TAKING BACK CONTROL FROM BRUSSELS:

THE RENATIONALIZATION OF THE EU MIGRATION AND ASYLUM POLICIES

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In cooperation with
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for Legal Culture

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Report graphic design
Ursines – Creative Agency. Błażej Zych
www.ursines.pl

Second edition, revised, 2026

ISBN print 978-83-68888-14-0
ISBN ebook 978-83-68888-15-7

Cover photo: DALL-E (OpenAI)

National Library – Cataloging-in-Publication
Taking back control from Brussels :
the renationalization of the EU migration
and asylum policies / [authors Rodrigo Ballester,
Viktor Marsai, Róbert Gönczi, Yann Caspar ; with
the collaboration of Jerzy Kwaśniewski]. - Second
edition, revised. - Budapest : Mathias Corvinus
Collegium : Migrációkutató Intézet ; Warsaw :
Ordo Iuris Institute fo Legal Culture, 2026

Published by

Mathias Corvinus Collegium
Tas vezér u. 3-7 | 1113 Budapest | HUNGARY

Migration Research Institute
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Tel.: +36 (30) 961 9472

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Publishers

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TAKE BACK CONTROL FROM BRUSSELS:

The Renationalization of the EU Migration and Asylum Policies

Thirty Years of Failure: The Migration Crisis at Europe's Core

This paper argues that the only viable path forward is a fundamental rebalancing of competences: a return of competences from the EU to Member States. The diagnosis reveals the structural failures of the EU's migration and asylum policy, while the remedy offers a roadmap for renationalization – restoring sovereignty, enabling effective border control, and reasserting democratic accountability. The current EU framework has produced paralysis rather than solutions. Its failures fall into several interlinked categories, as seen below.

Diagnosis: The Main Failures of EU Migration and Asylum Policy

1. Judicial Activism:
The European Court of Justice (ECJ) has repeatedly expanded the EU's competences and migrants' rights, narrowing Member States' room for maneuver. From redefining the Dublin system to enforcing relocation quotas, it acts as legislator rather than a judge.

2. International Straitjackets:
The European Convention on Human Rights (ECHR) and the 1967 Protocol to the Geneva Convention bind states to expansive non-refoulement obligations. These rules, dynamically interpreted, make effective border control legally uncertain if not impossible.

3. Is It Legal to Control Borders:
EU and international rules sanctify the principle of non-refoulment, as a result it is difficult, if not impossible, for border guards to fulfill their duty. Illegal migrants, smugglers, and traffickers take advantage of this legal uncertainty to violate the law.

4. Asylum System Abuse:
Anyone who reaches EU territory can lodge an asylum claim, even if ultimately ineligible. This incentivizes dangerous journeys, sustains smuggling networks, and floods national systems with unfounded applications. External processing of claims remains blocked by EU law.

5. Failed Returns:
Only around 25% of rejected migrants are actually returned. Legal constraints, short detention limits, and uncooperative third countries ensure that most remain, undermining the credibility of European immigration policy.

6. Broken Relocation Quotas:
Mandatory quotas collapsed in practice, as Member States refused compliance and migrants ignored assignments, moving freely within Schengen. The new proposal embedded in the Migration Pact is equally polarizing. This policy fueled division rather than solidarity.

7. A Paralyzed Frontex:
Europe's border agency is shackled by lawsuits, political attacks, and NGO interference, often abandoning states like Greece and Hungary precisely when they face crises.

8. The Schengen Sieve:
Once inside the Union, migrants exploit free movement to bypass controls. Internal border checks have returned, eroding trust in Brussels' capacity to safeguard external borders.

9. Family Reunification:
EU rules create a "multiplier effect" where one migrant entry permits numerous relatives to follow. This is a burden on social welfare and has a negative impact on integration. Moreover, there is no EU added value.

10. Lack of Border Infrastructure Support:
Brussels is reluctant to finance fences and walls, leaving frontline states like Poland, Hungary, and Greece to shoulder costs that benefit the entire Union.

11. NGOs Undermining Enforcement:
Many EU-funded NGOs directly or indirectly facilitate illegal migration through rescue operations, legal activism, and lobbying. In effect, taxpayers' money finances opposition to lawful border control.

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TAKE BACK CONTROL FROM BRUSSELS:

The Renationalization of the EU Migration and Asylum Policies

Remedies for an Effective Renationalization of EU Migration and Asylum Policies

The paper advances a comprehensive agenda to restore Member States' sovereignty over migration and asylum, structured around three pillars.

1. Opt-outs and Legal Derogations:

- Grant all Member States the right to opt out of common EU migration and asylum policy.
- Introduce a "notwithstanding clause" allowing national parliaments to suspend EU rules temporarily in crises.
- The EU should unilaterally disapply the EU acquis if the simplified reform of the treaties is blocked.
- Consider partial or total withdrawal from the jurisdiction of the European Court of Human Rights.
- Derogate from the 1967 Protocol to the Geneva Convention to restore national flexibility in asylum policy.

2. Drastic Reshuffle of Core Principles:

→ Restore Member States' competence to conclude readmission agreements.

→ Legally condition EU funding to the effective cooperation of third countries in migration, especially on return and readmission.

→ Allow long-term detention of illegal migrants until expulsion is enforceable.

→ Enable outsourcing of asylum claims to safe third countries.

→ Amend the Schengen Borders Code to eliminate legal ambiguity for border guards.

→ Limit the right of free movement within Schengen to European citizens.

→ Prohibit asylum applications lodged after illegally entering the territory of the Union.

→ Radically amend the Search and Rescue (SAR) framework and prohibit any collusion with smugglers and traffickers.

→ Remove any EU competence on family reunification and integration policies.

→ Earmark European funding for border infrastructure, especially fences.

3. Reconsidering Civil Society's Role:

- Keep Frontex as an agency meant to help Member states, not to control them; remove any presence of "NGOs" in internal structures.
- Subject organizations receiving European funds to strict rules on transparency, traceability and accountability.
- Prohibit direct or indirect EU funding of organizations promoting or facilitating illegal migration.

The remedies set out in this paper offer a new direction: empower national governments to take back control, restore the primacy of sovereignty, and implement policies that reflect democratic will and practical realities. Only through renationalization can Europe regain credibility, secure its borders, and rebuild public trust in migration governance.

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Special thanks to:

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FOREWORD

You may not be interested in migration, but migration is interested in you.

In the decades since the end of the Cold War – which was supposed to have marked the End of History™ – the leadership classes of the developed world, both right and left, have become detached from the peoples they presume to lead, no longer sharing their concerns, the interests, their loves. Patriotic attachment to the nation – the very idea of nationhood itself – is seen by many in politics, media, academia, business, labor, religion, etc. as passé at best, atavistically xenophobic at worst.

This has led to a loss of cultural self-confidence by those at the helm, even a rejection of their own nation's history and achievements and an inversion of the natural hierarchy of concerns. Roger Scruton called this valorizing of the Other over one's own "oikophobia."

A nation led by oikophobes would be a problem under any circumstances. But this societal vulnerability comes at a time when the West faces an unprecedented challenge. Ever-cheaper communications and transportation have combined with rapid population growth in the developing world and an anachronistic asylum/refugee regime to hugely increase migration pressures, turning migration into an existential issue for the countries of the developed world.

As a result, the most salient issues in the politics of the West no longer revolve around tax rates or welfare rules or even energy policy, as important as such questions remain. Rather, at the forefront now is what John O'Sullivan of the Danube Institute calls the "National Question" – borders, sovereignty, immigration, assimilation, and cultural continuity.

Angela Merkel's 2015 migration crisis in Europe and the de facto opening of U.S. borders by the Biden administration made those issues even more urgent and focused the attention of voters and taxpayers on the threat posed by mass migration. The metaphorical frog sitting placidly in the slowly warming pot of water jumped out when the heat was turned up too high.

The result in the United States was the election of Donald Trump. While Republican majorities in Congress are insufficient to enact needed changes in statute, the White House has aggressively adopted administrative measures to restore control over immigration. The border with Mexico has been brought under control, sweeping initiatives have been launched to combat widespread fraud, and, as Deputy Secretary of State Christopher Landau discussed at the margins of the UN General Assembly meeting in September 2025, the Trump administration plans "to revisit the asylum system in the 21st century."

In Europe, not so much. As President Trump noted in his speech to the UN General Assembly, "the number one political issue of our time" is "the crisis of uncontrolled migration." He said bluntly, "You're destroying your countries. They're being destroyed. Europe is in serious trouble… Your countries are going to hell."

Brussels has realized something must be done, but its 2024 EU Pact on Migration and Asylum has been a failure, seeking (like the Democrats' 2024 proposed border bill in the United States) to *redirect* the excessive migration into lawful channels rather than to decisively *end* mass migration.

The EU establishment's inability and/or unwillingness to cut immigration, legal or illegal, has led to a growing democratic backlash. The increasing success of non-mainstream parties (often tendentiously labeled "far right") in Britain, France, Germany, Sweden, the Netherlands, and elsewhere is due entirely to the established parties' mulish refusal to stop mass migration – and in some instances to accelerate it.

The powers-that-be seem to revel in rubbing the public's noses in the results of this mass immigration: taxpayer subsidies for border-jumping "asylum-seekers," official toleration of depraved immigrant crimes, prosecution of the native-born who dissent. Beyond simply voting for change, an example of constructive and healthy backlash has been Operation Raise the Colours, where ordinary Britons have mounted the Union Jack and the St. George's Cross on light poles and are painting them on every available surface.

Without decisive changes in policy, public dissatisfaction will not remain so peaceful. There have already been riots in Ireland, England, Spain, and the Netherlands against migrant outrages, and talk of coming civil war has become commonplace. Europe is hurtling toward a future that could make the Troubles in Northern Ireland seem like a summer vacation.

It is in that context that this paper by MCC and the Migration Research Institute is so timely and important. While its recommendations may seem radical to those daydreaming of the lyrics to John Lennon's "Imagine," they are actually the moderate response to the current crisis. Failing to adopt the firm but common-sense remedies outlined in this report will only lead to more loss of legitimacy, more public alienation, and more violence.

Vice President JD Vance asked the attendees of the Munich Security Conference earlier this year, "How many times must we suffer these appalling setbacks before we change course and take our shared civilization in a new direction?"

The paper offers such a new direction. Europe's leaders would be wise to take it.

Mark Krikorian
Executive director of the Center for Immigration Studies (CIS)

INTRODUCTION

Regarding shared competences, the principle of subsidiarity is clear: "the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States [...] but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."[1] Does this hold true for migration and asylum? Thirty years after the establishment of a common migration policy, can one genuinely assert that the European Union (EU) is better positioned than its Member States to fulfill the objectives set in the EU Treaties? More concretely, is the European level the most appropriate for controlling borders, returning illegal immigrants, concluding readmission agreements, preventing asylum from becoming a channel for migratory fraud, or defining the conditions for family reunification? Does the European Court of Justice (ECJ) case law facilitate or hinder Member States in achieving the Treaty's objectives?

These questions are, unfortunately, rhetorical, as the last thirty years have shown European migration and asylum policy to be an absolute failure. So much so that the migration crisis, along with its security implications, financial burdens, and its cultural impact has arguably become the most pressing political issue for voters in Europe. And rightly so.

AN UNPRECEDENTED MIGRATION SITUATION

The record of the past thirty years is indeed disastrous, and the situation Europe is currently facing is of unprecedented gravity. As highlighted in the US National Security Strategy, Europe might be "unrecognizable in 20 years or less" and risks "civilization erasure"[2].

From a quantitative perspective, the figures speak for themselves. While the EU's birth rate has been collapsing for decades, its overall population continues to grow inexorably, driven by ever-increasing migratory flows. As of 1 January 2025, the EU population stood at 450.4 million inhabitants, 1,070,702 more than the previous year. According to the European Commission, "the observed population growth can be largely attributed to increased migratory movements following the COVID-19 pandemic," and it further notes that "since 2012, the negative natural change (more deaths than births) in the EU population has been outweighed by positive net migration."[3] The conclusion is self-evident: official data from the past decade clearly show that migratory flows have been steadily rising.

In the field of international protection alone, the EU has received 8.5 million asylum seekers over the past decade: equivalent to the population of what would be the Union's fifteenth most popu-

1 Consolidated version of the Treaty on European Union – TITLE I: COMMON PROVISIONS, Article 5.

2 *National Security Strategy of the United States of America*, November 2025, p. 25.

3 Eurostat, *EU population increases again after two years decrease*, 11 July 2023, https://ec.europa.eu/eurostat/en/web/products-eurostat-news/w/edn-20230711-1, accessed 23 October 2025 [the same access date applies to all websites referenced below in this report – editor's note].

lous Member State. In parallel, the number of illegal entries fluctuates but shows no sign of abating: according to Eurostat, 7.4 million people have entered EU territory illegally since 2014, while only about one quarter of illegal migrants are removed from European soil. Legal migration figures are even more revealing of the magnitude of these movements: between 2013 and 2023, around 29 million first residence permits were granted in the EU, equivalent to approximately 6.5% of its population. For instance, in 2023, Eurostat reports that out of the 25.2 million valid residence permits around 2.1 million were issued to Moroccan nationals, 2 million to Turkish citizens, 1.5 million to Ukrainians, and 1.1 million to Chinese nationals. Altogether, permits granted to the top ten non-EU nationals in 2023 amounted to approximately 11.9 million, corresponding to about 2.6% of the EU population.[4]

From a qualitative standpoint, the figures are hardly more encouraging, revealing a clear failure of integration. In 2024, the employment rate of third-country nationals remained on average 21 percentage points lower than that of EU citizens, reaching as much as 27% in Austria.[5] Moreover, the proportion of non-EU nationals at risk of poverty is, on average, 25% higher than that of nationals of their host countries.[6] Considering that Western European countries are far more affected by migration than those in Central and Eastern Europe, one gains a sense of the social and economic pressures these societies are facing. To this must be added the deterioration of security and the increase in crime directly linked to migration: an issue both sensitive and undeniable in light of official statistics, particularly concerning sexual offenses and violent attacks.

THE URGENT NEED FOR A NEW PARADIGM

The contemporary migration phenomenon is unique in both scale and nature. It has evolved profoundly since the second half of the twentieth century and bears little resemblance to the post-war migration flows that inspired the creation of international legal and institutional frameworks. Today, the political and legal architecture governing migration is entirely misaligned with current realities and must therefore be thoroughly rethought and modernized. This reassessment is all the more urgent as large-scale economic migration is bound to intensify under the combined effects of several reinforcing factors: the increasing availability of means of mobility, the demographic crisis in the Global North, and the gradual erosion of traditional social structures limiting mobility in the Global South.

As a result, migration has transformed from a periodic, temporary, and limited phenomenon into a permanent process of unprecedented magnitude. What was once primarily addressed through the lens of humanitarian law is now increasingly viewed as a matter of national security. As Kelly M. Greenhill observes in *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy*[7] (Cornell Stud-

4 Eurostat, *All valid permits by reason, length of validity and citizenship on 31 December of each year (migr_resvalid)*, https://ec.europa.eu/eurostat/databrowser/view/migr_resvalid/default/table?lang=en.

5 Eurostat, *Employment rates by citizenship*, https://ec.europa.eu/eurostat/databrowser/view/lfsa_ergan__custom_17792614/default/table.

6 Eurostat, *EU statistics on income and living conditions (EU-SILC) methodology - people at risk of poverty or social exclusion*, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=EU_statistics_on_income_and_living_conditions_(EU-SILC)_methodology_-_people_at_risk_of_poverty_or_social_exclusion&oldid=199609.

7 K.M. Greenhill, *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy*, Cornell University Press 2010. Available at: http://www.jstor.org/stable/10.7591/j.ctt7v70q.

ies in Security Affairs), migration can be deliberately instrumentalized as a coercive tool in international relations. Indeed, the manipulation of international protection mechanisms and human rights norms by traffickers, smugglers, and even governments has turned migration into both a political weapon and a lucrative criminal enterprise.

