therefore, the data provided from the interviews were analysed abductively, to avoid the shortfalls of the deductive and inductive approaches. Furthermore, the analysis of the data was based on a latent approach, where the analysis was not limited to the explicit content of the data but involved the interpretation of implicit assumptions underlying the data. The interviews were transcribed, coded and the content was qualitatively analysed using ATLAS.ti 9.0 software.

3.5.3 Limitations

The chosen research method has two limitations. First, it is purely qualitative, which makes it subjective to biases from the interviewees, especially those who are in critical positions as they might be disinclined to openly express their true professional or personal opinions. In addition to that, it might be subject to the researcher's biases, caused by personal

experience and knowledge of the field. Secondly, this study lacks the objectivity and structure of quantitative research methods and might not be easily replicable as it is based on the qualitative analysis of the officials' opinions, which might change or reverse (Kelman, 1961). However, the analysis remains valid as it is conducted systematically.

3.5.4 Ethical considerations

The use of qualitative methods and semi-structured interviews raises ethical concerns and requires reflexivity on the researcher's positionality (Sultana, 2007). For self-reflexivity, I acknowledge my position stemming from my experience as a previous out-of-procedure migrant in the Netherlands with multiple return orders and as a TCN migration scholar. Although I am not a participant of any advocacy group, I have empathy for undocumented and out-of-procedure migrants, and an in-depth understanding of their situation and I am opposed to the use of exclusionary and coercive measures against them. I also, acknowledge that my positionality might have influenced this research to some extent, in the sense that it might have influenced my choice of the topic, the selection of research participants, the questions asked, the interpretation of language and data, and the recommendations posed.

To minimise the effects of my positionality, in order to conduct ethical research, I followed the recommended approach by Ritchie et al. (2014) to be as neutral as possible and avoid any obvious, conscious or systematic biases. Moreover, I conducted this research from a neutral position as I presented myself as a student and researcher rather than a migrant, in order to maximise objectivity. Furthermore, the data have been systematically analysed based on deductive codes informed by the theoretical framework. However, according to Greenbank (2003) social research cannot be value-free, and to Dubois (2015) that regardless of how reflexive the researcher is, they cannot describe something as it is or describe the reality objectively (Gary & Holmes, 2020).

Zapata-Barrero and Yalaz (2020) state that qualitative social sciences research, in particular migration research, is subject to several ethical challenges and limitations. Migration research might be abused or challenged by anti-immigration rhetoric and coercion supporters. Therefore, it is important to emphasise that this research does not aim to reproduce the irregularity, illegality and criminality mantras (Handmaker & Mora, 2014) and

uses neutral terminology such as "out-of-procedure migrants", whenever possible, instead of other emotive terms used to refer to migrants.

All the interviewees participated voluntarily in this research upon informed consent on the objectives and purposes of the study. All participants were anonymised, and the data were handled confidentially and stored on encrypted drive according to the GDPR privacy rules, in order to avoid any potential social or legal harm to the participants (Zapata-Barrero & Yalaz, 2020). Upon request, the interviewees received the opportunity to review their transcribed interviews in order to guarantee the clarity of the data and certainty of the results.

Chapter 4: Analysis

This chapter presents the main research findings, aiming to answer the research question of why ineffective policies are maintained in the case of the Independent Unsupervised Return policy in the Netherlands. In this chapter, the patterns of information appeared in the data collected from the interviews are presented and explained following the order and the structure of the research questions and study expectations. The section introduces the perceived factors causing the policy ineffectiveness and presents findings related to multi-level governance, path dependence, policy learning and policy change, and government inaction. This section also presents the additional patterns of information observed in the data.

4.1 Revisiting the policy's ineffectiveness

The participants stated several factors that undermine the policy effectiveness and inhibit the implementation of effective return, such as the indemonstrability of return, absconding and lack of cooperation from both the migrants and the countries of origin. In addition to that, they judged the policy effectiveness in the Netherlands by comparing it to other European countries, the policy was deemed ineffective when compared to Denmark or Germany and effective when compared to the policies of Southern European countries.

4.1.1 Absconding as a result

The goal of the return policy is that migrants who have no legal right to stay in the Netherlands, leave independently. However, there is no obligation to return to their country of origin, only the obligation to leave the Netherlands. This, in combination with the indemonstrability of return, results in these individuals becoming registered by the IND as "left to unknown destination". However, it is not known whether they have actually left the Netherlands or not.

This problem is exacerbated by the lack of any follow up process, which suggests that this outcome of absconding is considered as a result to the Dutch authorities, who assume that the individuals have left, while in fact they might be still staying in the Netherlands. Although being referred to as an *"unwanted effect of the return policy"* (i10), absconding is still considered as a policy result. Additionally, there are no clearly defined targets for the

deportation system. There is a general goal or *"ambition"* that the out-of-procedure migrants will leave. But there are no specific targets or objectives set out to achieve that goal (i6).

> "If somebody is MOB. It gets registered that this person has left the country, and it's not the intended result that we want to have, but at the same time it's a result and they're out of the system, so we don't need to focus or spend our resources on them" (i10).

4.1.2 Lack of cooperation

There are two problems assumed to be the major causes for the return policy's ineffectiveness. Firstly, the individuals' unwillingness to return as well as their use of aliases and fake documents to inhibit return, makes it difficult to allocate them to the concerned embassy to obtain the identification documents necessary for implementing return. Secondly, the lack of cooperation from the country of origin, with regards to assisted or forced return. Both approaches require cooperation from the country of origin on issuing travel documents for the individuals concerned and readmitting them upon arrival. However, the interviewees (i3/i6/i7/i10/i11/i12) stated a number of countries such as Algeria, Morocco, and Nigeria, which are among the top nationalities of migrants required to leave the Netherlands but, refuse to cooperate on return.

Therefore, even if there is capacity to implement forced return or if the migrants are willing to return, migrant return cannot be implemented, and detention would be unreasonable. In this case the migrant would qualify for a no-fault residence permit, or at least their return will be postponed. Yet, interviewees (i3/i15/i12/i18) stated that the criteria for no-fault permits are quite high, and in most cases the individuals do not qualify and end up in a limbo where they are unable to return and have no permit to stay.

4.1.3 Current problems leading to policy ineffectiveness

Interviewees (i1/i6/i7/i8/i9/i11/i13) suggested that migrants communicate to each other ways to stall the return process, which adds difficulty to the implementation of return. An example of this became apparent over the last two years, where migrants shared ways to inhibit the procedures around the Covid-19 pandemic. The countries of origin and the

countries responsible for the asylum claim required a negative PCR test for each individual entry, which migrants could refuse to obtain in order to stall their return.

An additional problem is that migrants have to wait for lengthy periods for decisions on their applications. They try many procedures for years and become "rooted" in the Dutch society, which makes return more difficult to implement (i3/i10/i12/i13/i14/i15).

4.2 Multi-level governance

The interviews revealed that migrant return is an overly complex subject where multiple levels of governance are involved. The European Union, the national government and its executional agencies (DT&V, DV&O, KMar and AVIM), the municipal level and the assisting level (COA, LVVs and NGOs) are all part of the process. Interviewees (i2/i3/i6/i8/i10/i13/i16) stated that multi-level involvement is important and needed because every level has its role and responsibilities, they also suggested that multi-level involvement gives a better perspective on how to deal with certain issues, and that it is impossible for only one level or actor to deal with the whole process.

However, the interviewees also pointed to ineffective interactions and communication between the various levels, stating that multi-level involvement is challenging, conflictive and leads to less effectiveness, as every level has its own goals and perceptions on problems and solutions (i2/i3/i5/i6/i10/i11/i12).

> Because you have this interplay between all these different actors, which I think is a good thing, you become less effective, of course. If you want to be effective, you just need one actor that decides, executes, makes the legal basis for it, executes it and that aspect would be better to everyone […], but at the same time, we are a democracy that is bound by rule of law "(i10).

4.2.1 Governance decoupling

Several factors causing decoupling between the various levels of governance were revealed in the interviews. The different perspectives, goals, responsibilities, approaches and perception of problems and solutions, that each level has, cause this decoupling. Interviewees stated that the EU's goal is to implement its legislation on migrant return represented in the Return Directives and to respect human rights (i2/i6/i10/i12). The national government's goal is to increase the pressure on out-of-procedure migrants so that

they leave the Netherlands (i3/i5/i6/i10/i12). At the same time, the municipalities, LVVs and NGOs aim to end the homelessness and to find a sustainable solution to the asylum seekers' homelessness (i3/i5/i7/i10/i12). Thus, each level has different goals and deals with different realities. Each level likewise has a different approach towards the out-of-procedure immigrants.

The municipalities and the NGOs have a social support approach, as *"they think that they should be socially involved to stand up for the weak in the society"* (i3). This stance is influenced by their direct contact with the (homeless) migrants, who are considered as a vulnerable category. The national government takes a technocratic approach towards ending reception rights. It attempts to be stricter and place more pressure on "irregular migrants", increasing their hardships in an attempt to drive out-of-procedure migrants to return (i3/i5/i6/i12).

