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Why Security-Based Policies on Migrants Do Not Work: A Case Study

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- A CJEU judgment in two joined cases has clarified that each EU Member State may designate safe countries of origin but must comply with the Directive's criteria and ensure effective judicial protection. Judges must be able to verify the accuracy and currency of the information on which the designation is based, including by acquiring new data. The sources used for classification must also be accessible and reliable. A country can only be considered 'safe' if it is safe for everyone, with no exceptions for certain categories.
- The EU has adopted an increasingly security-focused approach to migration, restricting asylum and tightening the system. However, recent reports (Draghi and Letta) and ECB data show that legal migration is crucial for offsetting demographic decline, supporting growth, and strengthening European competitiveness.
- The EU's security-based approach to migration is ineffective and contrary to the law. The CJEU has reiterated that security and the protection of human rights must coexist, and that even migrants who illegally enter in the EU are still entitled to the fundamental rights guaranteed by the EU Charter and the ECHR.
- Rather than restrictive migration policies, which fail to curb populism and undermine human rights, the EU needs multi-level strategies that balance security and dignity, respect the principles of non-refoulement and individual assessment, and guarantee humane conditions in reception centres. International cooperation and the opening of legal entry channels could reduce irregular migration while supporting the economy and security.

Content

Key points

1. The court of first instance in Rome suspended an asylum procedure and referred four questions to the Court of Justice of the European Union (CJEU) regarding a decree-law which classified Bangladesh as a safe country of origin. The Italian judges argued that the decree did not comply with Directive 2013/32. They claimed that it designated countries as safe without providing verifiable sources or criteria, thereby limiting the right to defence and judicial review. Furthermore, it allowed exceptions for unprotected categories, which contradicts EU case law.

2. In a judgment in two joint cases, the CJEU has clarified that Directive 2013/32 remains applicable until 11 June 2026, as Regulation 2024/1348 will only enter into force on 12 June 2026. Each State may designate safe countries of origin but must comply with the Directive's criteria and ensure effective remedy. Judges must be able to verify the accuracy and currency of the information on which the designation is based, including by acquiring new data. The sources used for the designation must also be accessible and reliable. A country can only be considered 'safe' if it is safe for everyone, with no exceptions for certain categories.

3. The Italian government has criticised the ruling, deeming it detrimental to political autonomy and national migration policies, particularly with regard to repatriation and facilities in Albania. However, according to Amnesty International, the ruling protects the rights of asylum seekers.

4. While the ruling strengthens the right of asylum seekers to effective remedy, it also introduces operational complexities. For example, judges may now rely on information from sources other than official ones when assessing the safety of a country. However, they must verify the reliability of this information and respect the adversarial process. While this broadens the scope of legitimacy checks, it also risks creating conflicts between the judiciary and political authorities, as well as inconsistencies in national decisions.

5. In April/May 2025, the EU Commission proposed amending Regulation 2024/1348 on 'safe countries' by introducing more flexible definitions and the first EU list of safe countries, which includes Bangladesh, India and Tunisia. These proposals allow for accelerated procedures and derogations for countries that are only partially safe. This has prompted strong criticism from NGOs, who see the proposals as detrimental to asylum rights and as an attempt to outsource the management of migrants.

6. The EU has adopted an increasingly security-focused approach to migration, restricting asylum and tightening the system. However, recent reports (Draghi and Letta) and ECB data show that legal migration is crucial for offsetting demographic decline, supporting growth, and strengthening European competitiveness.

7. The EU's security-based approach to migration is ineffective and contrary to the law. The EU Court of Justice has reiterated that security and the protection of human rights must coexist, and that migrants, even those who are in the EU illegally, are still entitled to the fundamental rights guaranteed by the EU Charter and the ECHR. Attempts to externalise asylum to 'safe' countries cannot circumvent these legal constraints because respect for the right to an effective remedy and individual assessment remains essential.

8. Restrictive migration policies fail to curb populism and undermine human rights. What is needed are multi-level strategies that balance security and dignity, respect the principles of non-refoulement and individual assessment, and guarantee humane conditions in reception centres. International cooperation and the opening of legal entry channels can reduce irregular migration while supporting the economy and security.

Introduction

On 1 August 2025, the EU Court of Justice ruled that European institutions and Member States could not decide which migration policies to implement. In particular, the Luxembourg judges temporarily halted the EU's recent security-based strategy. After outlining the legal and political factors that led to the ruling, this analysis examines the legal, political, economic, and strategic feasibility of restrictive policies in the European Union. It highlights the challenges to their implementation and proposes a more comprehensive approach to migration policy that prioritises the interests of Member States and their economic and employment systems.

1. The case that led to the ruling by the EU Court of Justice

Two citizens of the People's Republic of Bangladesh were rescued at sea by the Italian authorities and taken to Albania, where they were detained in the Gjadër detention centre. This was in accordance with the protocol between the Italian and Albanian governments[1], under which the government of Tirana made two areas of Albanian territory available to the Italian Republic. These areas were subject to Italian jurisdiction and were treated as border or transit zones in which asylum seekers could be detained[2].

From this detention centre, on 16 October 2024, the two Bangladeshi nationals submitted applications for international protection to the Italian authorities. On 17 October 2024, these applications were rejected by the Territorial Commission for the Recognition of International Protection in Rome, following an accelerated border procedure, on the grounds that the two applicants came from a safe country of origin[3]. As the detention measures in the Albanian centre had not been validated by the competent Italian court, however, the applicants were released. Upon their arrival in Italy, on 25 October 2024, the two Bangladeshi nationals brought an action before the court of first instance in Rome against the decision to reject their applications for international protection.

2. Preliminary ruling referred by the court in Rome

The court of first instance in Rome expressed doubts about the Italian authorities' designation of the People's Republic of Bangladesh as a safe country of origin. It decided to suspend the proceedings and refer four questions to the Court of Justice of the European Union (CJEU) for a preliminary ruling[4]. The Italian court considered the resolution of these questions to be crucial in order for it to properly assess the asylum applications submitted by the two Bangladeshi citizens.

Firstly, the court in Rome pointed out that, following the entry into force of Decree-Law No. 158/2024[5], the list of safe countries of origin in the Italian legal system is set out in a legislative act[6]. The Italian

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1 Protocollo Tra il Governo Della Repubblica Italiana e il Consiglio dei Ministri Della Repubblica di Albania per il Rafforzamento Della Collaborazione in Materia Migratoria, refworld.org, 6.11.2023.