There can be no doubt that migration in the twenty-first century bears no resemblance to that of fifty years ago. Consequently, the existing legal framework has become obsolete and must be re-evaluated, adapted, and transformed. Foundational principles such as *non-refoulement*, the 1951 Geneva Convention (and its 1967 Protocol), and the European Convention on Human Rights should no longer be treated as untouchable dogmas. These instruments, conceived for a vastly different historical context, have, over the past decades, evolved into potential threats to the stability and security of European states. It is therefore legitimate to question whether the current legal paradigm remains applicable. Under Article 62 of the Vienna Convention on the Law of Treaties (*rebus sic stantibus*), international obligations may cease to apply when the circumstances that originally justified them have fundamentally changed. This is undoubtedly the case with migration and asylum today.

A renewed legal framework must recognize migration as a potential security threat and assess it through the prism of national defense. Such a perspective could invoke Article 51 of the United Nations Charter (the inherent right of individual or collective self-defense) or Article 15 of the European Convention on Human Rights (temporary suspension of certain rights in times of war or other public emergency threatening the life of the nation). If the use of force may be justified in self-defense, then a *fortiori*, the temporary suspension, or even permanent revision, of international obligations that have become detrimental to national security must be considered legitimate.

It is therefore time to courageously rethink the outdated international rules on migration and asylum, adapt them to fundamentally new circumstances, and allow European states to free themselves from a legal framework that has become an existential threat. The first step in this process should be to reconsider – and, if necessary, revoke – the European Union's general mandate in the fields of migration and asylum policy.

TAKING BACK CONTROL

Brussels, with its delays, lack of ambition, ideological rigidity, chronic inefficiency, and sprawling, permissive case law, is widely held responsible for the current impasse. Migration and asylum are shared competences between the European Union and its Member States, and thus the responsibility for this profound failure cannot rest solely with Brussels. Yet, the centralization of these policies has proven ineffective, acting as a legal and political straitjacket on national governments – one that Member States themselves often invoke to evade accountability. This vicious cycle of disengagement has produced paralysis, deepened social and ethnic tensions, hardened public opinion, and even allowed migratory flows to be weaponized as instruments of hybrid geopolitics.

Distrust toward the Union is further reinforced by the exceptional position enjoyed by Denmark and Ireland. Owing to Protocols No. 21 and No. 22 of the Treaty on the Functioning of the European Union, these two countries have for decades benefited from extensive derogations from Title V of the Treaty. The scope of this privilege is remarkably broad, if not absolute. Under Article 2 of both Protocols, Denmark and Ireland are not bound by the *acquis communautaire* in the areas of justice and home affairs, including the Treaty itself, secondary legislation, European Court of Justice case law, and international obligations binding upon the Union. This exceptional autonomy has allowed the Danish government to reshape migration policy radically in accordance with the democratic will of its electorate. Unsurprisingly, several Member States are now openly calling for the same right to tailor their migration policies to national circumstances.

Contrary to a widespread misconception, the principle of subsidiarity is not unidirectional: nothing in the Treaties prevents Member States from reclaiming competences when the Union demonstrably fails to exercise them effectively. If EU oversight offers no clear advantage over national competence, and if two Member States already enjoy far-reaching opt-outs, then why not take the next logical step? Why not rebalance competences by allowing willing Member States to participate through an opt-in/opt-out mechanism, rather than adopting yet another "Migration Pact" destined to become obsolete before implementation? Why not give Member States, after three decades of Brussels' failures, the opportunity to determine their own level of cooperation? Why not envisage a temporary, unilateral derogation modeled on Canada's "notwithstanding clause"? And why not consider allowing Member States to deviate from the European Convention on Human Rights or the Geneva Convention? Proposals 1 to 5 of this report offer concrete answers to these questions.

Redistributing competences and allowing partial or full deviation from existing frameworks would enable a fundamental reassessment of migration policies that have become anachronistic, counterproductive, and detrimental. Expansive interpretations of *non-refoulement*, current practices on family reunification, the extension of free movement to third-country nationals, protections extended to foreign offenders, and the automatic right to claim asylum on European soil have collectively stripped border control of its meaning. These entrenched "dogmas" must be revisited and revised. Proposals 6 to 15 provide practical recommendations to guide these reforms.

Finally, the time has come to address the highly controversial role of so-called "civil society," i.e., organizations often funded with public money that routinely circumvent the law, facilitate irregular migration, and, at times, cooperate with human trafficking networks under the guise of humanitarianism. This report therefore advances three bold and pragmatic proposals (16 to 18) to confront and resolve these structural impediments.

The migration crisis confronting Europe is of unprecedented gravity, and the current status quo is as obsolete as it is unsustainable. This predicament demands urgent, decisive, and effective action: precisely the kind of measures proposed in this report. Yet such reform will only be possible if Member States reclaim, once and for all, control over migration and asylum policy from the European Union.

Once and for all, to take back control.

FIRST PART: THE MAIN FAILURES OF THE EU'S MIGRATION AND ASYLUM POLICIES

1) The Judicial Activism of the European Court of Justice

The tendency of the European Court of Justice (ECJ) to go beyond its mandate and embrace judicial activism is clearly evident regarding migration and asylum. With the self-declared intention to interpret the EU treaties in a teleological fashion,[8] the court often creates the law, instead of applying it, going well beyond its prerogatives. In the field of migration and asylum, there are countless examples of this abuse of competences where the judges act more like legislators and impose upon Member States an ideologically loaded interpretation of the directives grounded on Human rights and the "dogma" of European integration.

One obvious example of this activism is the so-called Dublin system used to allocate responsibility for asylum requests to Member States. In the *NS and ME* judgment (2011),[9] the Court required the suspension of asylum transfers to a Member State with "systemic deficiencies," thereby introducing an obligation that went beyond the text of the Dublin II Regulation.[10] This logic was reinforced in *Jawo* (2019),[11] where the ECJ ruled that the risk of extreme hardship alone was sufficient to prevent a transfer, thereby depriving the mechanism of its automaticity. In *CK* (2017),[12] it further extended protection by prohibiting the transfer of a seriously ill applicant, even in the absence of systemic deficiencies.

8 See K. Lenaerts and J.A. Gutiérrez-Fons, *Les méthodes d'interprétation de la Cour de justice de l'Union européenne*, Larcier, 2020, p. 214.

9 Court of Justice of the European Union (CJEU), Judgment of the Court (Grand Chamber) of 21 December 2011, *N. S. (C-411/10) v. Secretary of State for the Home Department* and *M. E. (C-493/10), A. S. M., M. T., K. P., E. H. v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, Joined Cases C-411/10 and C-493/10, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62010CJ0411.

10 Council Regulation (EC) No. 343/2003 of 18 February 2003 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-Country National (Dublin II Regulation), https://eur-lex.europa.eu/eli/reg/2003/343/oj/eng.

11 CJEU, Judgment of the Court (Grand Chamber) of 19 March 2019, *Jawo v. Bundesrepublik Deutschland*, Case C-163/17, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62017CJ0163.

12 CJEU, Judgment of the Court (Fifth Chamber) of 16 February 2017, *C. K. and Others v. Republika Slovenija*, Case C-578/16 PPU,https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62016CJ0578.

Another stunning example of the ECJ unilaterally expanding its mandate involved the relocation mechanism. In *Slovakia and Hungary v. Council* (2017),[13] the Court validated the mandatory relocation mechanism introduced in 2015. In doing so, it legally bound the principle of solidarity of Article 80 TFEU[14] to this mechanism. Previously, this had only served as a political guideline. Turning a political principle into a legal one substantially alters the original will of Member States and imposes a never-agreed obligation upon them.

The ECJ's case law on refugee status and subsidiary protection also illustrates this approach. In *Elgafaji* (2009),[15] the ECJ extended the protection offered by Directive 2004/83[16] by recognizing the right of residence in cases of indiscriminate violence linked to armed conflict, well beyond the criteria of the Geneva Convention. Family immigration and social rights are another area of intervention. The *Chakroun* judgment (2010)[17] restricted the means test imposed by States for family reunification, giving broader scope to Directive 2003/86. In the same vein, the *K. and A.* judgment (2015)[18] confirmed enhanced protection of this right against procedural obstacles.

Finally, the Court has intervened decisively on issues of detention and removal. In *Kadzoev* (2009),[19] it set strict limits on the maximum period of detention of foreign nationals provided for in the Return Directive. In *Achughbabian* (2011)[20] and *Celaj* (2015),[21] it also reduced the possibility for States to resort to criminal sanctions to punish illegal residence, establishing the primacy of European administrative logic over national enforcement.

These are only the very worst examples among many others that confirm a trend whereby the ECJ broadens the scope of rights, imposes fabricated legal principles and tightens maneuverability of Member States. As a result, Member States have either a restricted or non-existent ability to change current migration rules despite the clear democratic mandate to do so. It is therefore indispensable to address this judicial activism that carves in stone current migration and asylum policies despite its structural loopholes.

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13 CJEU, Judgment of the Court (Grand Chamber) of 6 September 2017, *Slovak Republic and Hungary v. Council of the European Union*, Joined Cases C-643/15 and C-647/15, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62015CJ0643.

14 "The policies of the Union set out in this Chapter, and their implementation, shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle."

15 CJEU, Judgment of the Court (Grand Chamber) of 17 February 2009, *Elgafaji v. Staatssecretaris van Justitie*, Case C-465/07, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62007CJ0465.

16 Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted (Qualification Directive), https://eur-lex.europa.eu/eli/dir/2004/83/oj/eng.

17 CJEU, Judgment of the Court (Second Chamber) of 4 March 2010, *Chakroun v. Minister van Buitenlandse Zaken*, Case C-578/08, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62008CJ0578.

18 CJEU, Judgment of the Court (Second Chamber) of 9 July 2015, *Minister van Buitenlandse Zaken v. K and A*, Case C-153/14,https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62014CJ0153.

19 CJEU, Judgment of the Court (Grand Chamber) of 30 November 2009, *Said Shamilovich Kadzoev (Huchbarov)*, Case C-357/09 PPU, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62009CJ0357.

20 CJEU, Judgment of the Court (Grand Chamber) of 6 December 2011, *Achughbabian v. Préfet du Val-de-Marne*, Case C-329/11, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62011CJ0329.

21 CJEU, Judgment of the Court (Fourth Chamber) of 1 October 2015, *Skerdjan Celaj*, Case C-290/14, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62014CJ0290.

2) The Legal Straitjacket of the European Convention of Human Rights and the United Nations

Member States' border controls are largely constrained by international "protective" standards, derived from both the European Convention on Human Rights (ECHR) and the UN system (1951 Geneva Convention and 1967 Protocol). These instruments, interpreted dynamically, impose obligations on States that also restrict their political room for maneuvering in asylum and migration policy.

The European Court of Human Rights (ECtHR) has given considerable scope to the principle of non-refoulement, linking it to Article 3 of the ECHR (prohibition of torture and inhuman treatment). In *Soering v. United Kingdom* (1989),[22] it ruled that extradition to the United States could demand action from the United Kingdom due to the US's "death row phenomenon." This reasoning has been transposed to migration flows.

In *M.S.S. v. Belgium and Greece* (2011),[23] the Court condemned Belgium for transferring an asylum seeker to Greece, due to its systemic failures which made the application of the Dublin Regulation contrary to Article 3. In *Hirsi Jamaa v. Italy* (2012),[24] it ruled the collective refoulement of migrants intercepted at sea was a violation of the Convention, imposing on States an obligation to examine applications individually, even in the context of mass crossings.

The ECtHR has also extended the scope of Article 8 of the ECHR (right to respect for private and family life) to cover the removal of foreign nationals. In *Boultif v. Switzerland* (2001)[25] and *Üner v. Netherlands* (2006),[26] the Court defined strict criteria limiting the expulsion of convicted foreigners in the name of protecting their family life. Thus, even in situations affecting internal security, States see their margin of discretion reduced. Even if this extensive approach was slightly corrected by the judgment in *N.D. and N.T. v. Spain* (2020),[27] the ECtHR's case-law is a straitjacket on Member States' basic sovereignty to protect themselves and control their border. Moreover, in *Sharafane v. Denmark* (2024)[28], the Court prohibits States from expelling criminals for a limited time if they do not have the guarantee to come back.

At the UN level, the 1951 Geneva Convention offers a similar situation. This text, which was initially limited to post-war European refugees and events prior to January 1, 1951, allowed States to limit their commitments to only exceptional situations. However, the 1967 Protocol[29] removed these limitations, making the regime applicable everywhere and indefinitely. Since then, all signatories must recognize refugee status and comply with Article 33 (non-refoulement)[30] without any contextual reservations. This shift transforms a cir-

22 European Court of Human Rights (ECtHR), Judgment of 7 July 1989, *Soering v. the United Kingdom*, Application No. 14038/88, 7 July 1989, https://hudoc.echr.coe.int/eng?i=001-57619.

23 ECtHR, Judgment of 21 January 2011, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, https://hudoc.echr.coe.int/eng?i=001-103050.

24 ECtHR, Judgment of 23 February 2012, *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09, https://hudoc.echr.coe.int/eng?i=001-109231.

25 ECtHR, Judgment of 2 August 2001, *Boultif v. Switzerland*, Application No. 54273/00, https://hudoc.echr.coe.int/eng?i=001-59621.

26 ECtHR, Judgment of 18 October 2006, *Üner v. the Netherlands [GC]*, Application No. 46410/99, https://hudoc.echr.coe.int/eng?i=001-77542.

27 ECtHR, Judgment of 13 February 2020, *N.D. and N.T. v. Spain*, Applications Nos. 8675/15 and 8697/15, https://hudoc.echr.coe.int/eng?i=001-201353.

28 ECtHR, Judgment of 12 November 2024, *Sharafane v. Denmark*, Application No. 5199/23, https://hudoc.echr.coe.int/eng?i=001-237958.

29 United Nations High Commissioner for Refugees (UNHCR), The 1951 Refugee Convention and the 1967 Protocol, February 2025, https://www.unhcr.org/sites/default/files/2025-02/1951-refugee-convention-1967-protocol.pdf.

30 Article 33(1) of the 1951 Convention Relating to the Status of Refugees: "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion."

cumstantial obligation into an indefinite and universal commitment, which deprives governments of the ability to adapt their asylum policies to geopolitical realities. What was intended to be a temporary safety net has become a permanent straitjacket, preventing States from sovereignly calibrating their responses to migration flows. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights embody are also problematic inasmuch as they sanctify the principle of "non-refoulement" in a way that makes border control illegal.

The combined effect of the ECHR and the 1967 Protocol is to transform migration sovereignty into a residual and conditional competence. States can no longer freely organize entry or easily carry out removals and as a result, border control becomes de facto impossible and illegal.

3) Non-Refoulement vs Border Security: Is it Legal to Control Borders?

A serious failure in EU migration governance is the legal and operational confusion at external borders caused by the non-refoulement principle.[31] Non-refoulement – the ban on returning anyone to a country where they face harm – is a fundamental humanitarian obligation and the cornerstone of the Geneva convention. But its broad application now prevents basic border enforcement. Border guards are caught between conflicting imperatives: they must stop unauthorized entries to uphold national sovereignty, yet if they turn migrants away without processing asylum claims, they risk accusations of "pushbacks" and illegal refoulement.[32] In effect, a border guard today cannot be sure whether refusing entry to someone crossing illegally will later be judged a violation of international law.

Real-world cases illustrate this dilemma. In Greece, border forces dealing with mass crossings from Turkey have been denounced by NGOs and EU agencies for allegedly pushing migrants back at sea or across the Evros River.[33] Greek officers argue they are simply trying to manage untenable surges orchestrated by smugglers, under conditions where individual screening is impossible. Similarly, in Croatia, during peak influx years, police attempting to repel persistent entrants from Bosnia were filmed and accused of brutality, even though authorities insist that without firm action, their border would be overwhelmed.[34] In Hungary, national police are regularly criticized by foreign and domestic NGOs for stemming illegal crossing at the border.[35] In all scenarios, national officials are abandoned by Brussels and left to make life-or-death decisions with no clear guidelines. If they let everyone in, they lose control of the border; if they push people back, they face legal scrutiny and moral condemnation. This confusing and paradoxical situation demoralizes border personnel and effectively incentivizes illegal migrants, smugglers, and traffickers.