> "From the national government perspective, we tend to offer people without residence permit as limited opportunities as possible so, they cannot work here nor register in a house, so their mobility rights and their social rights are very limited. But for municipalities, it is a real problem because the undocumented migrants stay in the municipality and they either stay on the street or in overcrowded houses [...] the difficult thing is that the municipality has all the disadvantages of the irregular stay. So, municipalities have the ambition to facilitate irregular stay and at the same time, the Dutch government want to discourage people to stay and there is friction between the two levels and sometimes it is problematic" (i6).

Furthermore, interviewees (i1/i3/i5/i6/i7/i10/i12/i13) argued that what makes sense at a national level, does not make sense at the municipal level. For example, ending the right of reception for the asylum seekers makes sense for the national government, as it means that these migrants will be out of the case load and will not be entitled to reception facilities, thus saving resources for the national government. However, on a municipal level it means that these migrants will be homeless and the municipalities will be confronted with homelessness and public order concerns. Thus, municipalities are confronted with and have to solve the problem caused by the national policy.

Another indication of governance decoupling between the national and the municipal level is apparent in the decision to end the reception right of out-of-procedure migrants. The order to evict a migrant from the reception centre is based on the national decision from the IND and DT&V, while the implementation involves the local police who follow the local authority, who in some municipalities and cases refuse to cooperate on

eviction. Eventually, this decoupling disables the implementation of eviction and return (i3/i7).

> "Sometimes it is an option to request eviction from the local police, but the local police fall under the jurisdiction of the municipality and in some cases, certain municipalities refuse to cooperate on that. So, in the worst-case scenario, there is someone staying indefinitely in the regular centre because we cannot move them, and the police will not act" (i7).

Interviewees (I3/i7/i10/i12) suggested that municipalities have a "local colour", meaning that they have different political orientations than the national government. This discrepancy in political orientation results in a different perspective and approach to dealing with the out-of-procedure migrants. Thus, while the national government has a more right-wing approach and is trying to limit the possibilities and exclude the out-of-procedure migrants, some municipalities have a more left-wing approach and are trying to create opportunities for the out-of-procedure migrants. An example of this, is when migrants are provided with food, shelter and medical care by municipalities or municipal actors.

> "The local colour of the municipality is very influential in this, and with the local colour I mean the politics in the municipality, for instance there is a municipality with more green left-wing parties, then it is more likely to give more chances and those municipalities don't agree with the national policies in general" (i7).

4.2.2 LVV as evidence for governance decoupling

The interviews (i1/i3/i5/i6/i7/i11/i12) indicated that the LVV is a result of and evidence for governance decoupling. There were two patterns of governance decoupling manifesting in the data. The first pattern shows decoupling between the national and local level, where the establishment of the LVV is a result of the discrepancies and the different approaches some municipalities have than the national approach. It is worth noting that the LVV was established as a joint pilot project between the national government and five municipalities (Amsterdam, Eindhoven, Groningen, Rotterdam and Utrecht) in 2019. However, the idea behind it dates back to the early 2000s. After the implementation of the Aliens Act and Decree 2000, which introduced restrictive measures against the rejected asylum seekers such as ending the reception right, resulting in the asylum seekers' homelessness.

The NGOs have negotiated with the municipalities and agreed to establish the emergency accommodations as a consequence of the homelessness resulting from the

national policy. These emergency accommodations became later known as "Bed Bath Bread" facilities. However, the national government was disgraced with these agreements, because such facilities are thought to frustrate the national return policy.

> "It was a clash between the two because the national authorities wanted to show that they were tough on migrants, especially the right-wing parties […] but the local authorities were confronted with the homelessness" (i12).

Interestingly, interviewees (i3/i5/i7/i10) stated that the national government has realised that the problem of non-deportability will not be solved by ending the accommodation rights of the out-of-procedure migrants and that the LVV is necessary to support the municipalities. Yet, there is a shared view that the existence of the LVV gives a "double message" to migrants, as it is not in line with the national policies and creates an alternative to migrant return or acts as a motive for the out-of-procedure migrants to stay in the Netherlands (i1/i3/i5/i10).

> "These people have to leave the reception centre and go back, but if there is a shelter in other cities like Amsterdam or Rotterdam, then, they know that they can end up there, in a shelter with medical facilities, so that is a double message" (i3).

The LVV is a joint pilot project between the municipalities and the national government. However, the practitioners in the LVV who belong to the municipal level and the NGOs have a different approach to working with out-of-procedure migrants compared to the national government. The approach of the municipalities and the NGOs is focused on finding a sustainable solution for the migrants, which starts with providing the basic requirements of shelter, food, medical care, psychiatric care and information on obtaining a residence permit or assisted return to their country of origin. The practitioners from this level share a confidential trust bond with migrants as they work on finding the best, possible and durable solution including the possibility to obtain a residence permit. While the national authority's approach is focused on enforcing migrant return through restrictiveness and exclusionary practices (i12/ /i17/i18/i19).

Governance decoupling was emphasised in statements from LVV practitioners (i12/i17/i18/i19) about the ineffective interaction with the DT&V, who focuses on migrant return although having the possibility to grant residence permit on various basis, as stated by a LVV and municipal practitioner:

> "We are trying to discuss with them, we focus on the serious and realistic possibilities, we have a confidential bond with them, because we also try to get them a residence permit, if possible, but that's something the DT&V for example does not focus on because they have the possibility to deport people. They tell the people, if they don't choose for voluntarily return, they will be deported, and that's a totally different conversation than what we do" (i12)

Moreover, such decoupling reflected in the favoured manner of return between the national and the assisting levels. The interviewees from the national level favoured the independent return, while those from the municipal and assisting levels favoured the assisted return.

The interviews with the municipal and assisting levels showed that the first instance of decoupling between the local and national level has resulted in a second pattern of governance decoupling, between the national and EU level. Due to the stalemate and the "clash" between local and the national levels regarding the Bed, Bath and Bread facilities, the Dutch Protestant Church (via the Council of European Churches) presented a collective complaint to the European Committee of Social Rights (ECSR) about the homelessness of the undocumented migrants. The Committee decided that there is an evident violation of the European Social Charter[8] and ruled that every undocumented migrant is entitled to basic necessities, as provided by the Bed, Bath and Bread facilities. However, this decision was not adopted by the national government, though it was adopted by several municipalities to reduce homelessness.

This decision clearly outlines the different goals, approaches and interests between the EU and the national government, as the first focuses on the protection of human rights across the EU while the second focuses on social exclusion. The overarching pattern of decoupling is made more apparent as the municipal level implemented the ECSR decision, while the national government did not, re-emphasising, the first pattern of governance decoupling between the local and the national level.

4.2.3 EU as a central actor

According to the interviewees, most of the legislation on asylum, immigration and return comes from the EU, presented in the Directives and case law from the European courts and

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[8] Article 13: 4 the right to social and medical assistance and specific emergency assistance for non-residents.
Article 31: 2 the right to housing and reduction of homelessness.

that the national government is dependent on the European legislation. Thus, the national legal framework on immigration is bound to the European framework. This limits the national government's ability to create or implement contrasting policies that are not aligned with the European framework.

Furthermore, the European Union and its legislations have superior authority and thus the EU migrant return framework overrides the national one. Therefore, interviewees (i1/i2/i3/i5/i7/i8/i9/i10/i11) indicated that in order to make the migrant return policy more effective, changes are required at the EU level. Despite the Netherlands' dependence on and deference to EU legislation, the margin of manoeuvre left allows the Member State to implement the policies with subtle differences.

> "it's an illusion to think that there is a very large national legislation, there are subtle differences between the states, but the bulk of legislation is European" (i2).

It is clear that there are two different views on the European legislation from the interviewees. One perspective is that the legislation is too strict regarding the human rights of migrants which then limits the member state's ability to implement "effective" migrant return (i8/i11), while the other perspective suggests that the legislation is necessary to provide safeguards for human rights and against excessive restrictiveness (i10/i12).

> "The guidelines coming from the European Union are very important, because we have seen, at least until now that, human rights are important to the European Union. While the Dutch policies were too strict in comparison with verdicts from the European court" (i12).

4.2.4 Defects in the European system

Interviewees (i1/i2/i3/i5/i7/i10/i11) pointed out defects in the European asylum system, which affect the Netherlands as a Member State and contribute to migrant return policy ineffectiveness. Firstly, the unequal level of protection/facilities and the ineffective Dublin system. There is disproportionate responsibility sharing between the Member States, where a small number of states, particularly the Southern ones, receive the biggest numbers of asylum seekers while the rest of the states receive insignificant numbers. This creates a situation in which the quality of facilities and the level of protection vary greatly, which drives migrants to re-immigrate to other Member States in what is known as *"Secondary Movements"*.