2 For information on the contents of the Italy-Albania Protocol and its conflicts with national and European law, see cepAdhoc 24/2024.

3 Giedrė Peseckytė, 12 migrants sent to Albania for processing are returned to Italy, Politico.eu, 19.10.2024.

4 Case C-758/24, Alace: Request for a preliminary ruling from the Tribunale ordinario di Roma (Italy) lodged on 4 November 2024 – LC v Commissione Territoriale per il riconoscimento della Protezione Internazionale di Roma – Sezione procedure alla frontiera II.

5 Decree-Law No 158 of 23 October 2044. Urgent provisions on procedures for the recognition of international protection.

6 Art. 2-bis paragraphs 2-4 Legislative Decree 25/2008, as amended by Decree-Law 158/2024.

legislature is thus empowered to establish the general regulatory framework for designating third countries as safe countries of origin, as well as to make such designations themselves. The referring court asks whether such designations made by legislative act comply with the requirements of Directive 2013/32 (also known as the Asylum Procedures Directive – APD).

Secondly, it should be noted that, following the amendment introduced by Decree-Law No. 158/2024, Italian legislation no longer contains any reference to the information sheets on third countries that were previously used by the Italian government when deciding to include those countries on the list of safe countries of origin. Nor does it mention the need to cite the sources from which that information was taken. Decree-Law No. 158/2024, which is now in force, defines the list of safe countries of origin by referring, in general, to 'findings from information sources provided by the relevant international organisations', without identifying those findings or sources. It merely provides that, for the purposes of periodically updating that list, the government shall adopt a report setting out the situation in third countries considered safe. According to the referring court, this would prevent those applying for international protection, and the courts before which they lodge any appeals, from challenging and reviewing the origin, authority, reliability, relevance, topicality, completeness and content of the information that led to a third country being designated as safe, in violation of the principle of effective remedy enshrined in Article 47 of the EU Charter[7].

Thirdly, the referring court asks whether Member States must allow national courts to use all relevant information at their disposal to verify the validity of the designation of a third country as a safe country of origin, regardless of whether the national authority making that designation has disclosed the information on which it relied. The referring court believes that the answer to this question should be in the affirmative in order to ensure that those applying for international protection have effective remedy where their applications are rejected during an accelerated procedure on the grounds that they come from a safe country of origin, as designated by Italian law.

Fourthly, it is pointed out that Decree-Law 158/2024 allows for the possibility of designating a country of origin as safe even though there are certain categories of persons for whom it would not be considered safe. According to the referring court, this exception would not be in line with current CJEU case law[8], which precludes countries from being considered safe where the safety of certain categories of persons is not guaranteed. This leads the court to ask the CJEU whether Italian legislation complies with European case law on safe countries.

[7] Art. 47 Charter of Fundamental Rights of the European Union: (Right to an effective remedy and to a fair trial): "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."

[8] Judgment of 4 October 2024, Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky (C-406/22, EU:C:2024:841

3. The response of the EU Court of Justice

In its judgement in the joined cases[9], issued in response to the preliminary questions raised by the Italian court, the CJEU first specifies that the current European law on the designation of safe countries is Directive 2013/32[10]. Regulation (EU) 2024/1348[11], which establishes a common procedure for international protection in the Union and will repeal Directive 2013/32, does not enter into force until 12 June 2026, unless the European institutions bring this date forward. It will apply to the procedure for granting international protection in relation to applications made on or after this date. Applications for international protection made before that date are governed by Directive 2013/32[12].

The EU Court therefore provided specific answers to the four questions raised by the Italian court. Regarding the first question, the judgment establishes that each Member State is responsible for designating safe countries of origin, in accordance with the procedures set out in Articles 36[13] and 37[14] of Directive 2013/32, as well as in Annex I[15] thereto. This means that each Member State is free to adopt a list of third countries classified as safe based on the criteria set out in Annex I and to establish additional implementation rules and procedures, while being required to notify the Commission of the list of safe countries of origin and its periodic review.

However, Member States do not have absolute discretion in this matter. They must take all necessary measures to ensure that every court fully applies Directive 2013/32. This may involve disapplying any provision of national law that conflicts with the Directive, even if this means acting without waiting for revisions to incompatible national legislation. Furthermore, Member States must ensure that the right

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9 Joined Cases C758/24, C-759/24 of 1 August 2025.

10 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

11 Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU.

12 C-758/24 and C-759/24, no. 17.

13 Art. 36 Directive 2013/32: "The concept of safe country of origin. 1. A third country designated as a safe country of origin in accordance with this Directive may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant only if: (a) he or she has the nationality of that country; or (b) he or she is a stateless person and was formerly habitually resident in that country, and he or she has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her qualification as a beneficiary of international protection in accordance with Directive 2011/95/EU. 2. Member States shall lay down in national legislation further rules and modalities for the application of the safe country of origin concept.

14 Art. 37 Directive 2013/32: "National designation of third countries as safe countries of origin. 1. Member States may retain or introduce legislation that allows, in accordance with Annex I, for the national designation of safe countries of origin for the purposes of examining applications for international protection. 2. Member States shall regularly review the situation in third countries designated as safe countries of origin in accordance with this Article. 3. The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations."

15 Annex I Directive 2013/32: Designation of safe countries of origin for the purposes of Article 37(1). "A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict. In making this assessment, account shall be taken, inter alia, of the extent to which protection is provided against persecution or mistreatment by: (a) the relevant laws and regulations of the country and the manner in which they are applied; (b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention; (c) respect for the non-refoulement principle in accordance with the Geneva Convention; (d) provision for a system of effective remedies against violations of those rights and freedoms."

of every asylum seeker to effective judicial protection, as set out in Article 47 of the EU Charter, is respected in all cases.

Therefore, a Member State's decision to designate an asylum seeker's country of origin as safe cannot undermine its obligation to guarantee that applicants for international protection will have the right to an effective judicial remedy in relation to decisions on their asylum applications, as recognised in Article 46 (3)[16] of Directive 2013/32. Interpreting the Directive in light of Article 47 of the EU Charter means that when a national court rules on an appeal, lodged under a special scheme applicable to asylum seekers from a designated safe country of origin, the court must verify the designation's accuracy based not only on information about the third country's conditions in the case file, but also on information brought to its attention during the proceedings. If the court finds discrepancies between the designation and the information it possesses, it should rule that the conditions for classifying the country of origin as safe have been violated[17]. Consequently, a Member State's domestic law can never limit the court's duty to verify, even incidentally, whether the designation of the country of origin as safe complies with the substantive conditions set out in Directive 2013/32[18].