31 Office of the United Nations High Commissioner for Human Rights (OHCHR), *The Principle of Non-Refoulement under International Human Rights Law*, 2018, https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf.

32 European Commission: European Migration Network Asylum and Migration Glossary, *Push-back*, https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/push-back_en.

33 Amnesty International, *Greece: Violence, Lies, and Pushbacks*, 2021, https://www.amnesty.at/media/8529/amnesty-report-greece-violence-lies-and-pushbacks.pdf.

34 European Center for Constitutional and Human Rights (ECCHR), *Illegal Pushbacks and Border Violence in Croatia: A Factsheet*, February 2023, https://www.ecchr.eu/fileadmin/user_upload/ECCHR_Croatia_factsheet__February_2023.pdf.

35 *Reports of Brutality by Hungarian Police Towards Migrants Are Untrue*, About Hungary, 14 June 2016, https://abouthungary.hu/news-in-brief/reports-of-brutality-by-hungarian-police-towards-migrants-are-untrue.

EU institutions have so far exacerbated the confusion rather than solve it. The European Commission and European Parliament frequently criticize Member States and Frontex, but have failed to establish a clear framework for handling mass illegal arrivals in a way that balances security with asylum obligations.[36] Courts have intervened against national measures without offering alternatives, further blurring the lines.[37] The European Council, representing the Member States, has pressed for workable solutions – such as rapid border screening procedures – to ensure that non-refoulement is respected without rendering borders defenseless.[38] Until such reforms are implemented, the current ambiguity will continue to cripple lawful border protection and embolden human smugglers who exploit the system's weaknesses.

4) Asylum System Abuse – The Failed Dream of External Processing

Europe's asylum system has become an open gateway for illegal migration – a situation the EU has been unable to change because asylum remains a strictly territorial process. Under the current rules, anyone setting foot on EU soil can apply for asylum. Thus, illegal migrants seek to physically reach Europe, often via smugglers, to claim protection even if unentitled.[39] If reach EU territory, there is no way to handle claims externally. The most promising solution to this is "externalizing" asylum, which involves processing applicants in safe third countries before entering Europe. This would allow the EU to filter genuine refugees and strongly deter economic migrants from paying thousands of euros for smugglers and embarking on a perilous and dangerous journey to the EU. In practice, however, this is impossible under EU law, as made clear by the Italy-Albania agreement.[40] Even worse, the European Court of Justice punished Hungary with an entirely disproportionate daily fine of 1 million euros for mandating asylum seekers apply from a third country. Consequently, asylum has become a major backdoor for illegal migration into Europe, even though most claimants (60%), ultimately do not qualify for any international protection.[41]

Attempts to break this pattern have stalled. Offshoring EU asylum claims have been discussed for years but have never been realized, blocked by legal barriers and political resistance.[42] By law, a person must be on European soil to lodge an asylum claim, which rules out any external pre-screening. Even the new proposals to fast-track "border procedures" still require migrants to arrive first. Thus, the system remains reactive: Europe must admit everyone who reaches its territory and asks for asylum, and only later determine if they genuinely qualify for protection.

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36 European Parliament, *Addressing Pushbacks at the EU's External Borders*, Briefing by the European Parliamentary Research Service (EPRS), October 2022, https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/738191/EPRS_BRI(2022)738191_EN.pdf.

37 Ibid.

38 E. Tsourdi, *The new screening and border procedures: Towards a seamless migration process?*, Policy Study No. 66, June 2024, Foundation for European Progressive Studies, Friedrich-Ebert-Stiftung and European Policy Centre, Brussels, https://epc.eu/content/FEPS-Policy_Study_-The_New_Screening_and_Border_Procedure-DP_66__9.pdf.

39 Médecins Sans Frontières (MSF), *Obstacle Course to Europe: A Policy-Made Humanitarian Crisis at EU Borders*, 2016, https://www.msf.org/sites/default/files/msf_obstacle_course_to_europe_0.pdf.

40 G. Leclerc and M.M. Mentzelopoulou, European Parliamentary Research Service (EPRS): Briefing, *Extraterritorial Processing of Asylum Claims*, July 2025, https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/757609/EPRS_BRI(2024)757609_EN.pdf.

41 European Council on Refugees and Exiles (ECRE), *Asylum statistics in Europe: Factsheet*, June 2020, https://ecre.org/wp-content/uploads/2020/06/Statistics-Briefing-ECRE.pdf.

42 Stiftung Wissenschaft und Politik (SWP), *The Externalisation of European Refugee Protection: A Legal, Practical and Political Assessment of Current Proposalss*, SWP Comment No. 13, March 2024, https://www.swp-berlin.org/publications/products/comments/2024C13_EuropeanRefugeeProtection.pdf.

The consequences of this trap are evident on Europe's external borders. In countries like Italy, Greece, and Spain, tens of thousands of people arrive illegally each year and immediately seek asylum.[43] Only a minority are ultimately granted refugee status (around 20–25% in Italy)[44] but, thanks to the aforementioned failure on repatriations, almost all remain for the entire duration of their processing, and most of those rejected never leave. The result is Member States spending vast resources housing and processing people who, in most cases, are not fleeing persecution or war. Meanwhile, because many arrivals carry no documents, officials can barely verify identity or origin. Among those who exploit this legal blind spot are unqualified individuals who later go on to commit serious crimes, including acts of terrorism, within the EU. In effect, simply reaching EU soil and claiming "asylum" guarantees at least temporary entry and support, and at most, an illegal but permanent stay, creating a powerful incentive for abuse.

This loophole undermines the integrity of Europe's asylum system. Genuine refugees are mixed with a large proportion of opportunistic, fraudulent, or even criminal applicants, destroying any public trust in the system. The European Council has warned that the status quo is unsustainable, yet other EU bodies have not established any mechanism to distinguish bona fide refugees from opportunists. Member States increasingly argue that the EU should only admit already verified refugees (such as via UN resettlement) instead of accepting unlimited on-site claims. Until such a shift is made, the asylum process will remain a loophole exploited by smugglers and effectively a "free pass" into Europe.[45]

To underscore the gravity of the situation, between 2014 and 2024 the EU received 8.5 million first-time asylum seekers, a number that, if regarded as the population of a new Member State, would make it the 15th largest in the Union.[46]

5) Failure to Return Illegal Migrants – Legal Constraints and Non-Cooperative Countries

One of the clearest failures of the EU's migration policy is the dismally low rate of return for rejected asylum seekers and illegal migrants. When individuals have no legal right to remain, they must be sent back to their country of origin. In practice, this rarely happens. At present, only around 20% of those ordered to leave the EU are removed, and certain major EU Member States have return rates below 10%.[47] This ineffectiveness stems from a combination of Europe's legal limitations and obstruction by countries of origin.

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43 European Border and Coast Guard Agency – Frontex, *Annual Risk Analysis 2024–2025*, Warsaw 2024, https://www.frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2024-2025.pdf.

44 Statista, *Number of Refugees in Italy from 2014 to 2023*, 9 October 2024, https://www.statista.com/statistics/1095402/number-of-refugees-in-italy.

45 L. Shelley and R. Pardo, *Human Smuggling and Trafficking into Europe: A Comparative Perspective*, [in:] Debating Imigration, ed. C.M. Swain, Cambridge University Press 2018. Chapter availbale at: https://traccc.gmu.edu/wp-content/uploads/2022/09/Shelley-Pardo_human-smuggling-and-trafficking-into-europe.pdf.

46 N. Pouvreau-Monti, *Nicolas Pouvreau-Monti : «En dix ans, l'UE a admis l'équivalent d'un nouvel État membre entièrement composé de demandeurs d'asile»*, 30 May 2024, https://www.lefigaro.fr/vox/monde/nicolas-pouvreau-monti-en-dix-ans-l-ue-a-admis-l-equivalent-d-un-nouvel-etat-membre-entierement-compose-de-demandeurs-d-asile-20240527.

47 European Court of Auditors (ECA), *EU Readmission Cooperation with Third Countries: Relevant Actions Yield Limited Results*, Special Report No. 17, 2021, https://www.eca.europa.eu/lists/ecadocuments/sr21_17/sr_readmission-cooperation_en.pdf.

Moreover, EU laws and court rulings grant extensive rights and guarantees to migrants, which can delay or block deportation.[48] National authorities are often only allowed to detain someone slated for removal for a few months and illegal migrants often exploit these rules by stalling their identification process or filing last-minute asylum applications, knowing that if they run down the clock, they will be set free. Once released, most disappear into the Schengen Area's free movement zone, making it nearly impossible to locate and expel them. The result is a de facto toleration of illegal stay, undermining the credibility of Europe's asylum and immigration system, and more importantly, the meaning of citizenship.

Even when EU States are determined to deport someone, they face uncooperative home countries. Many states of origin simply refuse to readmit their citizens. Countries like Mali,[49] Senegal,[50] and Pakistan[51] have repeatedly stalled or denied EU requests to take back deportees. This diplomatic stonewalling leaves European authorities with no destination to send many migrants, effectively stranding them in Europe. Efforts by the European Commission to secure readmission agreements have yielded few results.[52] The European Council and interior ministers have discussed using leverage, such as visa sanctions or cutting development aid, to pressure governments into compliance.[53] So far, these tools have only been applied timidly and inconsistently. The continuing inability to carry out returns not only erodes the rule of law but also emboldens human traffickers who assure would-be migrants that once they reach EU soil, they are likely to stay. To restore integrity to its immigration system, EU legislation must allow Member States to detain illegal migrants longer and hold countries of origin accountable. In addition, the EU and Member States must be willing to use political and economic pressure to force countries of origin to readmit their own citizens.

6) Broken Relocation Quotas – Forced Solidarity and Illegal Secondary Movements

After the 2015 migration crisis, the EU tried to impose a mandatory quota system to redistribute asylum seekers from border states to other member countries. This "solidarity" mechanism intended to relocate around 160,000 people. It largely failed. By 2017, only 19,000 transfers were carried out (12% of the goal), and a significant portion of those relocated did not remain in their assigned Member State. The quota policy faced both political non-compliance and practical evasion: many governments only half-heartedly participated or openly defied it, and many asylum seekers quietly left their host countries to enter Western Europe, abusing the Schengen area.

48 European Union Agency for Asylum (EUAA), *Quarterly Overview of Asylum Case Law*, Issue No 1/2025, March 2025, https://euaa.europa.eu/sites/default/files/publications/2025-3/2025_EUAA_Quarterly_Overview_Asylum_Case_Law_Issue1_EN.pdf.

49 *Mali sends back migrants deported by France*, BBC News, 30 December 2016, https://www.bbc.com/news/world-africa-38467244.

50 *EU Proposes Visa Restrictions on Countries Refusing to Take Back Illegal Migrants*, InfoMigrants [by Deutsche Welle], 15 March 2018, https://www.infomigrants.net/en/post/8082/eu-proposes-visa-restrictions-on-countries-refusing-to-take-back-illegal-migrants.

51 A. Hashim, *Pakistan Refuses to Accept Some Migrants Deported from Greece*, ReliefWeb, 3 December 2015, https://reliefweb.int/report/pakistan/pakistan-refuses-accept-some-migrants-deported-greece.

52 Izabella Majcher, *The European Union Returns Directive and Its Compatibility with International Human Rights Law*, Brill, Nijhoff 2019.

53 European Parliament, *Returns: The EU's New Approach to Sending Migrants Back*, 8 August 2023, last updated: 25 March 2025, https://www.europarl.europa.eu/topics/en/article/20230704STO02012/returns-the-eu-s-new-approach-to-sending-migrants-back.

Examples of this failure abound. Hungary and Poland refused outright to accept any relocated migrants, even when the European Court of Justice ruled that they must, preferring EU legal action to compliance. Other countries accepted asylum seekers, such as Estonia, Latvia, and Lithuania, only to report of the few dozen they accepted, more than 90% vanished within months, likely heading toward Germany or Scandinavia to join other family members, access generous public welfare, or find better jobs. In Slovakia, which initially agreed to the scheme, almost all relocated Syrians and Iraqis left for Austria or Germany, prompting Bratislava to halt further intake. Meanwhile, Italy observed that even outside the formal relocation program, thousands of migrants from its reception centers simply left for Northern Europe, uninterested in waiting for EU redistribution that might place them in an undesirable country.

The quota experiment revealed a fundamental flaw: neither migrants nor most Member States were willing to take part in this forced distribution scheme that went far beyond the EU's competences. One cannot successfully relocate people who clearly intend to reach specific countries, especially when Europe's internal free movement makes secondary travel easy. At the same time, trying to compel sovereign states to accept migrants against their will proved politically inflammatory. Instead of solidarity, the policy bred resentment. Frontline countries felt little relief as people didn't stay put elsewhere, and unwilling host countries bristled at Brussels' demands. The European Commission's reports later acknowledged the shortfall, and the EU quietly abandoned the mandatory quota approach, until 2023. Today, European leaders must understand that any new burden-sharing system must be voluntary and not enforced by financial coercion. As the blunt-force method of 2015 and seemingly the 2024 New Pact on Migration and Asylum show, this approach not only failed to achieve its objective, but erodes trust among Member States.

7) A Paralyzed Frontex – The Castration of EU's Border Agency

Frontex, the EU's border and coast guard agency, was established to help Member States secure Europe's external frontiers.[54] In reality, it has been hamstrung by legal ambiguity, the intrusion of "NGOs" representatives, and constant political pressure, rendering it largely ineffective. Actions necessary to stop illegal entries are often branded as human rights violations, despite the vagueness of EU law. As a result, the agency finds itself constantly on the defensive, unable to act as a confident enforcer.

In 2020–2021, during a surge of crossings in the Aegean Sea, Frontex was deployed to assist Greece in patrolling the sea border with Turkey.[55] Greek forces, facing extreme pressure, occasionally pushed migrant boats back toward Turkish waters to prevent uncontrolled entry. NGOs and media accused Frontex of complicity in these actions.[56] Due to this political furor, Frontex withdrew just when Greece their help the most.[57] The agency's director resigned in 2022 amid political pressure, complaining that

54 European Border and Coast Guard Agency – Frontex, *Tasks and Mission*, [n.d.], https://www.frontex.europa.eu/about-frontex/who-we-are/tasks-mission.

55 European Border and Coast Guard Agency – Frontex, *Frontex to Launch Rapid Border Intervention at Greece's External Borders*, 2 March 2020, https://www.frontex.europa.eu/media-centre/news/news-release/frontex-to-launch-rapid-border-intervention-at-greece-s-external-borders-NL8HaC.

56 K. Luyten, European Parliamentary Research Service (EPRS): Briefing, *Addressing Pushbacks at the EU's External Borders*, October 2022, https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/738191/EPRS_BRI(2022)738191_EN.pdf.

57 M. Pronczuk, *E.U. Border Agency Considers Pulling Out of Greece Over Migrant Abuses*, The New York Times, 27 June 2023, https://www.nytimes.com/2023/06/27/world/europe/greece-migrants-eu.html.

the Agency could not perform its official mission of protecting the EU's borders[58] and denouncing efforts to turn Frontex into a means to control Member States rather than borders. The message was clear: if Frontex personnel stop migrants, they risk legal and political persecution.

A similar scenario occurred on the Hungary-Serbia border. When the EU's Court of Justice ruled that Hungary's swift returns of migrants to Serbia violated EU law,[59] Frontex reacted by withdrawing all support from Hungary in 2021.[60] Rather than helping devise a compliant strategy, the agency simply abandoned an entire section of the EU's external border. This decision left Hungarian border guards unsupported and signaled that Frontex would withdraw whenever a Member State's measures became controversial.