Thus, asylum seekers who are registered in countries with poor facilities tend to travel further to Northern and Western countries that have better reception facilities and higher levels of protection (i1/i2/i5). However, based on the Dublin Regulation, these individuals have to be returned to the EU country of entry or the country responsible for the asylum claim, but due to the open borders in the Schengen Area, return is ineffective as migrants can move from one country to another or even get deported to the country responsible for the asylum claim, but later return to their preferred destination. Interviewees (i7/i10) stated that the Dublin system, despite its disadvantages to Southern Member States, is advantageous to Northern and Western Member States, as they are able to return asylum seekers to the entry countries and reduce their national caseload.

> "For the northern countries it is advantageous to be able to return people there, if we say okay, we are going to remove the Dublin agreement then more people will come from the entry route countries to here, because I think we can say that the facilities here are a lot better" (i7).

Another defect in the European system is that Member States have different or contrasting interests and that every country operates in a manner fitting their national interests, which can be counterproductive to the way other Member States, or the EU operate. This also applies to the Netherlands who *"stands up for its national interests, which are sometimes counterproductive for the European solution"* (i10).

An additional defect in the European system is the decision-making mechanism, where proposals, legislations and regulations need consensus or qualified majority or at least no objection from a certain number of states. Due to the member states' different interests, a proposal can easily be voted against by a number of countries to dismiss it. Therefore, the European Council is considered an obstacle for passing proposals and was described as *"the biggest hurdle"*. A clear example is the New Migration pact in 2020. The pact was proposed to solve migration issues in Europe, but there are countries blocking this Pact by voting against it. Thus, voting against proposals can be a bargaining chip to get better conditions in a different domain regulated by the EU.

> "If you need seven countries not to vote against, it's very easy for these seven countries to come together and vote against, not only to get better terms on the migration table, but also on a different table that the European Member States deal with. So, it could be farming, fishing, economics or finances" (i10).

4.3 Path Dependence

When asking the interviewees about the differences between the previous and current return policies, interviewees (i1/i2/i3/i5/i7/i10/i12) stated that there are no remarkable differences, as the policy had not changed, they stated that the policy three decades earlier and currently do not significantly differ, as they are both restrictive and are moving in one direction, but the policy currently is more restrictive than the policy earlier. They further explained that even with the change in the governing coalition the policy had not changed, as the policy is bound to laws and regulations that were not changed, especially in the last ten years as the immigration dossier was in the hands of the same political party (VVD).

Interviewees (i3/i6/i8/i10/i12) referred to the introduction of the Aliens Act in 2000 and the period of Rita Verdonk, who served as Minister for Integration and Asylum Affairs from 2003 to 2006, where the immigration policies were made more restrictive and exclusionary, with increased emphasis on return. Since then, the politicisation and problematisation of immigration by the right-wing parties have increased (i3/i6/i10/i12). During Verdonk's tenure, it was thought that tougher borders and return policies are needed. Thus, the COA was tasked to work on migrant return and the foundations were laid for the DT&V as a separate organisation to implement return. Yet, major changes did not take place, even with the change of the governing coalition, policy change did not occur (i1/i2/i3).

Some participants stated that minor changes happened in the implementation of the policy, because a separate organisation was established to execute return (DT&V) (i3/i7/i8). Although there was no change in the essence of the policy, there was a minor change in the availability of information. Migrants became more informed about their possibilities and the consequences of irregular stay than before. The type of return/reintegration support given to the returnees has also changed from financial support to in-kind support (i4/i5). Lastly, migrant return became a *"less taboo"* and less of a *"dirty word"* in the migration field, as more organisations started to work towards migrant return apart from the DT&V (i4/i5, i7/i8/i12/i14).

From the COA perspective the return policy has not changed, but the implementation has, since the establishment of the DT&V, the COA did not have to continue focusing on

return, but rather on reception, with a limited role in the implementation of migrant return, which led to more specialisation and professionalism (i3/i7).

When asking the interviewees about the possibility of changing the policy, the majority stated that it would be difficult to change it due to the bureaucratic system that requires a long time to change. Due to the multiplicity stakeholders involved in the policy who do not easily agree with one another, change is made more difficult. Interviewees explained that if the national government wants to initiate change, efforts should be made to adjust the EU policies, the European legal framework and the Dublin system (i2/i3/ i5/i7/i8/i9/i10). Interviewees (i2/i3/i6/i8/i11) suggested that change can only result from the EU, through the European case law from the ECJ. While interviewees (i4/i5/i6/i8/i10/i11/i13) suggested that the involvement of Frontex as an EU agency specialising in migrant return, is expected to introduce changes in the return policy and processes in the near future.

4.3.1 Policy alternatives

The interviewees have mentioned a number of alternatives to the current policy. Interviewees (i5/i10) mentioned that an alternative could be to admit fewer migrants to the Netherlands or to broaden the possibilities for asylum and regular migration by making the requirements less restrictive. In both cases, there would be less "irregular" immigrants who have to be returned and readmitted. Interviewees (i3/i12/i15) suggested that an alternative to the current policy (which requires migrants to wait in a "passive state" for a decision on their residence application) would be to allow the migrants who are waiting to work, so that they can earn an income and to provide them with return assistance, so that, *return would be less shameful*" (i15), as migrants would not be returning barehanded to their country of origin. Another alternative is to increase the capacity of the IND and the DT&V in order to have shorter procedures and more migrant returns (i3/i6). Increasing the budget for migrant return and reintegration support was mentioned as another alternative (i4/i5/i6).

Increasing the number of forced returns and detentions were not considered as viable alternatives, due to the rule of law nationally and at the European level. In addition, there is limited capacity and resources for detention and forced return, as these are resource-demanding processes (i1/i2/i3/i5/i6/i8/i10/i11/i13). Pardons were not considered as a viable alternative as they demotivate migrants from returning to their country of origin

if there is the possibility of a pardon after a number of years of undocumented stay in the Netherlands. Pardons were considered *"illogical"* and not in line with the admission policies, as they grant exception to migrants who do not fulfil the requirements (i1/i5/i6/i10/i11). However, pardons can be a solution for those who live in limbo when they do not qualify for permits but cannot be returned, due to, for example, physical danger in their country of origin (i2/i3/i5/i12).

Interviewees (i3/i5/i6/i7/i8) stated that it is difficult to discuss alternatives to the current policy, as there are negative sentiments in society towards irregular migrants, which makes it a more difficult challenge in parliament to discuss a balanced policy.

> "it's still also a difficult challenge and as we have seen in the discussion with Parliament, but also within society that why should we give people who have no right to stay here all kinds of facilities and support. And that they came here sometimes beforehand, knowing that they will not get a residence permit, and making use of all the facilities we already have in the Netherlands. So, these kinds of sentiments make it very difficult to have a real balanced policy on voluntary return and voluntary return assistance" (i5).

4.3.2 Policy advantages

The interviews importantly revealed that there are various advantages to the current return policy. The first advantage is for the out-of-procedure migrants who can abscond or move to another Member State where they can apply for asylum, it is seen as a better option than returning to their country of origin. Thus, staying undocumented in the Netherlands, is considered more advantageous to some migrants than returning to the countries of origin (i1/i5/i10). Another interviewee suggested that the policy offers a "*dignified return and self-determination"* (i11)*,* which is less shameful or traumatic than forced deportation or detention.

> "If they will choose the voluntary or forced return, they will have a worse life that they can get by leaving by themselves. They don't want to go back. They think they have a better chance to stay illegal or try asylum application or whatever, work under the radar in a different country, than to go back to their countries" (i10).

Secondly, for the national government, the current policy delivers administrative and economic advantages (i7/i10/i12), because *"it reduces the numbers of those who get into the national asylum procedures"* (i7)*.* Based on the Dublin regulation there is a term of 18 months after which the Dublin claim expires and the country where the migrant is staying

becomes responsible for the asylum application, as long as the migrant has stayed for 18 consecutive months.

The policy allows the deportation system to label migrants as "left to unknown destination" after the end of the departure term. This prevents migrants from getting into the national procedure, which means less asylum applications received nationally, less costs and less resources spent. Additionally, when migrants are registered as "left to unknown destination", they no longer have the right of reception, which reduces the expenses.

> "If somebody is MOB, then they're out of the system, so you don't focus on them anymore and don't spend your precious resources. So, in that sense, it's a bit of a number question. It's unwanted, but it's also not that unwanted" (i10).

The current policy offers advantages to the government, as it supports the government's image of being tough on migrants, as indicated in the terminology used, the label "left to unknown destination" conveniently excuses the government from its responsibility, as the terminology communicates that migrants have left the Netherlands and allows policy ineffectiveness to be blamed on the migrants, who appear to have left the Netherlands without informing the government.

> "It is just an administrative act and the term that has been given to it is also rhetoric because, if we would have written "continued illegally in the Netherlands", then it would have been a political suicide" (i6).