With regard to the second and third questions raised by the Italian court, the CJEU establishes the following. Firstly, the Member State that designates a country of origin as safe must ensure that the sources of information on which that designation is based are made accessible. Secondly, the court hearing an appeal concerning an asylum application must have the power to verify the correctness of the designation of the country of origin as safe within the meaning of Directive 2013/32, including on the basis of information it has gathered itself.

According to Article 37(3) of the Directive, the classification of a country as safe must be based on information gathered from specific sources, including data provided by other Member States, the European Union Agency for Asylum (EUAA), the United Nations High Commissioner for Refugees (UNHCR), the Council of Europe, and other pertinent international organisations. The fact that classification as a safe country allows a Member State to adopt an accelerated procedure for assessing asylum applications from that country — assuming a general level of protection in the country of origin that is sufficient to justify the refusal of asylum — means that it is crucial for asylum seekers to have access to the information on which the Member State based its decision, so they can challenge the refusal of asylum if necessary[19].

Furthermore, when establishing the right of asylum seekers to an effective remedy against decisions rejecting their asylum application, the Directive requires Member States to ensure access to the information used to designate the asylum seeker's country of origin as safe. This allows the court to conduct a "full and ex nunc examination of the facts and law"[20], as previously mentioned, including verifying the validity of the information on which the applicant's country of origin was classified as safe thereby justifying the refusal of international protection[21].

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16 Art. 46 (3) Directive 2013/32: "In order to comply with paragraph 1, Member States shall ensure that an effective remedy provides for a full and ex nunc examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive 2011/95/EU, at least in appeals procedures before a court or tribunal of first instance."

17 C-758/24 and C-759/24, nos. 64-66.

18 C-758/24 and C-759/24, no. 67.

19 C-758/24 and C-759/24, nos. 71-73.

20 Art. 46(1) Directive 2013/32.

21 C-758/24 and C-759/24, nos. 76-80.

In this regard, the phrase "ex nunc", meaning "at the present moment", is important because it highlights that the judge's obligation to verify information is not limited to examining what the Member State used, but also ascertaining its relevance at the time the asylum application is made. In other words, the judge must determine whether the situation in the asylum seeker's country of origin has changed since the information was collected, calling into question its classification as a safe country[22]. Furthermore, the Directive requires the court to conduct a "full" examination, meaning it must consider not only the information used or that should have been used by the Member State to classify the country of origin as safe, but also any additional information that became available after the classification and during the verification process[23]. In doing so, the court must verify that the substantive conditions set out in Annex I to the Directive are met[24]. When using information that has come to its attention but which the Member State did not take into account when classifying the country of origin as safe, the court must ascertain the reliability of that information and allow the parties to submit their observations on it[25], in accordance with the principle of adversarial proceedings. This places the authorities of the Member State and the court hearing the appeal against the rejection of the asylum application on an equal footing in the proceedings.

Finally, in response to the fourth question, the CJEU clarified that, under Articles 37 and Annex I of Directive 2013/32, a third country cannot be designated as safe if it is determined that the conditions set out in Annex I are not met in that country. This is the case if certain groups within the population may be subject to persecution, torture, or other forms of inhuman or degrading treatment or punishment. It is also the case if there may be a risk of indiscriminate violence in situations of internal or international armed conflict. In other words, under Directive 2013/32, a country must be safe for its entire population to be designated as safe[26].

Furthermore, the judgment in the joined cases specifies that, even if a country is generally considered safe for its entire population, this does not guarantee absolute safety for each individual. For this reason, Article 36 of the Directive allows any asylum seeker from a designated safe country of origin to rebut the presumption of adequate protection in their country by providing serious and proven reasons relating to their personal circumstances[27].

On the one hand, the CJEU points out that Article 61(2) of Regulation 2024/1348 introduces the possibility for Member States to designate countries of origin as safe even where safety conditions are not guaranteed for specific categories of persons. However, until the date of entry into force of the new Regulation is amended, Directive 2013/32 remains the applicable legislation in relation to safe countries until 11 June 2026[28].

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22 On this point, see the decision of the European Court of Justice of 25 July 2018, Alheto, C-585/16, EU:C:2018:584, para. 111; 29 July 2019, Torubarov, C-556/17, EU:C:2019:626, no. 52; 4 October 2024, Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky, C-406/22, EU:C:2024:841, para. 88.

23 C-758/24 and C-759/24, nos. 83-85.

24 S. FN 15.

25 C-758/24 and C-759/24, nos. 86-87.

26 C-758/24 and C-759/24, nos. 92-93, 96.

27 C-758/24 and C-759/24, no. 97.

28 C-758/24 and C-759/24, nos. 106-107.

4. Reactions to the ruling

In a statement issued on 1 August 2025, the Italian government expressed its opposition to the CJEU's decision, describing it as "surprising" as it would grant the judiciary decision-making powers regarding responsibilities that are solely political. The note states that the CJEU "has decided to hand over to any national court, not the decision on individual cases, but on migration policy relating to the rules governing the return and expulsion of irregular migrants". The government sees this as wrong as it would further reduce the already limited autonomy of governments and parliaments in the regulatory and administrative management of migration. It therefore believes that the Court's decision "weakens policies to combat mass illegal immigration and defend national borders"[29]. The Italian government's opposition can also be explained by the fact that the Court's ruling currently prevents migrants from being transferred to the two detention and expulsion centres built by Italy in Albania. These centres were intended to process asylum applications under an accelerated procedure and, where appropriate, facilitate the quick expulsion of migrants denied protection. However, the Court's ruling does not allow for the automatic classification of asylum seekers as coming from safe countries of origin, as assessed by the Rome government. Instead, this classification is subject to verification by the judicial authority[30].