In the Central Mediterranean, Frontex has also grown overly cautious. It conducts surveillance missions to identify migrant boats, but hesitates to share intelligence with North African authorities, fearing any implication with "refoulement" to Libya.[61] Opportunities to disrupt smugglers or save lives are lost as the agency prioritizes avoiding controversy over fulfilling its mission. Europe is left with a border agency that too often watches from the sidelines. Border states feel that Frontex, instead of supporting their efforts, is shackled by lawsuits and political pressure. Without reform, Frontex will remain a paper tiger and a source of distrust for Member States and border guards. The EU must clarify and strengthen Frontex's legal authority to act and stand behind the agency to prevent any activist interference. Only by shielding its officers from constant legal harassment can Europe's common border force do its job. Otherwise, border states will bear the burden alone, and the promise of a joint EU border will prove empty.

8) The Schengen Sieve – How Free Movement Enables Illegal Migration

The Schengen Zone, a pillar of EU integration, is being misused to facilitate illegal migration and frustrate national immigration controls.[62] Under Schengen rules, a non-EU national with a valid visa, or from a visa-exempt country, can move across Member States almost as freely as an EU citizen. Once they enter one Member, they face virtually no further checks. National authorities thus struggle to prevent or even track the onward travel of migrants initially admitted elsewhere. Smugglers and migrants exploit these freedoms to bypass individual countries' immigration laws.

Within the EU, free movement has undermined migration control. Migrants who land in southern Europe often head to other Member States without authorization. Italy cannot stop tens of thousands of

58 J. Rankin, *Head of EU Border Agency Frontex Resigns amid Criticisms*, The Guardian, 29 April 2022, https://www.theguardian.com/world/2022/apr/29/head-of-eu-border-agency-frontex-resigns-amid-criticisms-fabrice-leggeri.

59 European Commission: Press Release, *Migration: Commission Refers Hungary to the Court of Justice of the European Union over Its Failure to Comply with Court Judgment*, 12 November 2021, https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5801.

60 European Parliament: Parliamentary Question E-001120/2021, *Suspension of Frontex Operations in Hungary*, 24 February 2021, https://www.europarl.europa.eu/doceo/document/E-9-2021-001120_EN.html.

61 European Border and Coast Guard Agency – Frontex, *Eyes in the Sky: Monitoring the Mediterranean*, 2023, https://www.frontex.europa.eu/media-centre/news/news-release/eyes-in-the-sky-monitoring-the-mediterranean-17Gg1W.

62 S. Casella Colombeau, *Crisis of Schengen? The Effect of Two 'Migrant Crises' (2011 and 2015) on the Free Movement of People at an Internal Schengen Border*, "Journal of Ethnic and Migration Studies", 46/11, 2020, pp. 2258-2274, https://doi.org/10.1080/1369183X.2019.1596787.

new arrivals from moving north.[63] France reports that many asylum seekers on its soil entered the EU via Italy or Spain and then traveled on unchecked.[64] The Dublin Regulation is supposed to send such individuals back to their first entry point, but it has largely collapsed as migrants, some criminals, evade registration and abscond across the EU's open borders.[65] In response, France[66] and Austria,[67] Germany, Slovenia, Italy, Sweden, the Netherlands, Poland and Denmark[68] have reintroduced limited border checks inside Schengen, an extraordinary step showing governments feel forced to act on their own.

The Schengen Area did not anticipate large-scale misuse of legal entry and mobility. Even those who lawfully enter Schengen often overstay or "asylum shop"[69] by moving to a different country to claim asylum. EU institutions have been reluctant to address these issues, given that free movement is a core EU principle. Border states, however, are increasingly sounding the alarm. Some governments have proposed tighter visa rules for high-risk countries, improved tracking of EU entries and exits, and temporary internal border controls until external borders are secure. The European Council has echoed these concerns, urging the European Commission to close loopholes without dismantling Schengen. If the EU fails to adapt, more Member States will take matters into their own hands which could fragment the Schengen Area and erode trust in Brussels's migration management.

9) Family Reunification – The EU's Excessive Generosity

Family reunification has become a backdoor for mass immigration and systematically exploited under the cover of "family rights." EU rules allow third-country nationals legally residing in the EU to bring their spouses, children, and extended family, including the family of their spouse. The result is a chain-migration surge, where one resident can trigger an influx of numerous extended family members, often without consideration of their individual merits or integration prospects. Because of this, family reunification is one of the primary avenues of immigration to the EU, accounting for roughly one-third of all residence permits granted to non-EU nationals.[70] In effect, Europe's family-reunion policy multiplies each initial entry into a much larger migration wave, all under the politically untouchable banner of "keeping families together."

63 M. Barbero, *Giorgia Meloni Gets a Reality Check on Immigration*, Foreign Policy, 24 October 2023, https://foreignpolicy.com/2023/10/24/italy-immigration-right-wing-meloni-migrant-crisis.

64 Médecins Sans Frontières (MSF), *Migrants Trapped in Relentless Cycle of Rejection on French-Spanish Border*, 2019, https://www.msf.org/migrants-trapped-relentless-cycle-rejection-french-spanish-border-france.

65 Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person (Dublin III Regulation), https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex:32013R0604.

66 *France Reinstates Border Checks as Immigration Policies Tighten across Europe*, Radio France Internationale (RFI), 31 October 2024, https://www.rfi.fr/en/france/20241031-france-reinstates-border-checks-as-immigration-policies-tighten-across-europe.

67 B. Restelica, *Austria Extends Internal Border Controls With Hungary & Slovenia Until May 2025*, Schengen News, 12 November 2024, https://schengenvisainfo.com/news/austria-extends-internal-border-controls-with-hungary-slovenia-until-may-2025.

68 European Commission, *Temporary Reintroduction of Border Control*, [n.d.], https://home-affairs.ec.europa.eu/policies/schengen/schengen-area/temporary-reintroduction-border-control_en.

69 European Commission: European Migration Network Asylum and Migration Glossary, *Asylum Shopping*, [n.d.], https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/asylum-shopping_en.

70 European Commission, *Family Reunification for Non-EU Nationals*, [n.d.], https://home-affairs.ec.europa.eu/policies/migration-and-asylum/legal-migration-and--resettlement/family-reunification-non-eu-nationals_en.

This channel is so heavily protected by EU directives and courts that national governments are powerless to control it. The EU Family Reunification Directive (2003/86/EC) enshrines an almost unconditional right for migrants to bring in their families, tying states' hands with supranational legal obligations. Any attempt by Member State to tighten or rationalize these reunification rules is swiftly struck down by European judges or blocked by Brussels bureaucrats. A telling example was Denmark's effort to introduce a modest 3-year waiting period before refugees could sponsor family members, a policy aimed at discouraging excessive chain migration. In 2021, the European Court of Human Rights torpedoed that rule, condemning it as a breach of the migrant's "right to family life" under Article 8.[71] In the *M.A. v. Denmark* judgment, Strasbourg's judges boldly declared that Denmark hadn't given enough weight to family interests, absurdly suggesting that faster family reunion would "favour preserving social cohesion and facilitate integration." In effect, Europe's permissive human-rights laws have been used to bypass national immigration controls, requiring that even those who arrived illegally or temporarily can quickly bring in their relatives.

Family reunification policy must be removed from the EU and the Council of Europe and returned to Member States. The chain-migration loophole will never be closed if Brussels retains competence and continues to enforce this laxist policy Europe can no longer afford to have its immigration system on autopilot, allowing any migrant to bring large numbers of family members. The EU's rules on family reunification must be discarded, and each country must decide how to balance genuine family unity and the broader public interest. Repatriating authority over family reunification would allow sensible criteria such as limiting eligible relatives, requiring proof of integration ability and self-sufficiency, and setting quotas if necessary. Crucially, it would remove the perverse incentive for chain migration, whereby illegal entry is rewarded with a pathway to bring family members. European governments must regain the authority to say "no" when reunification claims are not in their country's interest.

10) No EU Funds for Fences – Border States Under Siege

A glaring gap in the EU's approach is its refusal to fund physical border barriers, even when border states desperately need them.[72] The European Commission has long insisted that EU funds should not be used for walls or fences. Countries facing heavy migratory pressures must pay for border fortifications entirely on their own. Although Brussels preaches about shared responsibility for external borders, it refuses to share the cost of basic border security infrastructure. Furthermore, countries that build fences face harsh criticism. Hungary, which spent more than 2 billion EUR to strengthen border protection and defend the EU's external borders, is constant attacked for its "inhuman" and "cruel" fence.[73]

71 N. Feith Tan, J. Vedsted-Hansen, *How Long Is Too Long? The Limits of Restrictions on Family Reunification for Temporary Protection Holders*, EU Immigration and Asylum Law and Policy [blog], 27 September 2021, https://eumigrationlawblog.eu/how-long-is-too-long-the-limits-of-restrictions-on-family-reunification-for-temporary-protection-holders.

72 *EC Rejects Request for Border Fence Contribution but Government Still Insists on It*, About Hungary, 4 September 2017, https://abouthungary.hu/news-in-brief/ec-rejects-request-for-border-fence-contribution-but-government-still-insists-on-it.

73 S. Saeed, *Hungary Starts Work on Second Border Fence*, Politico, 27 February 2017, https://www.politico.eu/article/hungary-starts-work-on-second-border-fence-migrants-refugees.

This policy was tested during the 2021 Polish border crisis when Belarus weaponized migration against Poland and others EU countries.[74] Poland rapidly erected a fence to prevent thousands of illicit crossings.[75] Yet, the EU offered no financial support[76] and Brussels officials insisted that "no EU money will go to barbed wire," even as Poland defended the Union's external border from a hostile attack. In the end, Poland spent its own funds to protect the entire Schengen Area. The contrast was clear: Europe benefited from the barrier but refused to share the cost.

Similarly, Bulgaria, which guards a long EU land border with Turkey, has repeatedly asked Brussels to co-finance its border fence and fortify gaps.[77] Each request was rebuffed.[78] Instead, the EU provides only minor equipment and patrol support, far short of the cost of building and maintaining a physical barrier.[79] As a result, Bulgaria, like Greece,[80] Latvia, Lithuania[81] and others, has had to extend or upgrade border fences from national budgets, left to handle a European problem alone.

Many EU leaders are now openly questioning the refusal to fund border barriers. Countries such as Austria, Greece, and Lithuania have urged at European Council meetings that the EU should help finance fencing as a matter of practical security,[82] noting that fences significantly reduce illegal flows. Even officials who once opposed the idea now acknowledge that EU funds may need to support "infrastructure" at the borders, a code word for fences, as migration pressures remain high. There is growing consensus if protecting the external border is a shared responsibility, then investing in essential border defenses should be part of that shared effort, since empty symbolism cannot stop the flow of illegal mass migration. Europe can no longer afford to let ideology prevent support for the physical security of its frontiers.

11) NGOs Against Europe – EU-Funded Activists Aiding Illegal Migration

One of the EU's most perplexing migration management failures is the undermining of migration law enforcement by so-called non-governmental organizations, some even funded by the EU. The EU provides significant grants to NGOs for humanitarian aid, asylum support, and human rights monitoring.[83] While these funds are meant to improve migrant welfare and uphold European values, they have also enabled

74 T. Grzywaczewski, *Russia and Belarus Are Using Migrants as a Weapon Against the EU*, Foreign Policy, 18 September 2021, https://foreignpolicy.com/2021/09/18/russia-belarus-poland-lithuiania-migrants-eu-weapon/.

75 *Poland Blocks Hundreds of Migrants at Belarus Border*, BBC News, 8 October 2021, https://www.bbc.com/news/world-europe-59206685.

76 M. MacGregor, *EU Refuses to Fund Border Walls Against Migrants Entering From Belarus*, InfoMigrants, 25 October 2021, https://www.infomigrants.net/en/post/35990/eu-refuses-to-fund-border-walls-against-migrants-entering-from-belarus.

77 K. Nikolov, *Bulgaria Wants EU Money for New Border Fence With Turkey*, Euractiv, 3 February 2023, https://www.euractiv.com/news/bulgaria-wants-eu-money-for-new-border-fence-with-turkey.

78 *European Commission Will Not Fund Bulgaria–Turkey Wall*, InfoMigrants [by ANSA], 31 January 2023, https://www.infomigrants.net/en/post/46472/european-commission-will-not-fund-bulgariaturkey-wall.

79 European Commission: Press Release, *Bulgaria and Romania Strengthen Cooperation on Border and Migration Management*, 4 March 2024, https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1283.

80 S. Michalopoulos, *With or Without EU Money, Greece Says Will Finish Border Fence*, Euractiv, 31 March 2023, https://www.euractiv.com/section/politics/news/with-or-without-eu-money-greece-says-will-finish-border-fence/.

81 N. O'Leary, *Pleas to Finance Border Walls Rejected by European Commission*, The Irish Times, 22 October 2021, https://www.irishtimes.com/news/world/europe/pleas-to-finance-border-walls-rejected-by-european-commission-1.4708283.

82 European Parliament: Parliamentary Question E-005077/2021, *Funding of Border Walls*, 11 November 2021, https://www.europarl.europa.eu/doceo/document/E-9-2021-005077_EN.html.

83 European Commission, *Humanitarian Aid*, [n.d.], https://civil-protection-humanitarian-aid.ec.europa.eu/what/humanitarian-aid_en.

a network of activist groups that oppose or obstruct EU Member States efforts to curb illegal migration. There are even allegations of collusion with human traffickers. European taxpayers are often financing the very entities that work against reducing illegal migration and lawful deportation.

These EU-funded NGOs engage in a variety of activities that facilitate illegal migration and obstruct border control.[84] In the Mediterranean, NGO-run ships patrol the coast of Libya and Turkey, picking up migrants from smugglers' boats and transporting them to Europe.[85] Their operations, often lauded as humanitarian, have been criticized by governments as an unwitting shuttle service for smugglers, and several such organizations have received state funding.[86] According to the EU Transparency Register, there are currently 543 organizations that receive EU funds as non-governmental organizations, platforms, or networks.[87] These organizations are primarily involved in migration and asylum, and do not represent commercial interests. Among them are well-known groups such as Amnesty International Limited.[88] Some of these organizations are directly involved in migrant rescue operations across the Mediterranean. Examples include Mediterranea Saving Humans APS,[89] Sea-Watch e.V.,[90] and United4Rescue – Gemeinsam retten e.V.[91] These NGOs can be identified and tracked through the Transparency Register, although the details of their financial support are often incomplete or unclear.

It is much harder to track funding in other organizations such as SOS Méditerranée[92] (also known as Ocean Viking)[93] and Proactiva Open Arms[94] (also called Open Arms). In 2023, Belgian MEP Tom Vandendriessche submitted a formal written question to the European Commission[95] alleging Open Arms received €1.44 million in EU funds in 2021. In response, Ylva Johansson, then Commissioner for Home Affairs, stated that all EU funding managed by the Commission was publicly available through the EU Financial Transparency System.[96] However, no records of EU funding for Proactiva Open Arms appear in that system. This has led to the suspicion that such organizations may receive indirect funding. SOS Méditerranée, for example, describes itself as a European association with teams based in Germany, France, Italy, and Switzerland, jointly operating rescue ships like the Aquarius and Ocean Viking.[97] These local teams might be registered as separate NGOs, making it difficult to track their EU

84 European Council on Refugees and Exiles (ECRE), *Members*, [n.d.], https://ecre.org/members.

85 G. Garelli, M. Tazzioli, *The Humanitarian Battlefield in the Mediterranean Sea: Moving Beyond Rescuing and Letting Die*, 2019, https://www.academia.edu/38719878/The_Humanitarian_Battlefield_in_the_Mediterranean_Sea_Moving_Beyond_Rescu_ing_and_Letting_Die.

86 European Council on Refugees and Exiles (ECRE), *Finance*, [n.d.], https://ecre.org/finance.

87 European Transparency Register, *Search Results for Organisations Active in Migration and Asylum (NGOs, Platforms, Networks)*, [n.d.], https://transparency-register.europa.eu/search-register-or-update/search-register_en.

88 European Transparency Register, *Organisation Profile: Amnesty International Limited*, [n.d.], https://transparency-register.europa.eu/search-register-or-update/organisation-detail_en?id=11063928073-34.