 Ultimately, the infeasibility of forced return practices and the limitations on granting return support, result in this policy being a viable option for the government, although that it is largely ineffective.

> "Deportations do not work, so they don't have another solution and they don't have the power to solve it, […] if you don't have to take responsibility, you can just lay back and do nothing but blame the asylum seekers for not returning, that's what they do and that's convenient" (i12).

Thirdly, the current policy delivers political advantages to the right-wing parties who focus on the identity politics, such as the PVV. These parties would criticise the governing parties' policies. On the other side, the policy offers an advantage to the other competing left-wing parties, as it is *very easy to criticise the current status quo and say that they would do it better"* (i10)*,* offering potential solutions to the problems and consequently achieving electoral gains (i5/i6/i10/i12). The fourth advantage is enjoyed by actors and organisations in

the chain that benefit from the flow of capital required to deal with the out-of-procedure migrants or to implement their return.

> "It's also beneficial, people make money out of it. There are agencies recruited by different municipalities. Municipalities get money from the state to deal with people that need to be returned. You have detention centre. There's a lot of money flowing around, money talks. So there are a lot of people making money from the current status quo, so it's beneficial for them as well" (i10).

4.3.3 Policy disadvantages

Interviews (i5/i6/i7/i10/i11) indicated that the current policy has political and administrative disadvantages to the Dutch government, as it is a sensitive and complicated topic which can be used by competing parties to direct criticism at the governing party and achieve electoral wins. Administratively, the policy is a resources-draining process, for which large financial and human capital are needed. Also, it is not easy to create nor develop a new strategy for this policy, as migrant return is "*very explosive in political terms*" (i10).

> "It is disadvantageous to the administration. It takes up a lot of capacities of human resources, economic resources to deal with this issue, that's technically insolvable" (i10).

The policy has disadvantages for municipalities in terms of maintaining public order, health and security problems caused by the homelessness of the rejected asylum seekers and undocumented migrants.

> "It is not good for municipalities to have people living on the streets who don't have proper facilities, who don't have healthcare, there could be public order problems, because you have someone in the worst-case scenario sleeping on the station basically, this could add to the homelessness problem that we already have" (i7).

4.4 Policy Learning and policy change

The interviewees stated that there is sufficient information in the immigration field for the government to be informed about the outcomes of the return policy (i1/i5/i7/i12). However, they asserted the lack of knowledge and information about the out-of-procedure migrants who are assumed to have left the Netherlands to unknown destination, due to the indemonstrability of their return.

The out-of-procedure immigrants who leave to unknown destination or "abscond", were described as a "very difficult group" (i1/i3/i6), as it is not known where they are, nor

what their current situation is. However, there is awareness about their existence and absconding.

> "I don't think that in all areas we have enough information […] there are definitely areas where we lack information [...] we are not exactly sure how big this group is, why they are doing this, how long they've been here" (i13).

Interviewees (i7/i10/i12/i14) referred to Denmark as an example of a more effective deportation regime than the Dutch regime and Germany was used as an example for a less restrictive immigration and admission regime than the Dutch regime (i5/i7/i10/i14/i18/i19). When asking the interviewees whether the Dutch system is imitating or learning from these experiences, the interviewees disaffirmed that the Dutch government is imitating or learning from these experiences. Yet, they illustrated that such experiences, in particular the Danish one is used by the right-wing parties in the context of criticising the policies or the government.

> "There is some discussion in the Netherlands. But it is mostly minority political groups who talk about this, to look more at the Danish model" (i7).

4.5 Government inaction

Interviewees (i1/i2/i8/i9/i10/i11) stated that the government is trying to improve policies on the EU level, they referenced continuous negotiations between the Dutch government and the European Union. However, these negotiations are slow and have thus far proved unfruitful. The national government remains dependent on and bound to the EU legislative framework, which limits the government's possibilities to act.

The interviewees went on to discuss aspects that indicate government inaction. The interviewees stated that the government is unable to initiate change due to the lack of resources needed, for example to increase the forced return rates it is required to have additional detention facilities, personnel and financial resources, which makes forced return a capacity consuming process that results in high costs. Even if there are resources and capacities to increase the rates of the forced return, the implementation would not be practically possible, due to the legal constraints and the limitations from the EU on detaining migrants (i1/i2/i5/i6/i10/i11/i13).

The lack of authority to act results not only from the binding European legislation, but also from the democracy and rule of law in the Netherlands, presented in the existence of independent judiciary, the role of the Council of the State who guards the legal framework by monitoring the legislative and executive branches and *"has the power to hit back"* in case that any of the branches has violated the law or *"surpassed the boundary"* (i10), and the undesirability to be a policed state.

> "We do not want to become a police state where on every corner of the street there is a police officer controlling documents and placing people in detention. That is not what we want to have in the Netherlands" (i6).

The government is unable to increase the return and reintegration support given to the returnees mainly due to two factors. The first factor is that such action might not receive enough political support, especially when there is opposition from parliament and negative sentiment in society towards aiding migrants who do not have the right to stay in the Netherlands.

> "These kinds of sentiments make it very difficult to have a real balanced policy on return and return assistance" (i5).

The second factor is that the government is aware that if reintegration support materially increased, then it might act as a pull factor for irregular migrants, such that they might intentionally leave their countries of origin to move to the Netherlands to make use of this support (i3/i5/i6/i7/i8).

4.6 Additional findings

This section outlines additional patterns of information extracted from the data, through the open coding technique.

4.6.1 Policy ineffectiveness resulted in the LVV

The existence of the LVVs is a result of the return policy ineffectiveness and failure to achieve the goal of having migrants leave the Netherlands. If the return policy was effective, the LVVs would not have existed, as migrants would either acquire a residence permit or would have returned to their country of origin (i3/i5/i12). However, many of the interviewees (i3/i4/i5/i6/i10/i11/i12) believe that that the LVV is a solution to practical

problems related to public order and security on the municipal level such as homelessness. Without the LVV, immigrants *"would live on the streets in more challenging conditions"* (i5).

4.6.2 Solutions to increase the policy effectiveness

Most of the interviewees considered migrant return to be an overly complex and difficult-to-solve issue, but they suggested solutions to increase effectiveness. First, the waiting times and procedures should be shortened, as the long procedures require migrants to wait for longer periods of uncertainty which causes them to become "rooted" in the Dutch society, making return more difficult to realise (i3/i10/i12/i13/i14/i15).

By increasing the capacity of the IND, procedures could be made shorter. A second solution is to increase demonstrable return rates by encouraging migrants to return to their country of origin with the help of NGOs and the IOM, who can arrange logistics such as travel documents and can provide better reintegration support to the returnees upon their return to their country of origin so that *"they can pick up their lives again"* (i2/i4/i5/i6/i11/i12).

A third solution is to start, "*investing in relations with the countries of origin*" by enhancing cooperation and increasing readmission agreements and developmental aid. This is assumed to facilitate the acquisition of documents needed for migrant return and could help solve the root causes of migration from these countries (i2/i3/i4/i5/i10). A fourth solution is to increase cooperation within the European Union, by making suitable return assistance accessible regardless of which Member State the migrant is in.

> "Harmonised policies within Europe (whether about asylum or return) […] makes it easier and also more understandable for a migrant what he or she can expect when entering the EU" (i5).

This will also help limit secondary movements to other member states when migrants leave the Netherlands without returning to their country of origin. Another solution suggested adopting a more realistic approach towards migrant return.

> "If people are here for 20 years, stop working on return. Let's be realistic, they will not return anymore, given they are integrated here. Give them a residence permit and so that can be solved (i12).

4.6.3 Action towards the Ukrainian situation

Some interviewees expressed their frustration over the imbalance in resources available to assist Ukrainian migrants versus migrants from other countries (i3/i5/i10/i12). The interviewees highlighted that, resources were quickly made available for a large number of Ukrainian migrants, creating a difference between the Dutch response to Ukrainian migrants' situation and the response to other migrants' situation.

> "it's a little tragical to see that people who got bombed by Russians in Syria, we cannot find a solution for them who have been on the islands of Greece for five years and we will not find a solution, but yeah, we find a solution within a few days for people from Ukraine" (i12).

> "if you look now at the sentiments towards Ukraine, it's different than the sentiment that was there for other migrants [...] if you look at the problems in Ter Apel, it is very strange that we have organised in less than two months, around 50,000 places for Ukrainians and we have all kinds of private solutions for having a place to stay for Ukrainians and we cannot solve this for other asylum seekers" (i5).

Chapter 5: Discussion

This chapter provides a reflection on the research findings and connects them to the existing body of theory and literature. It further outlines the contributions and limitations of this study in relation to the introduced theoretical framework and empirical research on policy ineffectiveness.