By contrast, Adriana Tidona, a migration researcher at Amnesty International, welcomed the ruling, noting that it represents "a heavy blow to the harmful Italy-Albania migration deal to offshore the processing of asylum seekers to camps in Albania". She went on to explain that this is because the court found that the designation of a country as safe must offer the possibility of an effective and transparent judicial review and be based on accessible sources of information, which Italy currently does not guarantee. "Unless Italy complies with the ruling in law and practice, transfers to Albania based on the use of the 'safe country of origin' concept would not be in line with EU law." Tidona added that the ECJ's ruling is "a welcome wake-up call for EU member states seeking to expand migration control at the expense of migrants' and refugees' rights. It sets out key safeguards for people navigating asylum procedures, which should set the standard not only for Italy's practice, but also for the implementation of the EU's Pact on Asylum and Migration."[31]

5. Key points and issues raised by the ruling

The key aspect of the ruling in the joined cases by the Court of Justice of the European Union is the recognition of the power of national judges to disregard the internal rules of Member States that conflict with Directive 2013/32 regarding the conditions for designating an asylum seeker's country of origin as safe. This excludes the possibility of designating countries as safe where safety is not guaranteed to the entire population without exceptions for specific categories of persons. While the applicable European legislation in this area remains the aforementioned Directive, a national authority cannot designate an asylum seeker's country of origin as safe. Consequently, they cannot assess their application for international protection based on this classification without an independent judge examining this

[29] Statement by Palazzo Chigi on the EU Court of Justice's decision regarding safe countries, 1 August 2025.

[30] Chiara Favilli, Luisa Marin, Alace and Canpelli: the Court of Justice firmly constrains domestic extraterritorial asylum processing politics, EU Law Analysis, 14.8.2025.

[31] Amnesty International, Italy: EU Court ruling on 'safe countries of origin' is a heavy blow to Italy-Albania migration deal, 1.8.2025.

designation and guaranteeing a complete and up-to-date verification of the conditions on which this designation is based.

However, one problematic aspect of the ruling concerns the fact that, when verifying the designation of a country as safe, the judge hearing appeals against the refusal of international protection may use information other than that on which the Member State authorities based their designation. In fact, the court may gather additional information on its own initiative or request it from one of the parties (presumably the asylum seeker), provided that it has verified the reliability of the information[32]. Furthermore, according to the decision, this information must be subject to the adversarial principle, which allows the parties to the proceedings to submit their observations on the information identified and used by the court[33].

In such uncertain conditions, disputes are likely to arise between judges and national authorities when the former use different information to challenge the designation of a country as safe. To avoid the 'balkanisation' of asylum application examination procedures and ensure minimum reliability standards for all information used to classify a country as safe, regardless of the source, the CJEU should have set out the essential conditions for admissible information. For example, they could have indicated the sources from which information may be obtained for the examination of an asylum application in advance and in a binding manner. Furthermore, requiring the national court to verify the reliability of the information presented in the proceedings amounts to an obligation that is very difficult to implement. In practice, the individual national court will have to acquire the technical and legal resources necessary to verify and demonstrate the reliability of information concerning the actual conditions in the asylum seeker's country of origin, which are often difficult to determine in all their particularities. It is unclear on what parameters this assessment of reliability should be based and how the court can fulfil this obligation adequately. This aspect also risks multiplying the number of governmental 'counter-appeals' against decisions which find the designation of the countries of origin of rejected asylum seekers as safe to be unlawful. To serve the interests of all the parties involved, the CJEU should have advocated an interpretation of the rules on safe countries that would ensure greater uniformity in the implementation of the asylum application verification procedure.

6. The EU Commission's proposal to bring forward the new rules on safe third countries

Between April and May 2025, several months before the publication of the CJEU's ruling on safe countries, the Commission presented two proposals to amend Regulation 2024/1348 ('Procedures Regulation'), which is currently scheduled to enter into force on 12 June 2026 and addresses, among other things, the criteria for designating safe countries.

With the first proposal ("Proposal on safe countries of origin") [34], presented on 16 April 2025, the Commission intends to intervene on three aspects of the Regulation. Firstly, it proposes to modify the common concept of a safe country of origin. Secondly, it proposes to draw up a list of safe countries of

[32] C-758/24 and C-759/24, no. 86.

[33] Id.

[34] Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the establishment of a list of safe countries of origin at Union level, COM (2025) 186 final. For a first comment on the proposal, see S. Peers, Jumping the Gun? The proposed early application of some of the EU's new asylum pact – and a common list of supposedly 'safe countries of origin', in EU Law Analysis, 21 April 2025.

origin at EU level. Thirdly, it proposes to provide for the early application of certain provisions of the Procedures Regulation upon the entry into force of the amending Regulation. This proposal follows the Commission's intention, expressed in a letter[35] sent by President von der Leyen to the Heads of State and Government ahead of the European Council meeting on 19 December 2024, to bring forward the application of certain provisions of the Procedures Regulation relating to the concepts of safe country of origin and safe third country[36].

The second proposal, presented on 20 May 2025 ("Proposal on safe third countries") [37], aims to amend the concept of a "safe third country" and the related procedure. Article 77 of the Procedures Regulation stipulates that the Commission must review this concept and consider targeted amendments by 12 June 2026. The explanatory memorandum to the proposal clearly demonstrates the Commission's intention to facilitate the applicability of the safe third country concept by introducing a "broader and more flexible" approach[38], a move that has received strong support from most Member States[39]. At the European Council meeting on 26 June 2025, the proposal was approved and the letter[40] sent by President von der Leyen a few days earlier was endorsed. The Parliament was invited to continue its examination of the proposals presented by the Commission on migration and asylum, including the one on safe third countries[41].

With the 'Proposal on safe countries of origin', the Commission will permit Member States to implement border or accelerated procedures for processing asylum applications from individuals hailing from countries where, on average, fewer than 20% of applicants are granted international protection within the EU. Additionally, exceptions may be made for safe third countries and safe countries of origin, giving Member States greater flexibility to classify countries as safe even where security conditions are not guaranteed for specific regions or categories of individuals. The Commission has also proposed the establishment of an initial EU list of safe countries of origin. This list includes Kosovo, Bangladesh, Colombia, Egypt, India, Morocco and Tunisia. These countries were selected based on their respect for the rule of law, democracy and human rights, and their absence of persecution or serious harm, as defined in the EU Qualification Regulation. These countries also have very low recognition rates for asylum (under 5%) in most EU Member States[42]. In addition, all candidate countries for EU membership should, in principle, guarantee internal conditions such that their citizens and residents do not need to seek asylum in other Member States. The Commission based its decision on data collected from the EUAA, the EEAS, the UNHCR, Member States, and international and national reports and legal analyses[43].

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35 Letter from President Ursula von der Leyen, 16 December 2024.

36 European Council, conclusions of 19 December 2024, EUCO 50/24 CO EUR 44 CONCL 5, point 19.

37 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the application of the 'safe third country' concept, COM (2025) 259 final.