89 European Transparency Register, *Organisation Profile: Mediterranea Saving Humans APS*, [n.d.], https://transparency-register.europa.eu/search-register-or-update/organisation-detail_en?id=269787294662-72.

90 European Transparency Register, *Organisation Profile: Sea-Watch e.V.*, [n.d.], https://transparency-register.europa.eu/search-register-or-update/organisation-detail_en?id=599687051086-63.

91 European Transparency Register, *Organisation Profile: United4Rescue – Gemeinsam retten e.V.*, [n.d.], https://transparency-register.europa.eu/search-register-or-update/organisation-detail_en?id=937266350789-20.

92 SOS Méditerranée [Homepage], [n.d.], https://www.sosmediterranee.org.

93 SOS Méditerranée, *The Ship*, [n.d.], https://www.sosmediterranee.org/the-ship.

94 Open Arms [Homepage], [n.d.], https://www.openarms.es/en.

95 European Parliament: Parliamentary Question E-000188/2023, *Subsidies for NGOs active in the field of asylum and migration*, 23 January 2023, https://www.europarl.europa.eu/doceo/document/E-9-2023-000188_EN.html.

96 European Parliament: Answer to Parliamentary Questions E-003782/2022 and E-000188/2023, 1 March 2023, https://data.europarl.europa.eu/distribution/reds_iMaQp_Asw/E-9-2022-003782-ASW/E-9-2022-003782-ASW_en.pdf.

97 SOS Méditerranée, *Missions & Organisation*, [n.d.], https://www.sosmediterranee.org/missions-organization.

funding, especially since SOS Méditerranée does not list these teams by their names on their website or its financial statements. This creates a legal gray area, sometimes referred to as a lex imperfecta, where public visibility of such financial flows is limited.

When it comes to financial transparency, some partial data is available. Mediterranea Saving Humans APS has received a total of €87,570 from two EU programs: the European Solidarity Corps (ESC) and the Citizens, Equality, Rights and Values Programme (CERV).[98] For Sea-Watch e.V., the register confirms that the organization received at least €10,000 in EU funding, although more precise details are lacking.[99] In the case of United4Rescue – Gemeinsam retten e.V., there is no record of EU grants in the register.[100] However, the organization did receive €63,448 from the Robert Bosch Stiftung, which itself is listed as having received between €100,000 and €199,999 from EU sources.[101]

On land, legal aid and advocacy NGOs use European grants to assist migrants in navigating and occasionally exploiting the asylum system. They file court injunctions to stop deportations, train migrants on what to say to avoid being returned, and campaign relentlessly against detention or fast-track asylum procedures. Advocacy networks that benefit from EU funding also lobby against stricter border measures like fences or tougher asylum rules. The cumulative effect is a well-organized, well-funded bloc of organizations that can delay or derail nearly every attempt to tighten migration controls.

European governments, especially those facing migratory pressure, have grown increasingly frustrated with this dynamic. They argue it is self-defeating for the EU to bankroll groups that undermine agreed-upon migration decisions. Some governments are now calling for stricter oversight of EU funding to ensure alignment with EU policy.[102] Suggestions include cutting off funding to NGOs that actively encourage illegal migration or litigate against enforcement, or at least demanding neutrality from grant recipients. The European Council has subtly endorsed the idea that EU resources should not finance opposition to lawful migration management. If Europe wants to regain control of its borders, it must also rethink whom it funds. Support should go to solving the crisis and improve controls, not the facilitation of illegal migration under the banner of humanitarianism.

98 European Transparency Register, *Organisation detail: Mediterranea Saving Humans APS*, [n.d.], https://transparency-register.europa.eu/search-register-or-update/organisation-detail_en?id=269787294662-72.

99 European Transparency Register, *Organisation detail: Sea-Watch e.V.*, [n.d.], https://transparency-register.europa.eu/search-register-or-update/organisation-detail_en?id=599687051086-63.

100 European Transparency Register, *Organisation detail: United4Rescue – Gemeinsam retten e.V.*, [n.d.], https://transparency-register.europa.eu/search-register-or-update/organisation-detail_en?id=937266350789-20.

101 European Transparency Register, *Organisation detail: Robert Bosch Stiftung GmbH*, [n.d.], https://transparency-register.europa.eu/search-register-or-update/organisation-detail_en?id=181823053178-62.

102 Z. Kovács, *Time for Transparency: The European Commission Must Clean Up NGO Funding*, About Hungary, 26 February 2025, https://abouthungary.hu/blog/time-for-transparency-the-european-commission-must-clean-up-ngo-funding.

SECOND PART: REMEDIES FOR AN EFFECTIVE RENATIONALIZATION OF THE EU MIGRATION AND ASYLUM POLICIES

I. OPT-OUT AND DEROGATIONS TO THE CURRENT LEGAL FRAMEWORKS

Proposal 1. Grant Member States an opt-in/opt-out from the EU common migration and asylum policy

Denmark and Ireland benefit from a general opt-out clause from Title V of the Treaty on the Functioning of the European Union (TFEU), which includes migration and asylum. Those Member States are therefore able to run their own migration and asylum policy without any interference of the EU, not even the case-law of the Court of Justice or international treaties.[103] Moreover, Ireland also has the right to "opt-in" to EU initiatives. Recently several Member States requested a similar treatment to regain competence and manage migration and asylum on their own, or at least with a greater margin of maneuver.

The question of extending the opt-in/opt-out privilege is both relevant and timely. Considering that the EU migration and asylum policy is a fiasco, it becomes urgent to envisage bold solutions and to give back the reins to the Member States. As we show in this report, amending secondary law is possible yet, it is cumbersome and lengthy at a time when the Member States need an urgent response. That is why the best possible solution to grant the Member States legal flexibility is to amend the TFEU through **the simplified procedure foreseen in Article 48 paragraph 6**

103 According to Article 2 "None of the provisions of Title V of Part Three of the Treaty on the Functioning of the European Union, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Union pursuant to that Title, and no decision of the Court of Justice of the European Union interpreting any such provision or measure or any measure amended or amendable pursuant to that Title shall be binding upon or applicable in Denmark; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of Denmark; and no such provision, measure or decision shall in any way affect the Community or Union acquis nor form part of Union law as they apply to Denmark. In particular, Acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon which are amended shall continue to be binding upon and applicable to Denmark unchanged."

of the Treaty on the European Union (TEU). According to this provision, one Member state can table an amendment to Part III of the Treaty to the European Council, the latter adopts it by unanimity after consulting the Commission and the Parliament. The only condition is that this proposal does not increase the EU's competences. This amendment would not enter into force until it is once ratified in accordance with their respective constitutional requirements.

In that way, the European Council would introduce in the TFEU a new provision allowing Member States to request an opt-in/opt-out on an individual basis. The detailed scope of the individual derogation would be further defined in another decision of the European Council and the whole legal process would be accomplished within a short period of time as long as all Member States agree to grant the possibility to any of them to benefit from the same privileges than Denmark and Ireland.

Proposal 2. Insert in the Treaty a "notwithstanding clause" thereby enabling Member States to derogate temporarily from the EU's asylum and migration policy, upon request of their national parliaments

Recently, the Greek Parliament adopted a law which suspended for three months the possibility to lodge an asylum application for persons arriving in Greece from North Africa.[104] Poland acted similarly with the requests of migrants from Belarus.[105] This evidences that EU rules are not adapted to the current challenges of border control or, worse, force Member States to act at total odds with their national interest. It is very likely that those situations will happen more and more often and that Member States will increasingly face emergency situations for which the EU acquis is a burden more than a solution.

As an alternative to the opt-in/opt-out mechanism or in addition to it, the EU shall also offer the possibility for Member States to temporarily derogate from their legal obligations on migration and asylum when their public order, public security or pressing national interest is at stake. Again, this amendment would be introduced through the **simplified revision procedure of the Treaty** embedded in Article 48 paragraph 6.

Similar mechanism exists in comparative law, especially in federal or decentralized states. For example, Article 33 of the Canadian Charter permits the national Parliament or a provincial assembly to adopt legislation to override certain rights and freedoms for a limited period, subject to renewal. A so-called "notwithstanding clause" that could serve as a model to amend the TFEU.

104 *Greek Parliament Passes Suspension of Asylum Claims Despite International Criticism*, Associated Press, 11 July 2025, https://apnews.com/article/migration-greece-libya-asylum-un-europe-council-760d2d0a4d3dc2d95cd37503a4f301f5.

105 A. Easton, I. Aikman, *Poland Suspends Migrants' Right to Apply for Asylum*, BBC News, 27 March 2025, https://www.bbc.com/news/articles/c8719dl587zo.

Proposal 3. Unilaterally disapply the most problematic elements of the EU acquis if the simplified reform of the Treaties is blocked

The two first proposals offer a flexible and pragmatic solution to all Member States: those wishing to depart from the EU acquis would benefit from an opt-in/opt-out system or could invoke the "notwithstanding clause"; those wishing to remain legally bound by the existing acquis would be able to do so.

However, there is a possibility that some Member States will block the simplified reform of the Treaty and will prevent others from recovering total or partial control on migration and asylum. Shall this happen two years after the simplified reform is triggered and given the urgency of the migration crisis Europe faces, then a coalition of Member States shall consider **unilaterally disapply the most harmful parts of the EU legislation**.

Proposal 4. Withdraw from the European Court of Human Rights or temporarily suspend its application

The European Convention on Human Rights (ECHR), and the European Court of Human Rights (ECtHR)'s case-law is a major straitjacket on countries' sovereignty and their capacity to control illegal migration. Except for rare cases in which the ECtHR has been more cautious and deferential to States, accepting restrictive practices when framed as necessary for border control,[106] the Strasbourg court has limited Member States' action by prohibiting refoulement to "unsafe" countries,[107] by restricting the automatic expulsion of foreign offenders in the name of family life,[108] by strictly regulating the detention of migrants[109] and by prohibiting collective expulsions without individual examination.[110] Moreover, in 2005, the Court granted itself the competence to temporarily suspend expulsions on the basis of Article 39 of its internal rules of procedure (interim measures), hence without any legal mandate.[111]

The Court's interpretation of those legal guarantees has led to an inflation of case law that weakens the ability of States to enforce their borders, organize removals and expel foreign criminals. Any restrictive measure, even temporary, is likely to be subject to individual appeals before the Court, hence undermining the capacity of national governments to take decisions. Recently, nine EU Mem-

106 European Court of Human Rights (ECtHR), Judgment of 13 February 2020, *N.D. and N.T. v. Spain*, Application Nos. 8675/15 and 8697/15, https://hudoc.echr.coe.int/fre?i=001-201353; ECtHR, Judgment of 15 December 2016, *Khlaifia and Others v. Italy*, Application No. 16483/12, https://hudoc.echr.coe.int/%20-fre?i=001-170054.

107 ECtHR, Judgment of 21 January 2011, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, https://hudoc.echr.coe.int/fre?i=001-103050; ECtHR, Judgment of 23 February 2012, *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09, https://hudoc.echr.coe.int/%20fre?i=001-109231; ECtHR, Judgment of 4 November 2014, *Tarakhel v. Switzerland*, Application No. 29217/12, https://hudoc.echr.coe.int/fre?i=001-148070.

108 ECtHR, Judgment of 2 August 2001, *Boultif v. Switzerland*, Application No. 54273/00, https://hudoc.echr.coe.int/fre?i=001-59621; ECtHR, Judgment of 18 October 2006, Üner v. the Netherlands, Application No. 46410/99, https://hudoc.echr.coe.int/eng?i=001-23987; ECtHR, Judgment of 3 October 2014, *Jeunesse v. the Netherlands*, Application No. 12738/10, https://hudoc.echr.coe.int/eng?i=001-147117.

109 ECtHR, Judgment of 29 January 2008, *Saadi v. the United Kingdom*, Application No. 13229/03, https://hudoc.echr.coe.int/eng?i=001-84709; ECtHR, Judgment of 15 December 2016, *Khlaifia and Others v. Italy*, Application No. 16483/12, https://hudoc.echr.coe.int/fre?i=001-170054.

110 ECtHR, Judgment of 21 October 2014, *Sharifi and Others v. Italy and Greece*, Application No. 16643/09, https://hudoc.echr.coe.int/eng?i=002-10215.

111 A. Yarovyi, *What are Interim Measures (or Rule 39 order) of the European Court of Human Rights?*, last update: 26 September 2025, Collegium of International Lawyers, https://extraditionlawyers.net/blog/what-are-interim-measures-rule-39-order-at-ecthr.

ber States expressed their concerns in an open letter.[112] Most importantly, 27 States (including 19 EU members) signed a joint declaration[113] in December 2025 pointing at the Convention resulting in the protection of the wrong people and limiting the states' ability to decide whom to expel from their territories.

Is it time for EU Member States to leave the ECHR? Legally speaking, Article 58 of the Convention allows States parties to denounce the Convention with a six months' notice. Nonetheless, this would lead to a total withdrawal from the Convention as it is not possible to disapply some specific provisions or leave them temporarily. States could derogate from the protocols but except for Article 4 of Protocol 3 (prohibition of collective expulsions of aliens) and Article 1 of Protocol 7 (procedural safeguards relating to expulsion of aliens), none of them is decisive to change the course of migration and asylum.

Otherwise, Article 15 of the ECHR, which is rarely invoked, **allows Member States to temporarily derogate from certain rights and obligations in exceptional circumstances** like wars or a state of emergency threatening the life of the nation. It is time to consider that clause to address a serious migratory pressure or a security crisis triggered by migratory flows is indeed tantamount to a national threat. Alternatively, Member States could adopt a **collective interpretative** declaration on how ECHR rights apply in large-scale migration, which, though not binding, would possibly guide the Court's approach. However, it is unlikely that the Court will reassess its consolidated case/law at the light of a non-binding document agreed upon by the States.

For all those reasons, and unless a political compromise is quickly agreed upon for the States in need to recover a substantial margin of maneuver to control their borders, triggering Article 58 of the Convention remains the most realistic option to enable States to take back control.

Finally, it is obviously of the essence that the European Union refrains from joining the ECHR. Although this is an obligation embedded in Article 6 paragraph 2 of the EU Treaty, the European Court of Justice blocked the accession process in its opinion 2/13[114] published in 2014.

Proposal 5. Derogate from the 1967 Protocol to the Geneva Convention

The development of international asylum law is largely based on the 1951 Geneva Convention, adopted in a post-war context, and its 1967 Additional Protocol, which extended its scope to all refugees worldwide, without any temporal or geographical limits. This shift transformed a tool for targeted protection into a vehicle for universalized migratory mobility, disconnected from the actual reception capacities of States and the reality of illegal migration. This open door is widely exploited and abused, including by criminal organizations of smugglers and traffickers.

112 Government of Italy, *Lettera aperta*, 22 May 2025, https://www.governo.it/sites/governo.it/files/Lettera_aperta_22052025.pdf.

113 *Joint Statement to the Conference of Ministers of Justice of the Council of Europe*, 10 December 2025, Gov UK, https://www.gov.uk/government/news/joint-statement-to-the-conference-of-ministers-of-justice-of-the-council-of-europe.

114 European Court of Justice, Opinion 2/13 of 18 December 2014, https://curia.europa.eu/juris/document/document.jsf?docid=160882&doclang=EN.

In practice, the obligation to receive all applications, guarantee a full investigation, respect the absolute principle of non-refoulement and provide a set of social rights to all persons recognized as refugees — regardless of their country of origin, mode of entry or geopolitical context — deprives Member States of any regulatory leeway. This constraint, combined with the effects of European law and the case law of the ECtHR, hinders the conduct of a rigorous asylum policy that is adapted to and consistent with the protection of hosting societies, their public safety and finances, and national interests.

In this context, it is necessary to reconsider a state's accession to the 1967 Protocol, which is a separate instrument from the Convention. Article IX of the Protocol explicitly authorizes its **unilateral denunciation**, with effect after twelve months. It would also be necessary to amend Article 78 of the TFEU accordingly through the **simplified amendment procedure** embedded in Article 48 paragraph 6.