The data presented in this study have clearly outlined the factors contributing to policy ineffectiveness. These factors include the absence of clearly defined targets for the policy and accepting absconding as a result to the Dutch government instead of actual demonstrable return. Collectively, these factors suggest that the policy ineffectiveness results from the flawed and unfitting policy design where, the desired outcome of migrants leaving the Netherlands, is not aligned with fitting approaches and processes to achieve it. This confirms Howlett and Rayner (2018) and van Geet et al. (2021) argument that the unfitting policy design is responsible for the policy ineffectiveness and failure.

The discrepancy between the intended objectives and the actual results of the policy, proves the existence of a control gap as addressed by Cornelius et al. (1994), while accepting absconding as a result, justifies the efficacy gap addressed by Kos et al. (2015) and by Leerkes and van Houte (2019), where the numbers of those who are ordered to return are greater than the numbers of those who actually return.

Inhibited change due to governance decoupling

Migrant return has been proven to be a complex matter, which requires the involvement of multiple actors, where the EU is the central actor, as its legislation is binding and of higher precedency than national legislation, which limits the independence of the Dutch government in making its own policies. This emphasises the existence of a vertical hierarchical structure, where one level holds the decision-making powers as flagged by Hooghe and Marks (2001), and by Fairbrass and Jordan (2001). Moreover, this affirms the top-down approach to policymaking and coordination in Scholten (2013) and disaffirms Bache and Flinders (2004) argument that, the interaction and coordination between the various levels of governance, enhance the state's autonomy. Governance decoupling is evident between firstly, the municipalities and national government, secondly, between the EU and the national government, due to the contradicting interests, different problem

definitions, ideas for their solutions and perceptions about certain problem areas such as the no-fault permit[9].

This decoupling renders the interaction between the different governance levels ineffective. The establishment of the basic rights facilities by the municipalities is a strong indication of such decoupling between the three levels of governance, as the municipalities were confronted with different problems and had different ideas for their solutions, contrasting to the national government's definition of the problem and its solution. The ECSR decision reflects the different interests between the EU and the national government, as the first focuses on protecting human rights, while the second focuses on social exclusion.

The adoption of the ECSR decision to provide basic rights facilities by the municipalities, supports the "Nested Multi-level Governance" theory of Fairbrass and Jordan (2001) which explains that, the municipalities might have high degree of agency, which enables them to define the problem locally and bypass or avoid the national government through establishing alliances with the supranational level (Saito-Jensen, 2015). Additionally, it adds weight to Kos et al. (2015) argument, that the exclusionary asylum and immigration policies in the Netherlands result in municipal practices countering the national policy. While the establishment of the LVV confirms Leerkes and van Houte (2020) finding that, social exclusion policies undermine the public security, which eventually drives the enforcement regime to offer basic relief and accommodation to mitigate the public order issues.

This decoupling between the various levels of governance shows that, a benefit to one level results in loss or frustration to another, and a solution to one level can be a problem to another, this is prevalent in ending the right of accommodation as a solution from the national government's perspective, while being a problem to the municipal level. Also, this holds true at the European level, as the advantages of some states are the disadvantages of others as outlined in the interviews by the discrepancy between the number of migrants that enter Northern versus Southern European countries as a result of the Dublin system. Moreover, each Member State functions in a manner serving its national

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[9] Interviewees from the national level suggested that migrants who cannot be returned are provided with no-fault permit to prevent them from entering a limbo phase. While the assisting-level-practitioners' stated that the criteria for the no-fault permit are too high that migrants rarely receive such permits. Available statistics (Appendix V) lends support to the contradiction in the perceptions of the different involved levels as a minority of average (13,5%) of the no-fault permit applications are accepted and result in permits between 2008-2012.

interests. However, this can be counterproductive to how other Member States function. This supports arguments made by Gustafsson (2019) and Mueller (2020) that a successful or efficient outcome for one actor can be an inefficient or failed outcome for another. While the voting practices in the EU can be counterproductive to the effective policymaking and implementation. Thus, the multiplicity of actors on the same level can cause counterproductivity.

This decoupling and the ineffective interaction in addition to the top-down approach to coordination and policymaking, result in the inability to create mutual grounds and inability to agree on a coherent policy or on change, which leads to the maintenance of the status quo and justifies the maintenance of ineffective policies. *This confirms the hypothesis that the maintenance of ineffective policies is due to the governance decoupling between the multiple levels.*

Advantages of maintaining the ineffective policy

The maintenance of the ineffective migrant return policy can be explained by the government's inability to initiate change or adopt alternatives. Right-wing parties have created an irreversible stalemate dynamic based on problematising and politicising immigration, with a focus on identity politics, in order to gain favour from the electoral base. This made policy change less possible as the political costs of adopting less restrictive alternatives became remarkably high, especially after the introduction of the restrictive legislations such as the Linking Act of 1998 and the Aliens Act and Decree of 2000.

Thus, the alternatives to the current policy were not considered in the parliament, due to the perceived lack of support and negative sentiments in the society towards the out-of-procedure migrants, which might result in electoral losses for the parties advocating for less restrictive alternatives. For example, although that increasing the return and reintegration support, might be a viable option, it was not considered, but discouraged due to the assumption that irregular migrants will deliberately come to the Netherlands to make use of the return support. This affirms Hansen (2002) argument that path dependence has a disincentive effect towards change, which is supposed to have high political costs. Additionally, the difficult-to-change bureaucratic system referred to in the interviews

confirms Arthur's argument (1994) that path dependence triggers inflexibility and policy continuity and Pierson's argument (2000) that public policies are change resistant.

Although the current policy is largely ineffective, the results indicated that the policy delivers various advantages. Firstly, economic and administrative advantages, as registering the migrants as "left to unknown destination" ends their right to reception and in-kind benefits. Based on the Dublin regulation, when migrants leave before consecutive 18 months of stay, they do not qualify to enter the national asylum procedure. Thus, registering migrants as "left to unknown destination" reduces the number of asylum applications in the national caseload and consequently, saves the government financial resources. Further, the policy delivers economic advantages to the actors from the various levels involved in the return of the out-of-procedure migrants, as they receive financial flows.

Secondly, the policy delivers political advantages to the government as the term "left to unknown destination" communicates that, migrants have already left the Netherlands without informing the government which supports the government's rhetoric allowing it to portray itself as being tough on migrants and to blame the migrants for the indemonstrability and ineffectiveness of return. In addition to that, the policy delivers a political advantage to the opposition parties which criticise the government policies' failure and portray themselves to have the solution, in order to gain electoral base.

Initiating policy change might threaten these actors' interests and deprive them from the advantages of the existing policy, making them hesitant to implement policy change, which leads to the maintenance of the ineffective policy. This further affirms the findings by Massey et al. (1998) that there is a shift towards symbolic policies that create the appearance of control by the governing party and deliver political advantages, whilst being ineffective. This also supports the previous research about the maintenance of inefficient policies, in particular with Dur (2001) explanation that, politicians maintain inefficient policies due to the perceived political risks such as the reduction of the chance of re-election. Also, with Howitt and Wintrobe (1995) explanation that changes might be in the favour of the competing political party.

This means that, the political interests and economic advantages achieved by the policy are more important than its effectiveness. *This confirms the hypothesis that the*

maintenance of ineffective policies partly results from inhibited policy change which arises from past decisions that undermine the government's capabilities to choose different alternatives and the actors' suppression of change due to the unwillingness to risk losing the advantages achieved by the policy.

Lack of policy learning leads to policy maintenance

The absence of policy change can be explained by a lack of policy learning. Although that the government is aware of the policy's ineffectiveness, the policy has not been significantly altered over the last 25 years. Due to the lack of data necessary for generating information and knowledge on the out-of-procedure migrants resulting from the indemonstrability of return, it is clear that evidence-based policy learning, as described by Moyson et al. (2017) was inhibited. The unaltered governmental behaviour and the lack of adaptations through trial and error, to improve the policy indicate that policy learning, according to Heclo (1974), Etheredge (1988), and Howlett (1992) was inhibited.

The lack of policy learning is further evident in that the policy has not been altered to better align with positive references, such as Germany or Denmark. Thus, policy learning through diffusion did not occur. The deliberate inaction of the government, despite its awareness of the policy outcomes and ineffectiveness, asserts that policy learning did not occur, as such awareness was not used to initiate change, support policy improvement nor increase its effectiveness. The lack of any notable change to the policy or in the government's response to the policy, indicates that policy learning did not occur neither through factual evidence nor diffusion. *Overall, the lack of any evidence showing significant alternations made to the policy supports the hypothesis that the maintenance of this ineffective policy is a result of inhibited policy change, due to a lack of policy learning.*

Change inhibition

The government's inability to initiate change and lack of independence in making own policies, result from the limited possibilities and tight margin of manoeuvre left under the European Union's authority. Moreover, the government's ability to initiate change by increasing forced return or detention rates, is limited by the legal constraints imposed by the EU and the national legal framework that adhere to the rule of law and the undesirability of

having a "police state", which inhibits the government's ability to impose stricter measures on returning migrants.