38 Ibid., 1.

39 Commission Staff Working Document, Review of the safe third country concept Accompanying the document Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the application of the 'safe third country' concept, {COM(2025) 259 final}, SWD(2025) 600 final, 20.5. 2025, 13 ff.

40 In her letter dated 23 June 2025, Ursula von der Leyen described it as 'crucial' to speed up the work of Parliament and the Council in order to allow for the rapid approval of proposals on safe countries of origin and safe third countries.

41 European Council, conclusions of 26 June 2025, EUCO 12/25 CO EUR 10 CONCL 4, point 37.

42 The Commission considers that EU candidate countries, in principle, meet the criteria for designation as safe countries of origin, as they are working towards achieving stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities as part of their path towards EU membership. A candidate country would only be excluded in certain specific circumstances: indiscriminate violence in situations of conflict, sanctions adopted by the Council against it, or an EU-wide recognition rate for asylum seekers of more than 20%.

43 European Economic and Social Committee, Safe countries package, last update: 8 August 2025.

On the other hand, the "Safe Third Country Proposal" addresses the concept of a "safe third country" (STC), enabling Member States to deem an asylum application inadmissible if the applicant could have sought protection in a third country deemed safe. Additionally, it allows for exceptions to be made to the principle of connection, which currently requires the competent asylum authorities to demonstrate a link (e.g. family ties or previous residence) between the applicant and the safe third country in which they could have applied for asylum. Furthermore, transit through a third country deemed safe is sufficient for the STC concept to be applied and thus for the application to be rejected. Alternatively, the STC concept may be applied on the basis of an agreement whereby the third country guarantees that a full examination of the asylum seeker's protection needs will be carried out. However, this procedure is not applicable in cases involving unaccompanied minors. Appeals against inadmissibility decisions based on the STC concept will no longer automatically suspend returns, except in cases where there is a risk of refoulement[44].

The Commission states that these measures aim to bring order to the current use of the safe country concept in asylum procedures, as well as to the gaps in coordination between Member States[45]. Many Member States, including Italy, already have national lists of safe countries of origin, and an EU-wide list would complement these and promote a more uniform application of the STC concept. This would make it easier for Member States to process asylum applications from citizens of countries included in the list under an accelerated procedure, since their applications are unlikely to be successful.

These are still only proposals, however, and must be approved and enacted by Parliament and the Council before they can come into force. Nevertheless, they have already received strong criticism from NGOs and humanitarian organisations. In a joint statement on 1 July 2025[46], 52 human rights, migrant rights, and humanitarian organisations[47] noted that the Commission's classification of countries as 'safe' based on their citizens obtaining international protection in only 20% of cases does not prove they are safe. They argued that the fact that at least one in five citizens of these countries has been granted asylum demonstrates that these countries are not safe for everyone. Yet the Commission's proposed list will allow the accelerated procedure for assessing asylum applications to be applied indiscriminately to all citizens of these states, based on the assumption that their applications are likely to be unfounded. The 52 organisations that signed the statement argue that the Commission's proposals aim to outsource the examination of applications for international protection to countries outside the EU. This would jeopardise migrants' rights to fair and comprehensive procedures for their asylum applications, regardless of the conditions in their country of origin.

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44 European Commission, Commission proposes to facilitate the application of the safe third country concept, 20 May 2025.

45 Id.

46 Amnesty International, Joint statement: EU 'safe country' and return proposals would seriously undermine protection and human dignity, 1.7.2025

47 These 52 organisations include: Amnesty International, ActionAid International, International Rescue Committee (organisation active in helping in humanitarian crises), Danish Refugee Council, International Lesbian and Gay Association (ILGA) Europe (non-governmental umbrella organisation co-funded by the European Union), Caritas Europa and Caritas International, EuroMed (network of 68 human rights organisations, institutions and individuals based in 30 countries across Europe and the Mediterranean region), Ligue des droits de l'homme (LDH), Churches' Commission for Migrants in Europe (CCME- ecumenical agency on migration and integration, refugees and asylum and anti-racism and anti-discrimination in Europe), Brot für die Welt (Campaign by the Protestant regional and free churches in Germany), Human Rights Watch.

7. The approach of EU asylum policies and its implications for the future

Without wishing to be overly critical of the Commission's proposals, it must be acknowledged that, in recent years, an approach to migration policy has emerged in many Member States and at EU level that focuses largely on the security aspects of asylum rules, relegating other important migration-related issues to the background. The reform adopted as part of the new Pact on Migration and Asylum[48] is emblematic of this approach; the ten acts passed on 14 May 2024 — almost all of which replace existing directives with regulations — highlight the EU's security-focused approach in recent years. They tighten the Dublin system and hinder access to territory by extending the grounds for, and duration of, border detention for those applying for international protection[49].

In previous years, however, the Commission's position on migration issues was very different. In 2000, in its first communication on legal migration, the Commission took a pragmatic approach to the issue. It repeatedly emphasised that migration policy was necessary to manage a long-term phenomenon, due to geopolitical conditions in countries of origin and the needs of the EU itself. The EU was experiencing demographic decline, which needed to be addressed to maintain and possibly increase the Union's economic well-being[50]. Subsequently, on several occasions, the Commission argued that migratory movements could not simply be countered but in fact needed to be appropriately regulated[51]. In 2001, the Commission presented a proposal for a directive on entry for work purposes[52], aimed at providing comprehensive regulation of entry and residence procedures for economic migrants, as well as introducing entry for job seekers. The proposal was never approved, however, and finally withdrawn in 2005 due to strong opposition from various national governments and changes in priorities relating to the creation of the Area of Freedom, Security and Justice, established at the end of 2001[53].

More recently, both the Report on the Future of European Competitiveness, presented by Mario Draghi on 9 September 2024[54], and the Report on the Internal Market, drafted under the direction of Enrico Letta and presented on 17–18 April 2024[55], highlighted the need to regulate the entry of foreign nationals into the EU for work purposes. The Draghi Report puts migration at the heart of the European competitiveness strategy, arguing that "Europe's competitiveness will increasingly depend on its ability to attract and retain talent, while demographic decline and labour shortages weigh heavily on its economies"[56]. It also criticises the EU's current approach of framing migration policy solely in terms of security and emergencies. Instead, it argues that migration should be considered as a structural component of the European growth strategy, encouraging the EU to adopt an appropriate approach to labour migration and include it among the Union's long-term economic priorities[57]. The Letta report also considers migration and labour mobility to be strategic tools for EU integration and development.

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48 cep**Adhoc** 19/2024.