Finally, Member States should also consider denouncing the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights as they both embed the distorted notion of "non refoulement." And totally reconsider the notion of "subsidiary protection" as it is the sources of countless abuses.

II. A NEW MIGRATION AND ASYLUM PARADIGM: A DRASTIC REDEFINITION OF THE CURRENT PRINCIPLES

Proposal 6. Restore Member States' competence to conclude readmission agreements

The European Union's common readmission policy is based primarily on agreements negotiated by the Commission with third countries, in accordance with Article 79(3) of the TFEU. However, this model failed: negotiations are lengthy, few agreements have been concluded with key countries, the "third state" clause remains a major stalemate and the EU does not use its funds as a leverage in the negotiations. Moreover, those agreements rarely take into account the diplomatic ties and strategic interests of Member States. So far, the EU concluded 18 readmission agreements since 2004, yet only one in Africa with Cape Verde.[115]

In that field, the EU's action proved to be a fiasco, it is obviously not the most suitable level to achieve tangible results. **Member States should therefore recover their competences in the negotiation and conclusion of readmission agreements with third countries**. Bilateral agreements are more agile and flexible: accelerated identification procedures, binding readmission deadlines, automatic return mechanisms, enhanced consular cooperation and administrative cooperation

115 In addition to the 18 binding readmission agreements, there are 6 non-binding readmission agreements, plus other international instruments such as the Samoa Agreement. There are also bilateral readmission agreements (e.g., Benelux and Suriname, February 2025).

built on mutual trust. This change will make it possible to return to a more flexible, faster and more pragmatic state-to-state approach.

Proposal 7. To legally condition EU funding to the effective cooperation of third countries in migration, especially on return and readmission

The European Union currently provides official development assistance through instruments such as the NDICI Global Europe (the EU's single instrument for neighborhood, development and international cooperation) or AMIF (Asylum, Migration and Integration Fund), without requiring effective cooperation on the readmission of their own nationals.

To remedy this anomaly, the EU legislation shall **enact a legally binding principle of conditionality**, based on Article 208(1) TFEU (cooperation based on the interests of the Union) and Article 21 TEU (consistency of external action with the Union's internal objectives). This mechanism must be mainstreamed into the European financial regulations in order to prohibit any disbursement without tangible evidence of cooperation on migration in general and readmission in particular. EU financing agreements with third countries, either bilateral or multilateral, must include mandatory clauses on readmission cooperation, accompanied by automatic sanctions or withdrawal of benefits in the event of non-compliance. Cooperation indicators will include the rate of issuance of laissez-passer, the number of returns accepted, the speed of consular responses and the effective availability of partner authorities. This mechanism will make neighborhood and development aid a genuine incentive, **restore the political credibility of the EU and its Member States vis-à-vis third countries** and ensure the responsible use of public funds. The principle is clear: no financial support can be maintained in the absence of effective cooperation on the return and readmission of illegal migrants.[116]

Proposal 8. Allow long-term detention of illegal migrants awaiting expulsion

Directive 2008/115/EC (the "Return Directive"), strictly regulates the use of administrative detention of third country nationals. It can only be used as a last resort, in a strictly proportionate manner and for a limited period. This approach, strongly influenced by the case law of the European Court of Justice[117] — has led to an increased number of absconding, long-term illegality, the impossibility to carry out forced returns, and a loss of credibility for the public authorities.

Aware of these shortcomings, the European Commission itself proposed in March 2025 to repeal the Return Directive outright, while centralizing additional areas, in particular by creating a uni-

116 The European Commission proposal for the Multiannual Financial Framework for the years 2028 to 2034 includes a suspension clause (Article 12(3) of the proposal for a Regulation establishing Global Europe, 16 July 2025) that grants the European Commission the power to suspend payments or the implementation of a program if a country fails to readmit its nationals, but the suspension will never affect humanitarian assistance. At this stage, although this is a positive sign, caution is advised, as it is only a proposal and not an actual measure.

117 See in particular the Court of Justice of the European Union (CJEU), Judgment of the Court (Grand Chamber) of 30 November 2009, *Said Shamilovich Kadzoev (Huchbarov)*, Case C-357/09 PPU, https://curia.europa.eu/juris/liste.jsf?language=en&num=C-357/09.

fied return decision system. This might be the right diagnosis but the wrong remedy. A centralized EU policy on return has proved to be a downright failure and Member States must therefore regain their competence in that field and **decide about the administrative or judicial detention of illegal migrants without any interferences from the EU**, including from the European Court of Justice and its case-law.

Proposal 9. Outsource the treatment of asylum requests to safe third countries

The European legal framework on asylum, established by Directives 2011/95/EU (qualification),[118] 2013/32/EU (procedure)[119] and 2013/33/EU (reception),[120] requires Member States to examine all asylum applications lodged on their territory. This system is widely abused by illegal migrants who are neither eligible for asylum nor entitled to the corresponding benefits. This penalizes real refugees and turns asylum into a boulevard for illegal migration as, once in Europe, fake asylum seekers are very unlikely to be returned.

In order to break this vicious cycle, Member States should have the opportunity to establish a mechanism to outsource asylum requests to safe third countries following the Australian (Nauru) or British (protocol with Rwanda)[121] models. This mechanism would allow **asylum applications to be outsourced to a third country through a bilateral agreement**, including when they are lodged at the border or on the territory of a Member State. It will be for each Member State to decide to choose the third country where asylum seekers will be safely returned.[122]

118 Directive 2011/95/EU of 13 December 2011 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (Recast), https://eur-lex.europa.eu/eli/dir/2011/95/oj/eng.

119 Directive 2013/32/EU of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection (Recast), https://eur-lex.europa.eu/eli/dir/2013/32/oj/eng.

120 Directive 2013/33/EU of 26 June 2013 Laying Down Standards for the Reception of Applicants for International Protection (Recast), 2013, https://eur-lex.europa.eu/eli/dir/2013/33/oj/eng.

121 Following the UK general election in 2024, the new Labour government led by Keir Starmer canceled the Rwanda plan, but Rwanda has opened the door to reviving its migrant deportation scheme with Britain if Nigel Farage becomes Prime Minister: G. Heffer, *Rwanda Ready to Revive Migrant Deal if Nigel Farage Becomes Prime Minister*, Daily Mail, 23 July 2024, https://www.dailymail.co.uk/news/article-15039751/Rwanda-revive-migrant-deal-Nigel-Farage-PM-UK-pays-50m-Taliban-says-ready-willing-work-Reform-UK-taking-migrants-Britain.html.

122 A new EU legal framework on asylum has been adopted recently and is already in force, while still not applicable until 2026: Regulation (EU) 2024/1347 (qualification: this Regulation shall apply from 1 July 2026), Regulation (EU) 2024/1348 (procedures: this Regulation shall apply from 12 June 2026.), and Directive (EU) 2024/1346 (reception: with effect from 12 June 2026). Articles 60 and 62 of the Regulation (EU) 2024/1348 (procedures) foresee an EU list of "safe third countries" and "safe countries of origin." But, while there is competence for a national authority to have its own list of safe third country or safe country of origin, the EU can limit the autonomy of Members States to elaborate their own national lists (Article 64.2). On the other hand, the European Commission has proposed a Regulation amending Regulation (EU) 2024/1348 as regards the application of the "safe third country" concept. The proposed Regulation establishing a common system for the return of third-country nationals staying illegally in the Union includes the possibility to create return hubs in third countries, but only "to return third-country nationals who have been issued a return decision to a third country with which there is an agreement or arrangement for return ('return hubs')" (Preamble).

Proposal 10. Amend the Schengen Borders Code to erase legal uncertainties, especially regarding abusive claims of "refoulement"

The Schengen Borders Code[123] strictly regulates the procedures for controls at the external borders of the Union. Article 4 requires Member States to respect fundamental rights,[124] in particular the principle of non-refoulement, and treat every border check individually. Article 7 provides that any measures taken by border guards "in the performance of their duties shall be proportionate to the objectives pursued by such measures." These principles have been interpreted particularly broadly by the case law of the ECJ,[125] less so by the ECtHR[126].

In practice, those provisions and their judicial interpretation prevent border guards from carrying out basic border control operations, i.e., to impede the crossing of a border outside the legal entry points. Hence, the Schengen Border Code in general, and those two provisions in particular shall be **amended accordingly and clear any legal ambiguity regarding the core tasks of border guards**.

Proposal 11. Limit the right of free movement within Schengen to European citizens

Within the Schengen area European citizens circulate freely without internal controls among 29 States. Third-country nationals legally residing in one of them, too. Hence, refugees, stateless persons and beneficiaries of subsidiary protection do also have the right to move within this area without being subject to passport control, but asylum seekers do not.

Schengen is an important achievement and one the majority of Europeans support. Nonetheless, the absence of controls is problematic in several ways. First, it enables illegal migrants, among them rejected asylum seekers, to move within this area without being entitled to do so. Second, it leads to secondary movements, i.e., the movement of refugees, asylum seekers or beneficiaries of international protection from the country where they first arrived in the EU to another Member States, driven by factors like economic opportunities, social welfare benefits and the presence of diasporas. Schengen, despite its acceptance among Europeans, inexorably fuels illegal migration.

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123 Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across border, https://eur-lex.europa.eu/eli/reg/2016/399/oj/eng.

124 "When applying this Regulation, Member States shall act in full compliance with relevant Union law, including the Charter of Fundamental Rights of the European Union ('the Charter'), relevant international law, including the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 ('the Geneva Convention'), obligations related to access to international protection, in particular the principle of non-refoulement, and fundamental rights. In accordance with the general principles of Union law, decisions under this Regulation shall be taken on an individual basis."

125 In C-23/12, *Zakaria* (2013), in C-83/12, *Rahmanian Koushkaki* (2013), in C-188/10 and C-189/10, *Melki and Abdeli* (2010), in C-808/18, *Commission v. Hungary* (2020), in C-368/20, *Staatssecretaris van Justitie en Veiligheid* (2022), and finally, in C-72/22, *Bundesrepublik Deutschland* (2023).

126 On non-refoulement (Article 3 ECHR and Protocol 4 Article 4) ECtHR has been very strict (*Hirsi Jamaa, M.S.S., Tarakhel*), no proportionality balancing is allowed against the risk of ill-treatment. On proportionality in border management: ECtHR has been more cautious and deferential to states, accepting restrictive practices when framed as necessary for border control (*ND & NT, Khlaifia*).

Restoring borders among those 29 States is not an option. But limiting the right to circulate freely to European citizens only is, as it would strike a **better balance between free movement and controlling illegal migration**. Under that scenario, the citizens of the 29 Schengen States will fully enjoy the right to circulate but each government will unilaterally decide what third country nationals legally residing in the Schengen area are entitled to enter their territory without a passport or a visa. In that fashion, the Schengen States will choose what foreigners enter their territory.

To enforce this new system, all Schengen States would agree on a **common system of sanctions ranging from the imposition of fines to the revocation of residence permits, refugee status or international protection statute against those circulating illegally in that area**. This new regime would be more difficult to implement in internal land borders and would arguably lead to more frequent checks, but less so in airports and ports. Moreover, a strict system of sanctions would have deterrent effects and will inexorably decrease illegal migration within the Schengen area.

In the same vein, in order to limit the rights to European citizenship to European citizens, EU Member States shall consider a deep overhaul of the existing EU legislation conferring similar rights, if not the very same, to third country nationals, starting with the long-term residence directive[127] (currently under review)[128] and the Directive 2004/38/EC[129] on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

Proposal 12. As a general rule, prohibit asylum applications lodged after illegally entering the territory of the Union

The current European asylum system allows third country nationals, including those who have entered the territory of the Union illegally, to lodge an application for asylum or international protection. This situation is widely exploited by organized networks (sometimes with the complicity of NGOs) which advise illegal migrants to lodge an asylum request with the sole purpose of delaying their removal and becoming overstayers. It is therefore necessary to explicitly **prohibit, as a rule, lodging an asylum application after entering illegally into the territory of the Union** and only allowing it as an exception duly defined by national law. Moreover, in line with Article 31 of the Geneva Convention, asylum seekers who do not present themselves without delay to the authorities and show good cause for the illegal entry should be automatically deprived of any legal possibility to benefit from asylum or subsidiary protection.

127 Directive 2003/109/EC of 25 November 2003 Concerning the Status of Third-Country Nationals Who Are Long-Term Residents, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02003L0109-20110520.

128 European Commission, Proposal for a Directive of the European Parliament and of the Council Concerning the Status of Third-Country Nationals Who Are Long-Term Residents (Recast), 2022, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0650.

129 Directive 2004/38/EC of 29 April 2004 on the Right of Citizens of the Union and Their Family Members to Move and Reside Freely Within the Territory of the Member States, https://eur-lex.europa.eu/eli/dir/2004/38/oj/eng.

Finally, the prohibition from requesting asylum after illegally entering the EU's territory would not prevent displaced persons fleeing their country for real exceptional circumstances seeking protection under the Temporary Protection Directive.[130] This European legislation has been activated for the first time in March 2022 in response to Russia's attack on Ukraine, granting Ukrainian nationals rights to residence, work, accommodation, social welfare, and medical care. **This mechanism should be limited to EU neighboring countries and triggered by unanimity**, which is not the case now.

Proposal 13. Radically amend the Search and Rescue (SAR) framework and prohibit any connivance with smugglers and traffickers

It's urgently needed to change the approach to the Search and Rescue (SAR) framework[131] in order to close loopholes that have turned humanitarian obligations into an uncontrolled migration channel. Current practice allows illegal arrivals to use SAR operations as a de facto route into the Union, undermining border control and incentivizing smugglers. A new framework must clearly reaffirm that the duty to rescue does not equate to a right of entry into EU territory.

SAR responsibilities should be **limited to the immediate humanitarian objective**: saving lives and ensuring disembarkation in the nearest safe port. This will end the automatic transfer of rescued persons to European ports and restore Member States' capacity to manage their borders.

The role of private and non-governmental vessels must also be regulated. Such vessels should operate strictly under the coordination of the competent coastal authority and may not disembark rescued persons in the EU without explicit authorization. Any breach of this rule must carry penalties including the confiscation of vessels.

Cooperation with North African coastal states is essential. These states should be made primarily responsible for rescues within their own SAR zones, in line with international conventions. EU financial and technical support must be conditional on effective border control measures and credible action to prevent departures. Partnerships should be built on accountability, not unconditional transfers of responsibility to the EU.

Proposal 14. Deprive the EU of any competence on family reunification and integration policies

Family reunification remains a significant vector of migration to the EU. Since decades, it enabled millions of third country nationals to settle in the European thanks to very flexible

130 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

131 SAR operations are governed by binding international treaties, including the International Convention for the Safety of Life at Sea (SOLAS, 1974), the United Nations Convention on the Law of the Sea (UNCLOS, 1982), and the International Convention on Maritime Search and Rescue (SAR Convention, 1979).

criteria of eligibility and the generous rights it confers to third country nationals. Currently, family reunification has been harmonized at European level and is regulated in a Directive of 2003[132] and it covers the relatives of the migrants legally residing in the EU, including parents or in-law parents. Hence, this Directive on family reunification unduly restricts the capacity of Member States to define admission conditions for third-country nationals on their own territory. Moreover, there is no added value to address this policy at EU level, and it is therefore in breach of the principle of subsidiarity. It is therefore necessary to **abolish any EU competence in that field** (including the relevant case-law of the European Court of Justice) to the benefit of Member States.

The same should apply to the accompanying competences the EU holds on integration of migrants, which is by essence a national policy. Apart from bringing no added value, the EU's record sheet in that field is controversial as its policies, projects and funding are tainted by ideology and an excessive influence of so-called "NGOs." Hence, apart from deleting any legal basis on integration in the Treaty of Functioning of the European Union and repealing any secondary legislation, no **EU funds (in particular AMIF) shall fund any initiative related to the integration of migrants**.