The lack of the financial and human capacities required for detention and implementation of forced migrant return, acts as another obstacle to policy change. Overall, the lack of authority and financial resources leads to reluctant government inaction. This confirms the argument made by McConnell and 't Hart (2019) that the government does not act on changing policies due to a perceived lack of resources needed for change. It importantly also disapproves the classification of the Netherlands by Leerkes and van Houte (2020) as a thick enforcement regime that has sufficient enforcement capacities.

On the other hand, the government is unable to increase the demonstrability of return through increasing the return and reintegration support due to the presumed lack of political support and the negative sentiments in the society towards the out-of-procedure immigrants. This proves the imposed government inaction and confirms McConnell and 't Hart (2019) argument that, the government lack of action is due to the perception that the decisions will not obtain the needed support from pivotal actors. *This confirms the hypothesis that the maintenance of the independent unsupervised return is a result of reluctant and imposed government inaction.* However, the abundance of resources made available and the rapid response towards the Ukrainian situation indicate the existence of selective action, where governments choose which situations to act on.

5.1 Contributions

This research supports the classification of the independent unsupervised return as a separate category of migrant return and provides an explanation for the efficacy gap between the numbers of migrants who are ordered to return and the number of those who actually return. It contributes to the body of literature on policy ineffectiveness by providing possible reasons for the Dutch return policy's ineffectiveness and suggests four reasons for why governments might maintain ineffective policies. It provides a comprehensive overview of the migrant return policy in the Netherlands, as it addresses the different perspectives of multiple actors and levels of governance involved in migrant return.

This study contributes to multi-level governance literature and adds to Scholten (2013) that governance decoupling does not only lead to ineffective interaction between the

various levels of authority involved in the same policy issue, but also, results in the maintenance of ineffective policies. The study suggests that the multiplicity of actors involved at the same level (Member States) can be counterproductive to making and implementing effective policies.

This study adds another contribution to the theoretical literature on policy ineffectiveness as it addresses the phenomenon of maintaining ineffective policies through four different theoretical lenses: Multi Level Governance, Path Dependence, Policy Learning and Government Inaction. Moreover, it introduces to the literature on policy-making and government inaction the concept of "selective government action" a term that describes a government's ability to change from an inactive stance to an active stance when implementing policies.

This study also adds a distinctive element to the available literature on migrant return policies, as it is conducted by a third country national, a first-generation, previous out-of-procedure immigrant with multiple return orders. As such, the phenomenon studied has been experienced by the researcher, which allows for a more in-depth understanding of the factors at play.

5.2 Limitations

There are two practical limitations to this study. Firstly, the DT&V is a closed organisation, where research coordinators control and monitor any contact with practitioners and function as gatekeepers rather than bridgeheads. This has limited further interviews with officials from the DT&V. Secondly, attempts to contact municipal practitioners from Amsterdam and Rotterdam were unsuccessful due to the added workload caused by the Ukrainian migrants' situation.

Moreover, the study noted opinions stating a different response to the Ukrainian migrants' situation than the responses to other refugee situations. However, it lies beyond the scope of this study to investigate the reasons for such differences. The researcher's experience as a first generation and a previous out-of-procedure immigrant in the Netherlands, might have influenced the interpretations of the data. However, this research was conducted from a neutral perspective and the data were systematically analysed to avoid any biases.

Chapter 6: Conclusion

This study explored the reasons behind why ineffective policies are maintained, by studying the case of the Independent Unsupervised Return policy in the Netherlands. Based on the qualitative analysis of the data collected from interviews with officials from multiple levels of governance involved in the return of out-of-procedure migrants, it can be concluded that the Dutch government maintains the ineffective Independent Unsupervised Return policy as the main approach towards deportability due to four reasons. The first reason for the maintenance of the ineffective policy is that, due to decoupling, ineffective interaction, conflicting interests between the different levels of governance and the top-down approach to policymaking in the EU, it is difficult for the Netherlands to initiate policy change or create its own policies due to the dependence on the EU and the limited margin of manoeuvre that it allows.

The second reason for maintaining the ineffective independent unsupervised return policy is that the Netherlands is unable to switch to alternative policies, such as a less restrictive admission policy, increasing return and reintegration support, due to the limited possibilities available. In addition to the possible backlash or scrutiny from the voter base or opposition parties. Thus, advocating for an alternative might lead to electoral losses. In addition to that, the advantages delivered by the policy, particularly the political and economic ones, outweigh its disadvantages. This indicates that the advantages delivered by the policy are more important than its effectiveness, which motivates the government to maintain the current ineffective policy.

The third reason for the Dutch government to maintain the Independent Unsupervised Return Policy is the lack of the data, information and knowledge necessary for policy learning and consequently policy change. The fourth reason results from the government's inability to initiate changes due to a lack of authority, financial resources and perceived lack of political support for the changes, aggravated further by the negative sentiments in society towards the out-of-procedure immigrants.

It can also be concluded that, the migrant return policy in the Netherlands has an "unfitting policy design" as the goals and outcomes of the return policy are not aligned and

do not serve the deportation system's goal of achieving effective and sustainable migrant return.

Overall, it is clear that several factors contribute to the maintenance of ineffective policies, including but not limited to governance decoupling, a top-down approach to policymaking and path dependence. In addition to these factors, policy learning is required to enable policy change along with financial resources and political support for change. Finally, more research is needed to fill the gaps in understanding these factors and then using the knowledge gained to implement more effective migrant return policy.

6.1 Research recommendations

This research has a limited scope focused only on the Dutch migrant return policy. It is recommended that future research uses a comparative approach by studying return policies from various countries, in order to identify and review different experiences and their effectiveness in dealing with (non-) deportability. Another recommendation for future research is to examine the different approaches of the five municipalities who participate in the LVV, in order to determine the factors that affect their success rates, along with the best approach towards dealing with the out-of-procedure migrants and how it can be adopted on a larger scale. There is a pressing need for research focused on the out-of-procedure migrants, their expectations, ambitions, needs and obstacles, in order to better understand how this category of migrants can be dealt with and how best to increase the policy's effectiveness.

A discourse analysis on the term "left to unknown destination" and other terms used to describe absconding, such as "left the country at an external border", would be beneficial, so that the effects of different terms and the communicated assumptions behind them could be explored. An investigation into whether pardons are a solution to non-deportability or a motive for irregular stay is suggested. Future research should examine the feasibility of increasing the return rates and reintegration support. Finally, it is recommended that research is conducted on the reasons behind the difference in government response to the Ukrainian migrants' situation and other situations.

6.2 Policy recommendations

Given the policy's ineffectiveness due to the indemonstrability of return and the very limited ability to change the policy, based on the insights collected from the interviews, this research study is in favour of increasing the return policy's effectiveness, through enhancing the assisted return and resettlement rates. Therefore, this study poses the following recommendations to the Ministry of Justice and Security and to the municipalities.

6.2.1 Recommendations to the Ministry of Justice and Security

In order to overcome the lack of financial resources needed to increase the assisted return rates, the Ministry of Justice and Security is recommended to cut down the budget for migrants detention[10] and limit detention to immigrants with criminal records, in order to increase the budget for assisted migrant return through the IOM, who can then increase the out-reach activities and the amount of support packages provided to the returning migrants, so that more migrants would be motivated to return to their country of origin. This recommendation is based on the findings of Brouwer (2018), that the return rates in family locations declined due to the halt in return support granted for certain nationalities.

A solution to the political debate could be to implement this recommendation as a pilot project for a number of years and then, based on the results, the government can decide whether to continue or not. This pilot period allows for more flexibility while reducing the weight of criticism from the voter base and the opposition parties.

A uniform and consistent approach to asylum, reception and return policies across the European Union is needed over the long term, but this could take considerable time to implement and optimise. It is therefore recommended that the Dutch Ministry of Foreign Affairs, the Bureau of International Migration and the Migration Policy Directorate within the Ministry of Justice and Security, start negotiations on policy harmonisation with the neighbouring countries to which out-of-procedure migrants might abscond. For example, Belgium, France and Germany should be consulted on migrant return policy.

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[10] The Dutch government spends 250 million Euro per year on migrants detention (Handmaker & Mora, 2014).

Migrant return policies do not exist in a vacuum and have some relation to admission policies. In order to increase the effectiveness of the migrant return policy, the admission policies need to be reviewed as well. The UWV [11] rules regarding the employment of TCNs could be made less restrictive, so that TCNs would be allowed to access the labour market in the Netherlands and migrants would be allowed to work while waiting for their applications for residence to be reviewed. This can be done by cooperating with the Ministry of Social Affairs to link migration to the labour market and to readmission agreements with the country of origin. Investing in the relations and cooperation with the countries of origin through creating circular migration schemes for the TCNs, would have additional advantages, as labour shortages in the Netherlands could be reduced.