49 Luca Barana, Is Migration Really Solved? Managing Expectations on the New Pact and External Deals, IAI Commentaries, 6 December 2024.

50 Communication from the Commission to the Council and the European Parliament on a Community Immigration Policy, COM(2000)757 of 22.11.2000. See also Fitness check on EU Legislation on legal migration, SWD(2019)1055 of 29.3.2019.

51 Communication on migration, COM(2011) 248 final of 4 May 2021.

52 Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities, COM(2001) 386 final, published in Official Journal of the European Communities C332E of 27.11.2001.

53 Green Paper on an EU approach to managing economic migration, COM/2004/0811 final, 11.1.2005.

54 The Draghi report on EU competitiveness.

55 Enrico Letta, Much more than a Market. Speed, Security, Solidarity. Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens.

56 The Draghi report on EU competitiveness, 42.

57 Ibid., 44.

According to Letta, the single market remains an "unfinished task" since the free movement of persons has not yet been fully achieved, unlike the free movement of goods, services and capital[58]. The report goes on to highlight how properly organised migration policies could help reduce regional disparities within the Union by strengthening social resilience and stimulating creativity in various sectors. It even proposes the creation of a "Union of Mobility of Persons": a regulatory system that would integrate intra-EU mobility and migration from third countries into the strategic framework of the Single Market[59].

A communication from the European Union's diplomatic service dated 5 May 2025 states that "legal migration is not only an essential element in combating irregular migration, but also brings significant benefits to our society and can be an important driver of economic growth". Meanwhile, data from a recent study, published on the European Central Bank's blog, shows that many euro-area countries have offset the ageing of their populations in recent years through the influx of foreign workers into the labour market. This has had a positive impact on national GDP that would not otherwise have occurred. Foreign workers can improve their professional position over time, when they are provided with training that enables them to acquire additional skills and take on more complex tasks.

A communication dated 5 May 2025 from the European Union's Diplomatic Service states that 'legal migration is not only an essential element in countering irregular migration; it also brings considerable benefits to our society and can be an important driver of economic growth'[60]. Meanwhile, data presented in a study, published on the European Central Bank Blog in May 2025[61], shows that many Eurozone countries have offset the ageing of their populations in recent years thanks to the employment contribution of foreign workers, which has had a positive impact on national GDP that would not otherwise have been possible[62]. Furthermore, when training programmes are provided to enable foreign workers in Europe to acquire additional skills and perform more complex tasks, they are able to improve their job status over time, thereby enhancing the quality of the available workforce[63].

8. A security-based approach to migration policy is not the solution.

The case that led to the EU Court of Justice's ruling on 1 August 2025 highlights an undeniable fact: a European migration policy that focuses almost exclusively on a security-based approach and stubbornly insists on repatriating migrants 'whatever it takes' is not working and risks being counterproductive.

This approach does not even meet the legal requirements: judges in Luxembourg have once again pointed out that there are legal constraints in terms of respect for human rights, primarily under European law. Neither the European institutions nor the Member States can circumvent these

58 Enrico Letta, Much more than a Market, 67-68.

59 Ibid., 71-74.

60 European Union External Action, Migration, Mobility & Forced Displacement, Strategic Communication, 5.5.2025.

61 Oscar Arce, Agostino Consolo, António Dias da Silva, Marco Weissler, Foreign workers: a lever for economic growth, The ECB Blog, 8.5.2025.

62 However, the study highlights differences between national contexts: in countries where the participation of foreign workers in the labour market is low, such as Italy, their contribution to the country's economic growth is low; on the other hand, in countries where there is a high level of foreign employment in the labour market, such as Germany, France, the Netherlands and Spain, the contribution of foreign nationals to mitigating the effects of the ageing of native workers and – especially in Spain – to GDP growth is very high.

63 According to a recent study requested by the European Parliament's Committee on Employment and Social Affairs (EMPL), "more successful labour-market integration [of migrant workers] is important for aggregate labour supply, economic growth and public finances, and specifically, it may contribute to alleviating the problems of non-sustainable public finances in the long term caused by ageing European populations", s. Francesco Fasani, New approaches to labour market integration of migrants and refugees, December 2024, 13.

constraints. This will not please national governments who are trying to fulfil election promises and attempting to overcome these constraints with 'creative' solutions, such as the Italian centres in Albania. However, European and other laws recognise the rights of migrants, even if they are in the EU illegally. Attempting to define third countries as 'safe' based on standards outside of European law in order to outsource asylum application assessment procedures is simply unworkable. The EU Court of Justice's decision has been criticised for improperly limiting the power of national governments, as it leaves the final assessment of the asylum application procedure to the courts, even in cases involving migrants from countries deemed safe. It is said to violate the separation of powers by depriving the executive of its right to decide on security policies in the interests of its own country[64]. However, this criticism fails to consider the role of the Court of Justice in Luxembourg, which is to strike a balance between legitimate rights and powers when they conflict. In this case, alongside ensuring security in countries affected by migration, it is equally essential to protect the fundamental rights of asylum seekers seeking international protection in EU Member States. When assessing the adequacy of migration policies, the Court of Justice must consider both the security requirements and the humanitarian aspects of the right to asylum.

Moreover, the need for balance will persist even when Directive 2013/32 is replaced by the new EU Pact on Migration and Asylum and related Commission proposals on safe third countries. Thus, any appeals against transfer orders to safe third countries will not necessarily be deemed unlawful, even if European asylum rules differ from the current ones. For example, the right to an effective remedy and to a fair trial, enshrined in Article 47 of the Charter of Fundamental Rights of the European Union[65], remains paramount, even with regard to the expected 2026 legislation. The new EU Pact will allow Member States to designate safe countries, even if the safety of certain groups is not guaranteed. Nevertheless, the provisions of Article 47 of the Nice Charter can still be invoked to request a judge to verify the specific circumstances of an asylum seeker who is to be transferred to a safe third country.

In addition, the right to an effective remedy is not the only right enshrined in the EU Charter that Member States must guarantee to irregular migrants under their jurisdiction. There is also a core set of human rights standards that must be applied to irregular foreign nationals[66], without differentiating them from the citizens of the State concerned, including access to necessary medical care for all, emergency and basic healthcare, the right to consult a doctor or obtain essential medicines, guaranteed healthcare for pregnant women and healthcare and education for children[67]. Even if asylum seekers were transferred to a third country, they would remain under the jurisdiction of the State that ordered their transfer until it was established that they were not entitled to asylum, after which they would be returned to their country of origin. Consequently, the Member State would have the same obligations to guarantee these rights as it would if the migrants were still on its territory. The possible transfer of migrants to a third country, however safe it may be considered, would not remove these obligations. If migrants destined for transfer to a safe third country were to appeal against the transfer based on the Member State's inability to guarantee their rights under the EU Charter and their appeal deemed well-founded, the judicial authorities could annul the transfers[68].