Proposal 15. Earmark European funding for border infrastructure, especially fences

The Integrated Border Management Fund provides financial support for border control, visa policy and related measures. However, it does not clearly earmark funding for physical border infrastructure such as fences, despite repeated requests from Member States facing exceptional migratory pressure and hybrid threats. However, several Member States (Poland, Hungary, Spain or Greece), have built fences and other infrastructure that are crucial in keeping the EU external border. This anomaly should be corrected, and **EU funds shall partially cover those costs**, if not entirely and the current financial framework shall be amended so that physical infrastructure of any type, including secure fences, are eligible under the AMIF fund.

In 2021, twelve Member States ask Commission to finance "physical barriers" as border protection measures, arguing that "recent developments at the external borders of the European Union (EU) indicate that the EU needs to adapt the existing legal framework to the new realities, enabling us to adequately address attempts of instrumentalization of illegal migration for political purposes and other hybrid threats,"[133] but this debate is even older, knowing that in 2017 the Hungarian government asked for the first time[134] the EU to finance border wall construction, a request rejected by the Commission.[135]

132 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

133 A. Brzozowski, *Twelve Member States Ask Commission to Finance Physical Barriers as Border Protection Measures*, Euractiv, 8 October 2021, https://www.euractiv.com/section/politics/news/twelve-member-states-ask-commission-to-finance-physical-barriers-as-border-protection-measures.

134 In 2023, Hungarian Finance Minister Mihály Varga has asked the European Union to reimburse Hungary for the money it has spent on protecting the external border which led to EU Commissioner to Finally Visit the Southern Hungarian Border Fence: *EU Commissioner Finally to Visit the Fence on Our Southern Borders*, Hungary Today, 27 May 2024, https://hungarytoday.hu/eu-commissioner-finally-to-visit-the-fence-on-our-southern-borders.

135 *European Union Rejected Hungary's Demand to Finance Border Fence*, LibertiesEU, 4 September 2017, https://www.liberties.eu/en/stories/european-union-rejected-hungary-s-demand-to-finance-border-fence-sn-19951/38603.

On that question, the EU's position seems to evolve. In its proposal for the 2028-2034 European budget, the Commission proposed to triple the funds for migration, border management and internal security,[136] but it remains unclear if the funding of physical barriers will be authorized. On 31 August 2025, during a visit to Poland, on the Belarusian border, the President of the Commission stated that "Member States with a direct border with Russia and Belarus will receive additional EU funding."[137] This appears to be a green light for the funding of physical barriers, but nevertheless leaves room for doubt, especially since there is a risk that a double standard will be applied to the allocation of funds, favoring Poland over Hungary, for example.

III. RECONSIDER THE ROLE OF THE CIVIL SOCIETY

Proposal 16. Keep Frontex as an agency meant to help Member States, not to control them; remove any presence of "NGOs" in internal structures

Created to support Member States in managing their external borders, the European Border and Coast Guard Agency (Frontex) have gradually evolved into a body that controls Member States more than it supports them. Moreover, it is often paralyzed by the excessive interference of external NGOs seating in its advisory bodies and the internal conflicts triggered by the Fundamental Rights Officer.

Frontex must be refocused on its original mission: providing operational, logistical and technical support to Member States while they control their borders. This requires a thorough **reform of its functioning: reformulation of its mandate**, removing any ambiguity regarding the legality of the tasks of border guards, exclusion of NGOs from its internal structures, suppression of the positions of Executive Director on fundamental rights-related issues and the Fundamental Rights Officer. Frontex' compliance with fundamental rights should not follow an exceptional regime and shall be subject to the usual channel, like other EU Agencies. Nonetheless, given the special nature of Frontex's missions, they should be subject to internal inspections in a similar fashion to national border guards are. If those reforms fail and the Member States trust in Frontex is not restored, then Member States shall consider abolishing Frontex and start a bilateral cooperation on border control.

136 European Commission, *EU 2028–2034 Proposed Budget Triples Funds for Migration, Border Management and Internal Security*, 17 July 2025, https://home-affairs.ec.europa.eu/news/eu-2028-2034-proposed-budget-triples-funds-migration-border-management-and-internal-security-2025-07-17_en.

137 European Commission, *Statement by President von der Leyen with Polish Prime Minister Tusk*, 31 August 2025, https://ec.europa.eu/commission/presscorner/detail/et/statement_25_2001.

Proposal 17. Subject organizations receiving European funds to strict rules on transparency, traceability and accountability

As the European Court of Auditors recently evidenced, the financing of NGOs by the European Union often escapes rigorous control. However, some of these organizations devote all or part of their activities to circumvent and undermine adopted legislation. Some groups carry out search and rescue (SAR) operations, providing information and even logistical assistance for illegal entry and, even worse, are suspected of connivence with traffickers and smugglers.

It is therefore necessary to **make all European funding conditional on strict obligations of transparency, traceability of funds and accountability**. An **independent audit** of public funding, accompanied by a **public register of beneficiaries**, will ensure that taxpayers' money is not used for illegal purposes. Furthermore, a **legal liability clause** must be included in funding agreements: any activity facilitating illegal immigration, even under the guise of humanitarian action, must expose the organization concerned to prosecution, including criminal prosecution. The aim is not to question the legitimacy of humanitarian aid, but to prevent any militant exploitation of European public funds.

Proposal 18. Prohibit direct or indirect funding of organizations promoting or facilitating illegal migration

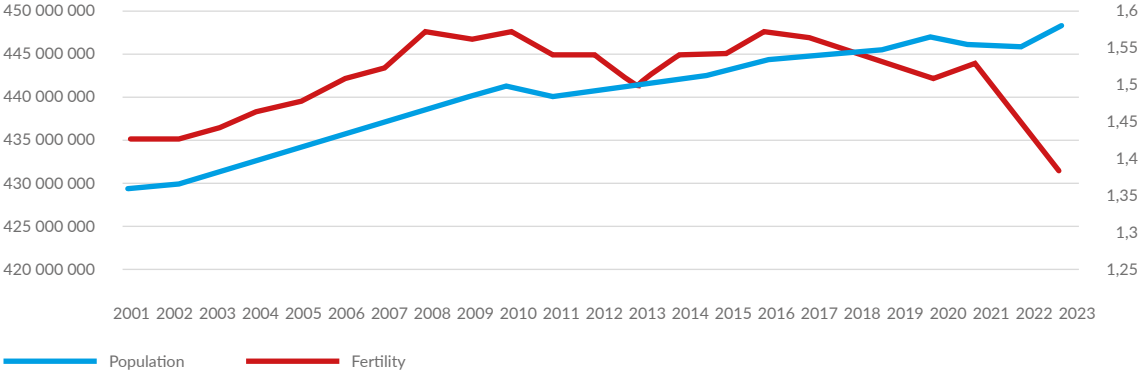
Beyond the simple requirement of transparency, the European Union must expressly **prohibit the direct or indirect funding of organizations that promote or facilitate illegal immigration**. This implies not only revising the eligibility criteria for public funds but also strengthen ex post control mechanisms to detect any circumvention and, possibly, prosecute them.

Intermediaries, in particular public institutions, foundations or agencies that redistribute European funds, must also be held accountable by requiring them to ensure that the projects they support are in line with the objectives of the EU's migration policy. No public funding should contribute to encouraging violations of the rights of foreigners or undermining Member States' efforts to control migration flows.

KEY FIGURES ON MIGRATION AND ASYLUM

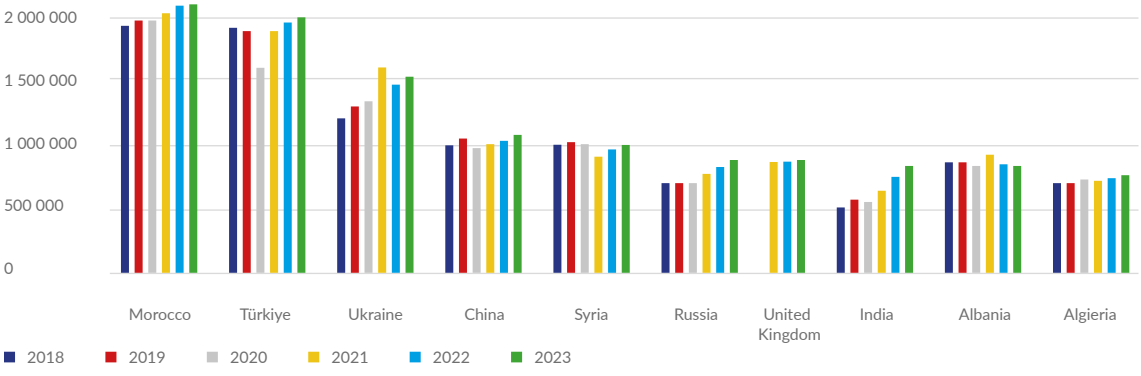
(Source: Eurostat and Frontex)

Figure 1. Total population and fertility rate of EU27



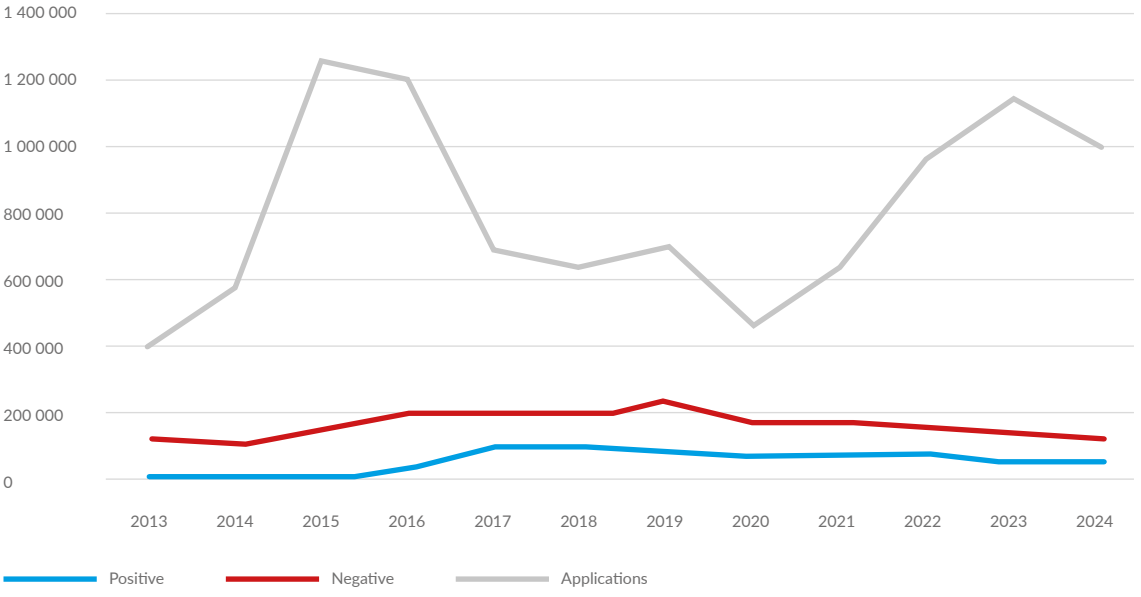
Source: Eurostat, *EU Population Increases for the 4th Consecutive Year*, 11 July 2025, https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20250711-1.

Figure 2. Stock of residence permits granted in the EU for the top 10 countries of non-EU citizenships, 2018–2023



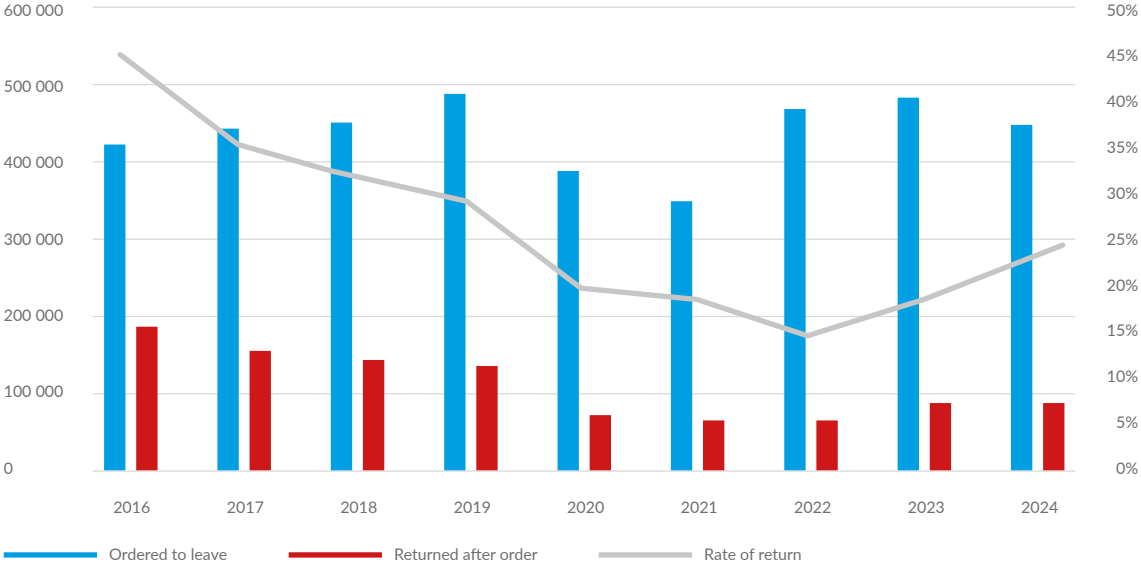
Source: Eurostat, *Stock of Valid Residence Permits by Reason, Length of Stay and Citizenship (migr_resvalid)*, https://ec.europa.eu/eurostat/databrowser/view/migr_resvalid/default/table?lang=en.

Figure 3. Asylum applications, approvals, and rejections in EU27 over the last decade



Source: Eurostat, *Final decisions on applications by citizenship, age and sex – annual data (migr_asydcfina)*, https://ec.europa.eu/eurostat/databrowser/view/MIGR_ASYDCFINA/default/table?lang=en.

Figure 4. Effective returns of third country nationals after ordered to leave



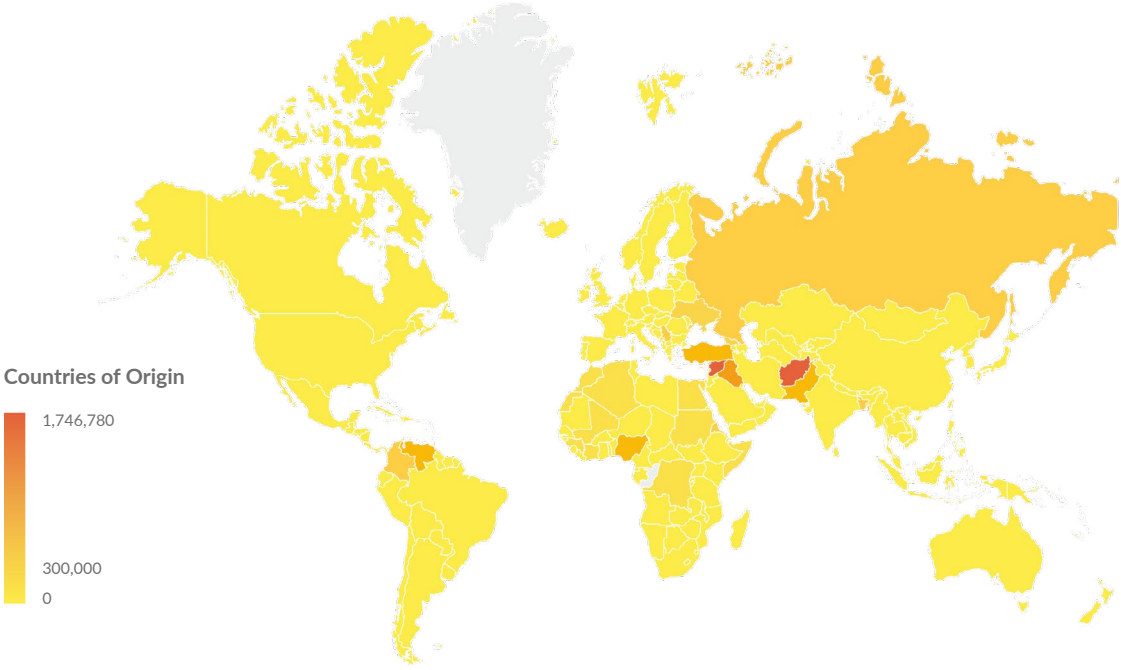
Source: Eurostat, *Third-Country Nationals Ordered to Leave — Annual Data (migr_eiord) and Third-Country Nationals Returned Following an Order to Leave — Annual Data (migr_eirtn)*, European Commission, 2024, https://ec.europa.eu/eurostat/databrowser/view/migr_eiord/default/table?lang=en and https://ec.europa.eu/eurostat/databrowser/view/migr_eirtn/default/table?lang=en; own calculation.