6.2.2 Recommendations for the municipalities

In order to effectively reduce homelessness of the out-of-procedure migrants and issues related to public order, the Union of the Dutch Municipalities (VNG) needs to advocate for the change of Articles 45:1(c) and 45:1(e) of the Aliens Act 2000. These articles are the root causes of the homelessness issue, as they terminate the in-kind benefits offered to migrants including shelter. Reforming these articles could reduce the homelessness, the numbers of migrants who end up in the LVVs and reduce the need for emergency shelters. Additionally, based on the success rates of some LVVs in finding a sustainable solution to the out-of-procedure migrants, it is recommended that the VNG advocates for more funding for the LVV with more participating municipalities.

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[11] The Employee Insurance Agency does not issue work permits for third country nationals, unless the employer can prove that they cannot find a suitable candidate in the EU (Rijksoverheid, 2022)

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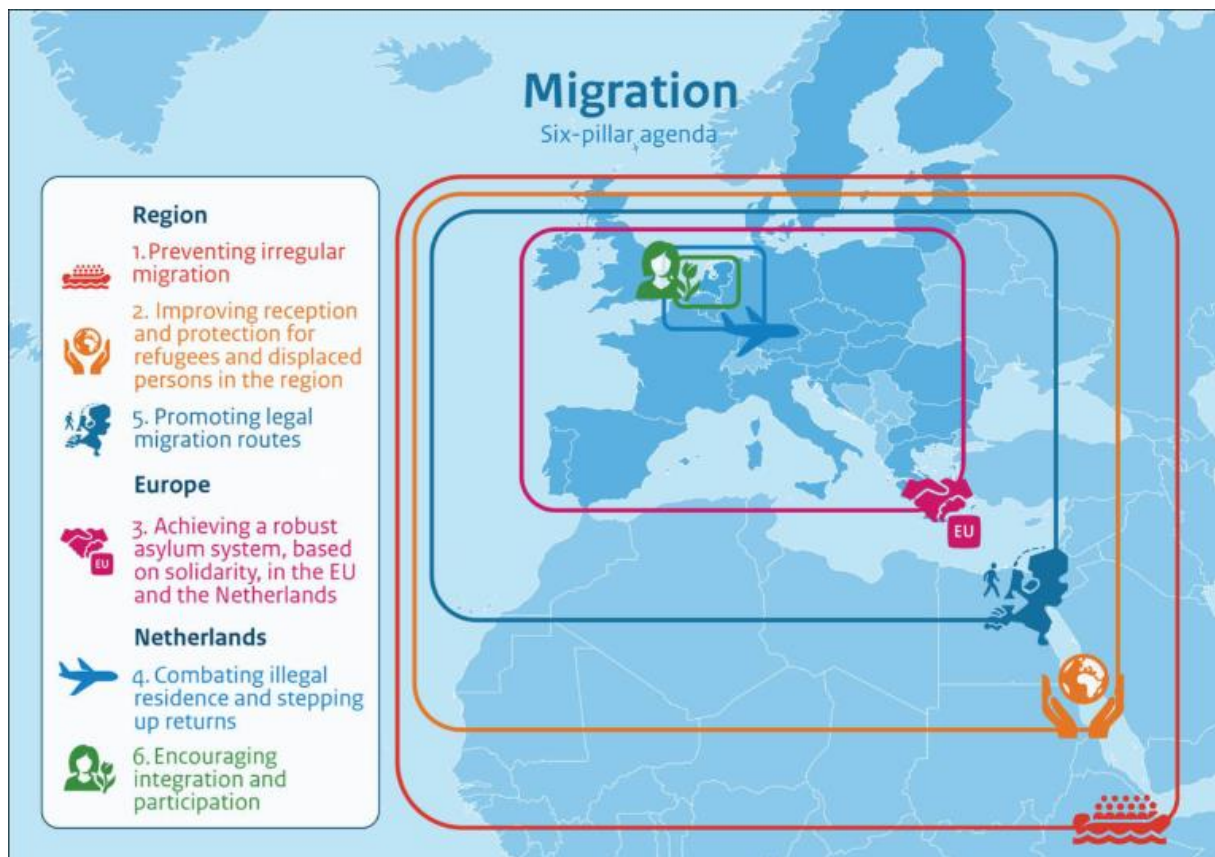
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Migration
Six-pillar agenda

Region
1. Preventing irregular migration
2. Improving reception and protection for refugees and displaced persons in the region
5. Promoting legal migration routes

Europe
3. Achieving a robust asylum system, based on solidarity, in the EU and the Netherlands

Netherlands
4. Combating illegal residence and stepping up returns
6. Encouraging integration and participation

Appendix II: Return Order

Immigratie- en Naturalisatiedienst
Ministerie van Justitie en Veiligheid

> Retouradres Postbus 16 9560 AA TER APEL

Aan ███████ Advocaten
t.a.v.
███████████

Directie Regulier Verblijf en
Nederlanderschap
RVN P&G DH Team 11

Bezoekadres
Rijnstraat 8
2515 XP DEN HAAG

Postadres
Postbus 16
9560 AA TER APEL

T 088-0430430
werkdagen van 9.00 tot 17.00

www.ind.nl

Datum   4 juni 2021
Betreft
                    geboren op
                    nationaliteit:

Contactpersoon

V-nummer

Zaaknummer

Uw kenmerk

Let op! *Door het coronavirus zijn veel processen bij de IND en andere organisaties tijdelijk veranderd. Kijk in alle gevallen voordat u actie onderneemt op www.ind.nl/coronavirus.*
Please note! *As a result of the coronavirus, many processes at the IND and other organizations we work with have been temporarily changed. Before taking any action, please in every case check www.ind.nl/en/coronavirus.*

beschikking

Geachte ███████

U hebt op ███████ een bezwaarschrift ingediend namens uw cliënte,
████████████████ Dit is mijn besluit.

Ik richt mij verder tot uw cliënte.

Besluit
Ik verklaar uw bezwaar ongegrond.

Ik wijs uw verzoek om vergoeding van de proceskosten af.

Hoe is uw procedure verlopen?
In het besluit van ███████ is uw verblijfsvergunning regulier voor
bepaalde tijd onder de beperking ███████████ ingetrokken
met ingang van ███████ en is uw aanvraag voor het wijzigen van het
doel van uw verblijfsvergunning afgewezen.

U hebt op ███████ bezwaar gemaakt tegen dat besluit. Het bezwaar is op
███████ aangevuld met de gronden.

Waarom dit besluit?
In het besluit waar u het niet mee eens bent, heb ik uitgelegd waarom ik uw
verblijfsvergunning heb ingetrokken en uw aanvraag heb afgewezen.

Directie Regulier Verblijf en
Nederlanderschap
RVN FNB DH Team 11

Datum

V-nummer

Zaaknummer

Ik concludeer daarom dat uw bezwaar ongegrond is.

Uit de beoordeling blijkt direct dat uw bezwaar ongegrond is. Over deze conclusie bestaat geen twijfel en dat betekent dat uw bezwaar kennelijk ongegrond is. Daarom bent u niet gehoord. Dat volgt uit de artikelen 7:2 en 7:3 van de Algemene wet bestuursrecht (Awb).

Proceskosten
U hebt verzocht om vergoeding van de kosten voor de behandeling van uw bezwaar (hierna: proceskosten).

In artikel 7:15, tweede lid Algemene wet bestuursrecht (Awb) staat dat u kunt vragen om vergoeding van de kosten die u in redelijkheid hebt gemaakt voor de behandeling van uw bezwaar. De kosten worden vergoed als de IND het besluit waartegen bezwaar is gemaakt, herroept omdat onrechtmatig is gehandeld.

In dit geval heb ik niet onrechtmatig gehandeld want het besluit waartegen u bezwaar maakt, is niet herroepen.

Daarom vergoed ik de proceskosten niet.

Wat betekent dit besluit voor u?
U hebt geen verblijfsrecht meer. Dat betekent dat u niet meer in Nederland mag zijn.

U moet Nederland en de Europese Unie (EU) binnen 4 weken verlaten. Als u dat niet doet, kunt u worden uitgezet. Ik bedoel met de EU ook de Europese Economische Ruimte (EER) en Zwitserland.

U bent zelf verantwoordelijk voor uw vertrek.

Als u ondersteuning nodig hebt bij uw vertrek, kunt u contact opnemen met de Internationale Organisatie voor Migratie (IOM) of de Dienst Terugkeer en Vertrek (DT&V). Voor meer informatie kijkt u op www.ind.nl.

Bent u het niet eens met dit besluit?
Tegen dit besluit kunt u binnen 4 weken na de datum van deze brief beroep instellen bij de rechter. U bent niet verplicht om een advocaat in te schakelen.

U mag de uitspraak op uw beroep **niet** in Nederland afwachten. U kunt de rechter vragen om een voorlopige voorziening. U vraagt daarmee of u de uitspraak op uw beroep in Nederland mag afwachten.