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64 Mario Savino, Disapplication Unbound. The Alace Ruling on Safe Countries of Origin, Verfassungsblog.de, 4.9.2025.

65 S. FN 7.

66 European Union Agency for Fundamental Rights, Fundamental rights of migrants in an irregular situation in the European Union, 2011.

67 S. Art. 1, 14, 31 and 35 of the Charter of Fundamental Rights of the European Union.

68 In the past, the identification of significant shortcomings in the capacity to ensure fair asylum procedures and adequate reception has sometimes rendered transfers illegal even between EU Member States, see European Court of Human Rights, M.S.S. v. Belgium and Greece [GC], 2011.

Furthermore, EU law is not the only legal framework governing migration policy. The European Convention on Human Rights (ECHR), to which all 27 EU Member States are signatories, applies to anyone under the jurisdiction of any of the 46 member states of the Council of Europe and guarantees a wide range of rights[69], including those relating to the conditions in which applicants for international protection are held before, during and after the assessment of their applications. The ECHR member state authorities where migrants have applied for asylum are responsible for ensuring respect for these rights, regardless of where the migrants are held while awaiting the assessment of their applications.

In addition, the ECHR expressly recognises the right to an effective remedy for individuals who believe that their rights and freedoms, as guaranteed by the Convention, have been violated[70]. This provision is similar in scope to Article 47 of the Nice Charter, which allows asylum seekers in safe third countries to appeal to the European Court of Human Rights if they believe that their rights have been violated during asylum procedures. The British government is well aware that the ECHR represents an obstacle to the relocation of asylum procedures outside national borders. Following a process lasting more than two years between 2022 and 2024, the government was forced to abandon the agreement to transfer refugees in the United Kingdom to Rwanda[71], primarily due to the risk of violating ECHR provisions, particularly the prohibition of torture, if the agreement were to be implemented[72]. The ECHR's binding nature in migration matters means that it is difficult for governments of member states to get around it. For this reason, the current leadership of the UK's Conservative Party have indicated, in their next election manifesto, that they will take the United Kingdom out of the ECHR, partly because the Convention is hindering the immigration reforms they would like to implement if they return to power[73]. This should serve as a warning to those who believe that relaxing EU law would give Member State governments a free hand in managing asylum procedures, since the constraints of the ECHR would still apply.

Moreover, the Council of Europe – of which the European Convention on Human Rights (ECHR) is a reflection – has clearly stated its position on asylum for the future. A report dated 4 September 2025, by its Commissioner for Human Rights, Michael O'Flaherty, calls on the member states of the Convention to adopt a precautionary approach to external cooperation on asylum, return and the prevention of irregular migration, in order to prevent human rights violations[74]. Furthermore, if a member state intends to outsource the examination of asylum applications, they must, in order to ensure the legality of the procedure, carry out an individualised assessment before any transfer, whether from the outsourcing member state to another state or from the latter to a country of origin or any other country. This assessment must focus on the safety of the country to which the transfer is planned and take into account the risks associated with a possible return in light of the specific circumstances of each person. Even when Member States apply the 'safe country' concept, individuals should be able to present reasons why

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[69] According to the ECHR, the following rights are relevant to migration: the right to life (Art. 2); the prohibition of torture (Art. 3); the prohibition of slavery and forced labour (Art. 4); the right to liberty and security (Art. 5); and the prohibition of discrimination (Art. 14). The latter states that "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground, such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

[70] Art. 13 CEDU: "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

[71] UK/Rwanda: Agreement for the Provision of an Asylum Partnership to Strengthen Shared International Commitments on the Protection of Refugees and Migrants.

[72] Isaac Brock Muhambya, UK-Rwanda agreement versus legal framework on the protection of refugees: primacy of minimum guarantees of human rights, Cahiers de l'EDEM, September 2022, Revisited December 2024.

[73] Sam Francis, UK will leave ECHR if Tories win election, Badenoch says, bbc.com, 4.10.2025.

[74] Michael O'Flaherty, Externalised asylum and migration policies and human rights law, Council of Europe, 4.9.2025, 53.

these safety assumptions do not apply to their case, and these reasons should be assessed with all the necessary safeguards.'[75]

Conclusions: how to combine border controls with respect for human rights

There are enough reasons to doubt whether entry into force of the forthcoming EU Pact on Migration and Asylum will be sufficient to give national governments a free hand in outsourcing asylum. On the other hand, it is well known that in recent years radical political movements, especially those on the far right, have progressively exploited the problems associated with migration issues, often reaping substantial benefits in terms of the growth in their electoral support[76]. It is reasonable to assume therefore that the restrictive approach to migration has gained ground at European level and in various Member States, partly in an attempt to counter this transfer of votes from moderate to extreme parties.

The adoption of restrictive migration policies does not, however, seem to be countering the rise of radical and populist parties. In Italy, a centre-left government led by Paolo Gentiloni signed a controversial[77] memorandum of cooperation with Libya in 2017[78]. The agreement involved the Italian government providing economic aid and technical support to the Libyan Coast Guard in an attempt to reduce migrant trafficking across the Mediterranean Sea. Nevertheless, in the general election of September 2022, a centre-right coalition won, having focused its election campaign, among other things, on its intention to tighten migration policies if elected[79]. In the UK, Labour Prime Minister Keir Starmer, who came to power after his party's landslide victory in the 2024 elections, has promised to drastically reduce the number of migrants entering British territory over the next four years[80]. Nevertheless, Reform UK, a far-right populist party, which is proposing to expel large numbers of legally resident foreign nationals from the UK and imposing significantly worse employment and welfare conditions on those who remain than are enjoyed by British citizens[81], is currently the most popular party in the polls, with 30% of the vote while Labour and the Conservatives[82] have only 17-18%. In Germany, the government led by Friedrich Merz, which took office in May 2025, immediately announced a restrictive policy towards asylum seekers trying to cross German borders as well as an increase in the repatriation of irregular migrants, limitations on family reunification for legally resident migrants, and a general reduction in welfare benefits for asylum seekers[83]. Nevertheless, according to the latest polls, the far-right populist party, Alternative for Germany (AfD), which now openly talks about 'remigration' of not only irregular migrants but also German citizens