Table 1. Top 20 Countries of Origins of Asylum Seekers in EU27 (2014-2024)

Rank	Country	Number of asylum applicants	Rank	Country	Number of asylum applicants
1.	Syria	1,746,780	11.	Eritrea	200,465
2.	Afghanistan	1,026,255	12.	Russia	185,250
3.	Iraq	518,240	13.	Somalia	183,200
4.	Pakistan	332,980	14.	Iran	181,110
5.	Venezuela	329,125	15.	Georgia	169,375
6.	Türkiye	318,420	16.	Ukraine	156,975
7.	Nigeria	267,655	17.	Kosovo*	155,815
8.	Colombia	249,385	18.	Morocco	145,630
9.	Bangladesh	240,925	19.	Guinea	142,600
10.	Albania	224,460	20.	Serbia	113,355

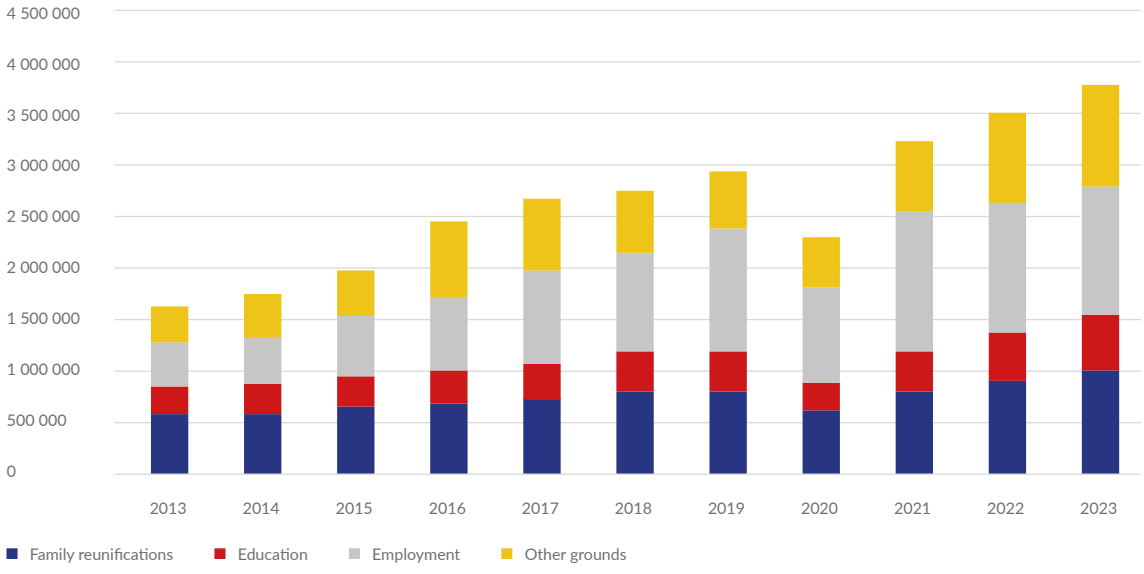
Source: Eurostat, *Asylum Applications by Citizenship, Age and Sex – Annual Data (migr_asyappctza)*, European Commission, 2024.

Figure 5. Countries of Origins of Asylum Seekers in EU27 (2014-2024)



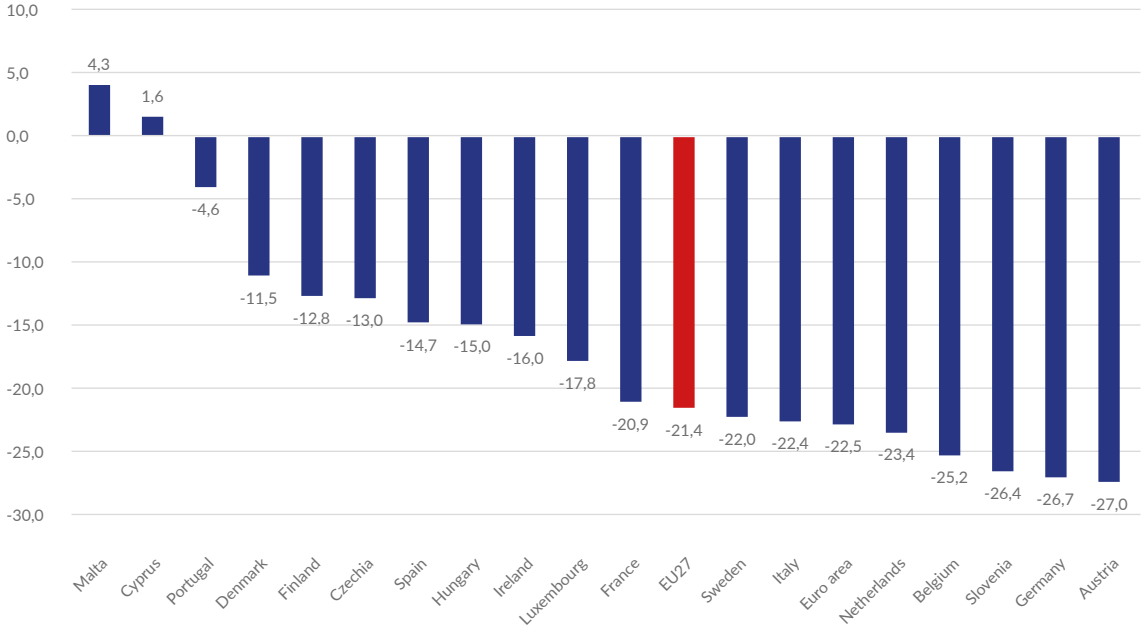
Source: Eurostat, *Asylum Applications by Citizenship, Age and Sex – Annual Data (migr_asyappctza)*, European Commission, 2024.

Figure 6. First residence permits granted in the EU from 2013 to 2023 by reasons



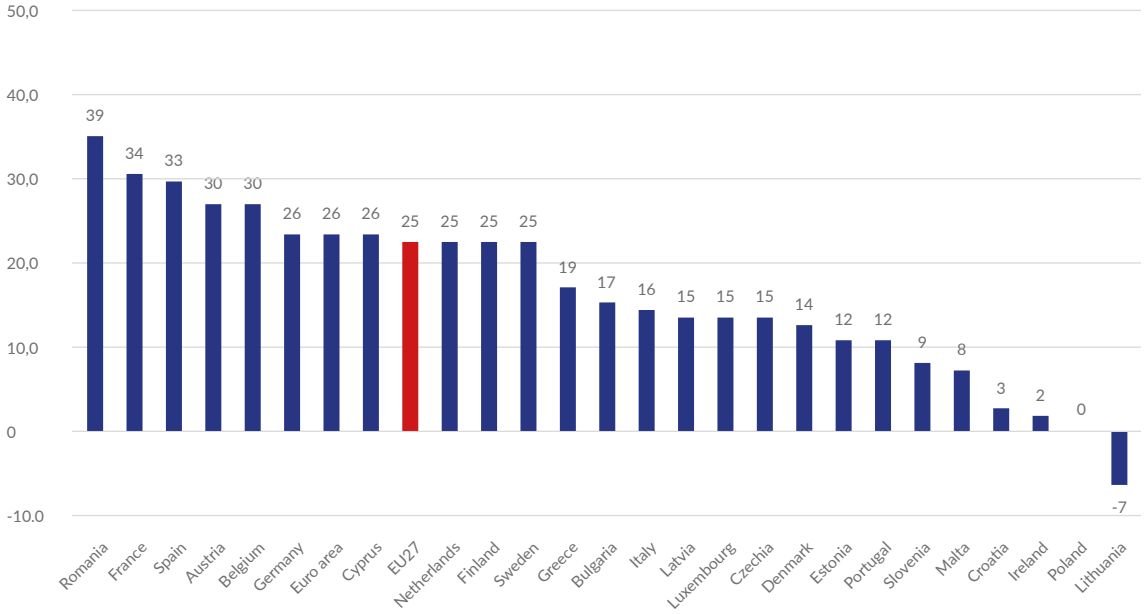
Source: Eurostat, *First Permits Issued for Residence by Reason — Annual Data (migr_resfirst)*, European Commission, 2024, https://ec.europa.eu/eurostat/databrowser/view/tps00170__custom_17884164/default/table.

Figure 7. Difference of employed immigrants with EU27 and non-EU27 citizenships in 2024



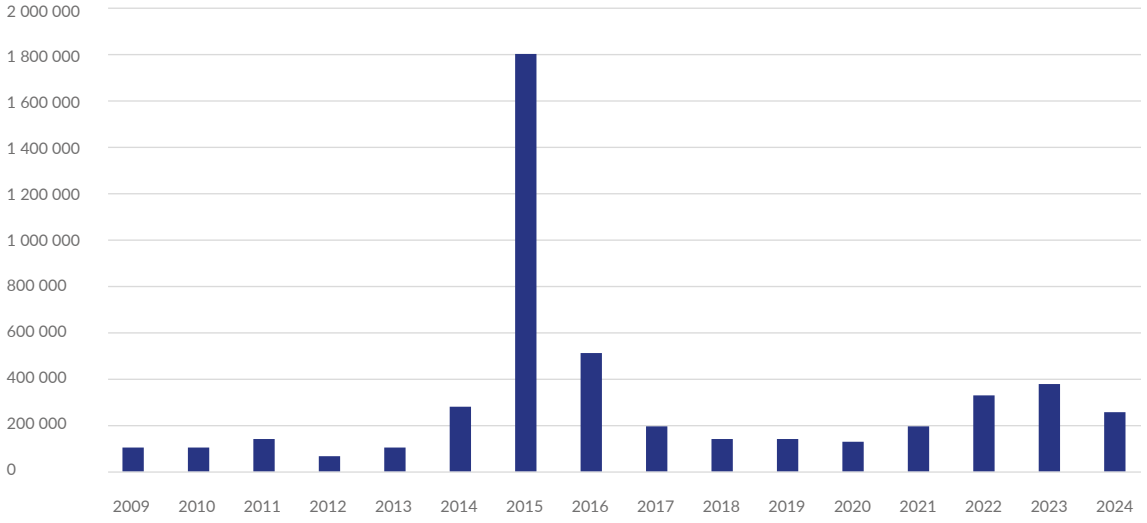
Source: Eurostat, *Employment Rates by Sex, Age and Citizenship (lfst_rimgenga)*, European Commission, 2024, https://ec.europa.eu/eurostat/databrowser/view/lfst_rimgenga$defaultview/default/table.

Figure 8. Proportion of non EU National at risk of poverty compared to the nationals of the countries where they live in 2024



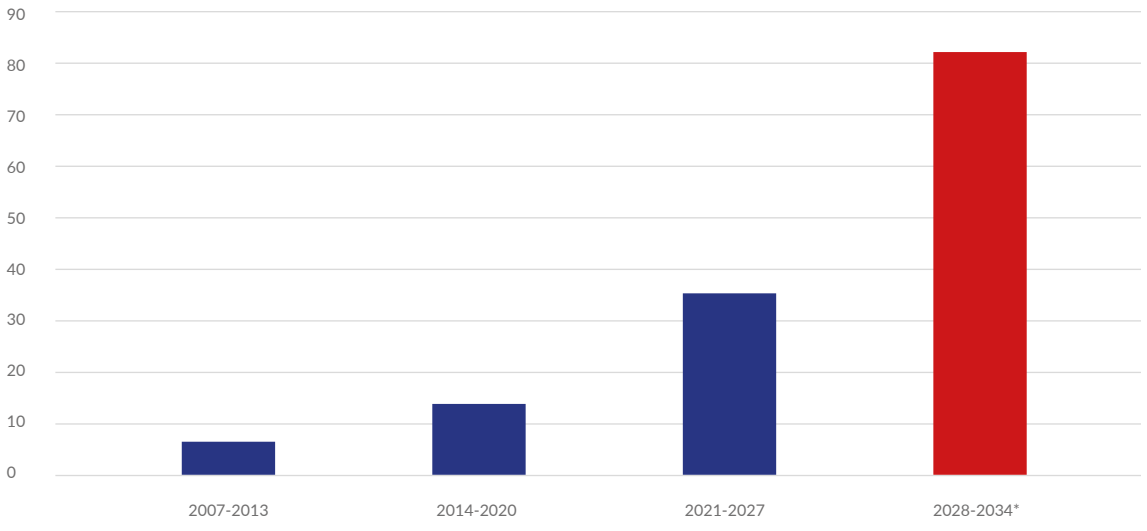
Source: Eurostat, *Persons at Risk of Poverty or Social Exclusion by Group of Citizenship (Population Aged 18 and Over) (ilc_peps05n)*, European Commission, custom extract, accessed October 2025, https://ec.europa.eu/eurostat/databrowser/view/ilc_peps05n__custom_17884932/default/table.

Figure 9. Number of illegal crossings from 2009 to 2024



Source: Frontex, *Migratory Routes – Irregular Border Crossings Detected at EU External Borders (Data for 2024–2009)*, https://www.frontex.europa.eu/what-we-do/monitoring-and-risk-analysis/migratory-routes/migratory-routes/.

Figure 10. EU Migration Spending Over the Last 3 Budgetary Periods



* The formal proposal drafted by the EC for the Multiannual Financial Framework (MFF) includes a "sizeable increase" of the AMIF, BMVI and ISF funds, tripling their subsidies.

Source: European Commission, *Framework Programme on Solidarity and Management of Migration Flows for the Period 2007–2013; Asylum, Migration and Integration Fund (AMIF) 2014–2020; Asylum, Migration and Integration Fund (AMIF) 2021–2027; and EU 2028–2034 Proposed Budget Triples Funds for Migration, Border Management and Internal Security*, 17 July 2025. Available at:
https://eur-lex.europa.eu/EN/legal-content/summary/framework-programme-on-solidarity-and-management-of-migration-flows-for-the-period-2007-2013.html;
https://home-affairs.ec.europa.eu/funding/asylum-migration-and-integration-funds/asylum-migration-and-integration-fund-2014-2020_en;
https://home-affairs.ec.europa.eu/funding/asylum-migration-and-integration-funds/asylum-migration-and-integration-fund-2021-2027_en;
https://home-affairs.ec.europa.eu/news/eu-2028-2034-proposed-budget-triples-funds-migration-border-management-and-internal-security-2025-07-17_en.

Europe is facing an unprecedented legal crisis that is depriving member states of their ability to protect their own borders and citizens.

After years of a common EU migration and asylum policy, the system has completely collapsed. The Schengen area has turned into a sieve through which illegal migrants move freely. Return procedures for illegal migrants are largely illusory: only twenty-five percent of rejected migrants actually leave the Union. Meanwhile, overlapping international obligations have made effective border protection almost impossible from a legal standpoint. To make matters worse, European taxpayers are financing NGOs that directly facilitate illegal migration and obstruct effective border control.

Given the total failure of the European Union's common migration and asylum policy, further reforms within the current EU framework are no longer possible. A fundamental paradigm shift is needed — the restoration of migration sovereignty to nation-states, which alone possess the democratic legitimacy to decide who has the right to enter and reside on their territory.

The renationalization of migration policy is no longer an option; it is a necessity. The alternative is a complete loss of control over Europe's borders and the definitive end of our ability to manage our own territory.

The time for debate is over. The time for decisive action is now.

Jerzy Kwaśniewski
Attorney, President and co-founder of the Ordo Iuris Institute for Legal Culture

ISBN 978-83-68888-15-7
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