U mag de uitspraak op een verzoek om een voorlopige voorziening in Nederland afwachten, als u dat verzoek binnen 4 weken indient.

nformatieblad voor de rechtbank bij de beschikking van ████████ betreffende:

V-nummer: ████████ horende bij ████████████ geboren op ●
████████ van ████ ████████ nationaliteit.
Zaaknummers: ████████████

Locatie IND	Regulier Den Haag
Soort beschikking	Bezwaar
Soort aanvraag	Regulier
Verblijfsdoel	████████████████
Opschortende werking	Nee
Vertrektermijn	28 dagen

Bekendmaking beschikking:

- verzonden per post aan gemachtigde

Appendix III: Return figures 2007-2022

Type of return	Demonstrable return		indemonstrable return	Share of independent unsupervised return from the total returns
Year	Forced return/ deportation	Independent and Assisted return	Independent unsupervised return	
2007	10020	1870	14740	55,3%
2008	6860	2310	10940	54,4%
2009	7270	3060	11700	53,1%
2010	8030	3750	11130	48,5%
2011	6630	4160	10610	49,5%
2012	5970	4120	10660	51,3%
2013	4870	3640	7210	45,8%
2014	2100	2550	5150	52,5%
2015	1850	3320	5070	49,5%
2016	2220	6760	8100	47,4%
2017	3390	3340	10170	60,1%
2018	2650	3610	8620	57,9%
2019	2760	4460	9660	57,5%
2020	1650	2630	6880	61,6%
2021	1630	2100	5600	60%
Till April 2022	450	590	1430	57,8%
Total	18700	29360	60680	57,4%

(Tweede Kamer der Staten-Generaal, 2013; EMN Netherlands, 2015-2017; Repatriation and Departure Service, 2022).

Appendix IV: Operationalisation table

Definition	Attributes	Dimensions	Sub dimensions	Indicators	Sources
Multi-level governance (Hooghe & Marks, 2001; Scholten, 2013)					
The involvement of multiple actors and stakeholders from various levels in the same policy. However, only few actors have authority and decision-making powers	Governance decoupling	Ineffective interaction between the various levels	Conflicting problem definitions and solutions	-different interests -different problem definition - different ideas for solution - absence of common goals	Interviews with practitioners from the national, executional, assisting and municipal levels
			Conflicting policies		
	Top-down approach in policymaking	Lack of collaborative policymaking	Failure to establish common grounds	-few actors have authority, policymaking and decision-making powers -inability to make and implement different policies	
			Failure to agree on policy change		

Path dependence (Pierson, 2000; Levi, 1997; Greener, 2002; Hansen, 2000)					
The inability of institutions to change policies due to the high costs of following policy alternatives, affected by past decisions who limit the capabilities to choose.	Inability to change	Limited capabilities	Limited viable options	high costs of change	Interviews with practitioners from the national, executional, assisting and municipal levels
	Resistance to change	inflexibility	Disincentive effects	-Negligence and rejection of the available alternatives. -Difficult to change bureaucracies	
	Policy continuity	Dependence on past decisions	Protection of the existing situation	Ineffective policies are maintained unchanged due to the advantages they deliver	

Policy change (Sabatier, 2007; May, 1992; Bennett & Howlett,1992)					
"Introducing changes in the already existing policy structures or introducing new innovative policies based on policy learning or macro-environmental factors" (Bennett & Howlett, 1992; Sabatier, 1988)	Evidence Based Learning Moyson et al. (2017)	Knowledge based on data and information about the problems and solutions		Change in policy based on evidence of (in)effectiveness, Information and knowledge used to address policy problems or to increase its effectiveness	Interviews with practitioners from the national, executional, assisting and municipal levels
	Learning through diffusion	Imitation	EU experiences	Is the Netherlands learning from or imitating other EU countries' experiences	
	External factors	Political	Change in the governing coalition	Did the change in the governing coalition lead to change in the immigration/ return policies?	

Government inaction (McConnell & 't Hart, 2019)					
"The government, policymakers, and public organisations non-intervention in an issue within their jurisdiction where plausible policy interventions did not take place" (McConnell & 't Hart, 2019, p.648)	Reluctant inaction	Lack of appropriate resources needed for implementation	Lack of authority Lack of financial resources	Desirable alternatives could not be put into practice -Lack of effective policy instruments and lack of authority to act -Lack of the needed resources for implementation	Interviews with practitioners from the national, executional, assisting and municipal levels
	Imposed inaction	Lack of support from pivotal actors and institutions	Lack of political support	-Desired alternatives are assumed to lack the needed political support to be approved	

Appendix V: no-fault permit statistics

	2008	2009	2010	2011	2012	2013 t/m juni
Aanvragen «buiten schuld»	460	550	470	290	240	90

Bron: IND. Afgerond op tientallen.

Het aantal verblijfsvergunningen dat in de afgelopen jaren op grond van «buiten schuld» is verleend (in eerste aanleg en na bezwaar) wordt weergegeven in de volgende tabel:

	2008	2009	2010	2011	2012	2013 t/m juni
Inwilligingen «buiten schuld»	70	70	60	30	40	10

Bron: IND. Afgerond op tientallen.

After explaining the aims of the research and obtaining consent to record the interviews.

These questions will be asked.

Background questions

1. Can you tell me about the return policies in the Netherlands?

2. How effective do you think the return policy is?

3. How aware is the government of the return policy (in)effectiveness?

4. What is the independent unsupervised return?

Multi-level Governance

1. What do you think about the involvement of the EU, national government, municipalities and Intergovernmental / NGOs in the same policy?

2. Is there a common goal that the current return policy is achieving?

3. How would you describe the interaction between the national government and the EU?

4. How would you describe the interaction between the municipalities and the national government?

5. What are the preferences of the EU/ national government/ municipalities?

6. Which level has more authority concerning making return policies?

7. How independent the national government is in making own return policies?

8. Can the government adopt more restrictive measures?

9. What do you think about the involvement of Frontex in return?

10. Can you tell me about the LVV?

11. Do you think that the LVV demotivates people from return?

Path Dependence

1. How do you think the effectiveness of the policy can be increased?

2. In your opinion what are the alternatives for the current return policy?

3. Why do you think that these alternatives were rejected?

4. What would be the costs of adopting these alternatives?

5. Are there possibilities to change this policy?

6. How this policy can be changed?

7. What is the difference between earlier return policies and the current return policies?

8. What are the effects of previous regulations on the return policies?

Policy learning and policy change

1. How sufficient is the amount of data available to generate information and knowledge about the return policy?

2. To which extent do you think the government is aware of (in)effectiveness of the return policy?

3. What are the bureaucratic and legal constraints to change?

4. In your opinion which EU country's experience inspires this policy?

5. To which extent do you think that the government is able to change the return policy?

6. What would the consequences of changing this policy?

- How much support/ objection will change get?

- What would the limitations be from the EU?

Government Inaction

1. To which extent do you think that the government is acting on the return policy?

2. What is the government doing?

3. How would you justify the government's lack of action on the return policy?

4. Do you think that the government would act in a later stage?

5. To which extent do you think that the government has the needed resources to act?

6. Is there political opposition or lack of support to the government's action?

Final questions

1. What are the political and administrative advantages of this policy?

2. What are the political and administrative disadvantages of this policy?

3. What are the motives and interests behind the current return policy?

4. How do you imagine an effective return policy?

5. Is there something you would like to add or something that I should be aware of?

After explaining the aims of the research and obtaining consent to record the interviews.

These questions will be asked.

Background questions

1. Can you tell me what exactly do you do?

2. Can you tell me about the LVV?

3. Why was the LVV established?

4. What are the goals of the LVV?

5. How do the people come into the LVV?

6. Can you tell me about the people who come to the LVV? How the LVV helps them?

7. What are the opportunities offered to the people staying in the LVV?

LVV and return

1. What do you think about the return policies in the Netherlands?

2. What is the difference between the current return policies and earlier return policies?

3. What is the role of the LVV in return?

4. There is an opinion saying that the LVV demotivates people from return, what do you think about that?

5. Based on the coalition agreement, what would be the consequences if the LVV focused on return

Multi-level governance

1. How is the communication and interaction between the LVV and the national government?

2. How is the communication and interaction between the LVV and the municipality?

3. How is the communication and interaction between the LVV and organisations like COA, DT&V and IOM?

4. How different is the municipal policy from the national policy?

5. Where do you think this difference is coming from?

6. Which level does the LVV follow?

Policy change and Government action

1. Is the government aware about the situation of the residents in the LVV?
2. What should be improved or changed in the return policies? how?
3. In your opinion, what would be a viable alternative or option for those who are staying in the LVV?
4. To which extent do you think the national government aware of or considers these alternatives?
5. To which extent do you think the government is acting on change or on applying these alternatives?
6. Why do you think the government is not acting on change?
7. What the constraints for change be?

Final questions

1. How do you imagine an effective return policy?
2. Is there something you would like to add?