[75] Id., 56.
[76] Ayhan Kaya, The instrumentalisation of migration in the populist era, Mixed Migration Center, 2.5.2025.
[77] The Memorandum has been strongly criticised for violations of the human rights of migrants heading to Italy by the Libyan coast guard, s. Italy: End Border Control Pact with Libya. People Returned by Libyan Coast Guard Subject to Severe Abuse, Human Rights Watch, 13.10.2025.
[78] Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic.
[79] Julian M. Campisi, Cecilia Emma Sottilotta, Italy's Far-Right and the Migration Debate: Implications for Europe, IAI Commentaries, 22.9.2022.
[80] Sam Francis, PM promises migration drop as he unveils plans for 'tightened' visa rules, bbc.com, 12.5.2025.
[81] Rajeev Sjal, What are Nigel Farage's immigration plans – and do his sums add up?, theguardian.com, 22.9.2025.
[82] United Kingdom — Parliament voting intention, politico.com, latest polls consulted: 15 October 2025.
[83] Gaia Mastrosanti, Germany's Migration Reset and What it Means for the EU, ispionline.it, 24.4.2025.

with a migrant background[84], is currently polling at 26%, compared to 25% for the Christian Democratic Union/Christian Social Union (CDU/CSU) and 14% for the Social Democratic Party (SPD)[85].

Balancing the legitimate rights of EU Member States to control the entry of foreign nationals onto their territory with their obligation to respect the human rights of migrants, whether or not they are entitled to asylum, is a particularly complex issue that cannot be addressed solely through a security-based approach. A multi-level operational strategy would be preferable, as migration flows are determined by short, medium and long-term factors and require diverse and effective interventions with different methods and timelines. To avoid legal disputes, States should adopt a balanced, rights-based approach that guarantees border security while protecting dignity and fundamental rights because border control cannot be exercised without ensuring compliance with national, European and international human rights obligations.

This approach is based on two key principles: respect for the principle of non-refoulement, which prohibits the return of individuals to places where they may be tortured or subjected to inhuman or degrading treatment; and rejection of collective expulsions, which are prohibited by international law. At the same time, each asylum seeker must be assessed individually to determine whether they require protection, regardless of their migration status. Asylum seekers must be guaranteed access to clear and comprehensible information as to their rights, as well as on the procedures for challenging decisions or actions that affect them. This is in accordance with the right to a fair trial and involves fair, humane and expeditious examination procedures. The use of detention should be reduced, and arbitrary detention or cruel, inhuman or degrading treatment should be avoided. Conditions in reception centres must respect human dignity, paying particular attention to vulnerable groups. Detention should be a last resort, with alternative measures provided wherever possible[86].

Furthermore, by protecting the human rights of irregular migrants, including victims of trafficking and smuggling, States can more effectively address the issues of corruption[87] and transnational organised crime[88], which frequently accompany trafficking and smuggling offences. Combating these crimes protects victims of trafficking from exploitation while also increasing national security and public order because organisations that commit crimes against migrants are frequently involved in other criminal activities that endanger collective security, such as arms or drug trafficking. Combating these crimes does not call into question the sovereignty of the State, nor does it violate the State's right to protect its borders and its citizens but rather aims to increase collective security[89].

Regarding border management, a humanitarian approach must be adopted that respects the rights and dignity of populations affected by crises and can adapt to migration flows. Border personnel must receive adequate training in human rights. Restrictive measures must take into account the existing constraints of humanitarian law, so as not to unreasonably prejudice the conditions of asylum seekers and to avoid measures being declared unlawful by the competent judicial authorities as a result of having been issued in violation of the applicable rules. Additionally, independent monitoring mechanisms should be

84 Jessica Parker, AfD embraces mass deportation of migrants as German election nears, bbc.com, 13.1.2025.

85 Germany — National parliament voting intention, politico.com, latest polls consulted: 17.10.2025.

86 United Nations, Recommended principles and guidelines on human rights at international borders, 2024, 11 ff.

87 Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Emerging knowledge and practice regarding the prevention of and response to corruption in the context of trafficking in persons Background paper prepared by the Secretariat, 14.7.2023.

88 William Battle, Human Trafficking Is Organized Crime – Let's End the Exploitation, United Nations Information Center.

89 Communication from the Commissione to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings, COM(2021) 171 final, 14.4.2021.

established for borders and detention centres to prevent and address human rights violations. These mechanisms should involve national human rights agencies and NGOs capable of providing migrants with legal and psychological assistance and monitoring procedures. While it may seem like an effective immediate solution, the use of third countries to manage applications for international protection should be approached with great caution given the many risks of illegality that such a measure would entail if subjected to judicial review.

In any case, migration management cannot be designed purely at national level. As migration is a global phenomenon, an effective strategy must involve international cooperation. Collaboration between States and shared responsibility are essential for the effective management of migration. At the same time, to reduce pressure on borders from irregular migrants, states should develop strategies that provide greater opportunities for regular migration in the interests of their own economic and employment systems. They should also cooperate more effectively with the governments of migrants' countries of origin, provided these governments implement policies that respect human rights and combat inequality and discrimination. These are clearly long-term policies whose effects would only be visible in the medium to long term, but they should be implemented alongside other initiatives, such as opening legal entry channels, to reduce the influx of irregular migrants more quickly[90].

As we have seen, the effects of migration on Western societies are varied and complex and cannot be seen simply in terms of public security. To ensure that public opinion can assess the issue from every angle, and thereby counter a narrative that focuses exclusively on the security aspects of migration, it would be appropriate for the media and politicians to highlight the complexity of migrant movements and the many facets involved, both positive and negative. However, if we follow populist movements down the path of increasingly drastic restrictions on migration policies, we risk making three mistakes. Firstly, we would fail to implement the promises made in election campaigns, since existing legal constraints in a state governed by the rule of law do not give the government of the day a free hand, regardless of the level of support obtained at the ballot box. Secondly, radical parties would be rewarded, since they are promising even more drastic restrictions on migrant movements and asylum seeker reception systems. Thirdly, we would deprive Western economic and productive systems of a labour and social component which, as the cited studies show, is destined to become crucial for the growth of European countries. It is time to consider alternative solutions.

[90] Samuel Okon Ekpeowoh, The Intersection of Immigration Law and Human Rights: Current Issues and Future Trends, International Journal of Research and Innovation in Social Science (IJRISS), X-2024, 788-800.

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