



# The European Union's Migration Pact and Border Protection in Questions and Answers

Jerzy Kwaśniewski



**ORDO IURIS INSTITUTE REPORTS**





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**Author**

Jerzy Kwaśniewski

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# Introduction

Poland's border with Belarus, which is also the eastern border of the European Union, has been under unprecedented pressure from migrants since 2021. The Belarusian and Russian authorities, in their effort to open a new channel of mass migration from the Middle East and Africa to the European Union, have promoted several waves of migrants. Poland has thus found itself in a situation that has long been familiar to the countries of the EU's southern flank. These "weapons of mass migration" represent a phenomenon that has existed in international law for over a dozen years. It can be characterized as an abuse of the international treaty obligations concerning refugee guarantees, with the aim of destabilizing the target countries.

Modern international law does not offer simple tools for dealing with this new threat. Indeed, any defense must face the potential threat from illegal immigrants and even real refugees, who become "hybrid weapons" in the hands of hostile states or terrorist organizations. This is evident from the experience of the Islamic State and other Islamic organizations sending jihadists to Europe.

On the other hand, only a firm border-protection policy can effectively close these migration channels and save the thousands of migrants who are being exploited by countries and organizations that are hostile to Europe, or else by mafias that specialize in human smuggling for profit.

The so-called "Migration Pact" adopted by the European Union under these circumstances does not address these problems through effective border protection. It instead represents a determination to create rapid, smooth migration processes, given that it accepts as givens the inevitability of mass migration as well as its positive impact on the European society, economy, and culture. As a result, the Pact's realization will lead to more efficient legalization of migration and a more equal distribution of the burden of hosting millions of illegal immigrants among the member states under the so-called solidarity mechanism. The purpose of this report is to familiarize the reader with those regulations that are collectively known as the "Migration Pact."

This report is ultimately also a voice for the governments of those countries that have been affected by the migration crisis (or by the use of "weapons of mass migration" – as is the case in those situations where this crisis is being deliberately provoked by hostile states or organizations), who are making an effort to update the guarantees that are offered to refugees so that the obligations of states under international law cannot be used as a means of destabilization. Such a systemic change would not only safeguard the interests of those countries that are being victimized by these new migratory weapons, but would also predictably lead to greater control over the circumstances under which refugee guarantees are waived in emergency situations.





# 1. What is the Migration Pact?

The Migration Pact is the colloquial name for a set of ten pieces of legislation that were prepared by the European Commission in 2020. The Commission considers it a major step forward in harmonizing the immigration systems of the EU member states. This is evident in about the way in which the pact has been communicated to the European Parliament, the European Council, the European Economic and Social Committee, and the European Committee of the Regions.<sup>1</sup>

The adoption of the Migration Pact means the acceptance on an EU-wide level of a regulatory paradigm under which migration is seen as an inevitable and permanent feature of European societies, in turn leading to diversity, development, innovation, and social change. As the European Commission indicated in the aforementioned communication: “Migration has been a constant feature of human history with a profound impact on European society, its economy and its culture. With a well-managed system, migration can contribute to growth, innovation and social dynamism.”

The explicit **goals of the Migration Pact** are: “faster, seamless migration processes,” to “reduce unsafe and irregular routes [of migration] and promote sustainable and safe legal pathways for those in need of protection,” as well as leading to immigration that is “better matched to EU labour market needs.”



Migrants and refugees from Africa and Asia on a ship in the port of Taranto, Puglia, Italy. Source: Shutterstock, Massimo Todaro.

According to a European Commission statement, the Migration Pact is also a response to shortcomings that have been identified in how the European Union was protected from waves of illegal migration since the 2015-16 migration crisis. The Pact further promises “stronger governance of

<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the New Pact on Migration and Asylum, COM/2020/609 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0609> (accessed: July 17, 2024).

migration and borders policies, supported by modern IT systems and more effective agencies.” It likewise aims to provide for increased cooperation with third countries (both transit countries as well as migrants’ countries of origin) in order to “promote well-managed legal migration” by “addressing the root causes of irregular migration, combatting migrant smuggling, helping refugees residing in third countries and supporting well-managed legal migration.”<sup>2</sup>

**In summary, the Migration Pact is a comprehensive system of regulations designed to lead to a reduction in uncontrolled illegal migration, an increase in controlled legal migration, and a commitment by all member states to share harmoniously in the burden of admitting increasing numbers of migrants to Europe.**

As noted above, the Migration Pact cites humanitarian rationales as well as the needs of the European labor market (as it stands today) to justify a steady flow of legal migrants. Its normative content omits (as do its declarations and preambles) the need to protect national identities as well as the cultural cohesion of member states, however, as do its declarations and preambles. The victory of the “inclusiveness and diversity” paradigm in migration policy thus diminishes the importance of the EU Treaty’s principle of respect for the member states’ “national identities, inherent in their fundamental structures, political and constitutional.”<sup>3</sup> In the long run, it may also lead to the undermining of the Treaty’s principle under which the European Union must show respect for the state’s fundamental functions, especially those that are aimed at “ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security,”<sup>4</sup> given that it negates the right of member states to pursue sovereign policies that would limit migration and protect the nation’s ethnic and cultural cohesion.



Source: Adobe Stock.

<sup>2</sup> Ibid. (for all of the above quotes).

<sup>3</sup> Article 4(2) of the Treaty on European Union.

<sup>4</sup> Ibid.

## THE MIGRATION PACT



**It addresses objectives of a humanitarian nature and the needs of the European labor market (in its current form).**



**It ignores the rationale of protecting national identity and cultural of member states.**

After four years of negotiations and legislative work, the European Parliament and the EU Council have passed ten new pieces of legislation totaling more than 1,000 pages, including:

- 1) Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management (hereinafter: Asylum and Migration Management Regulation);<sup>5</sup>
- 2) 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 (hereinafter: the Common Asylum Procedure Regulation);<sup>6</sup>
- 3) Regulation (EU) 2024/1349 of the European Parliament and of the Council of 14 May 2024 establishing a return border procedure, and amending Regulation (EU) 2021/1148;<sup>7</sup>
- 4) Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147;<sup>8</sup>
- 5) Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament

<sup>5</sup> OJ L 1351, 22.05.2024, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1351> (accessed: July 17, 2024).

<sup>6</sup> OJ L 1348, 22.05.2024, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_202401348](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401348) (accessed: July 17, 2024).

<sup>7</sup> OJ L 1349, 22.05.2024, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_202401349](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401349) (accessed: July 17, 2024).

<sup>8</sup> OJ L 1359, 22.05.2024, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_202401359](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401359) (accessed: July 17, 2024).



and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council;<sup>9</sup>

- 6) Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817;<sup>10</sup>
- 7) Regulation (EU) 2024/1352 of the European Parliament and of the Council of 14 May 2024 amending Regulations (EU) 2019/816 and (EU) 2019/818 for the purpose of introducing the screening of third-country nationals at the external borders;<sup>11</sup>
- 8) Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 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, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (hereinafter: Qualification Regulation);<sup>12</sup>
- 9) Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection (hereinafter: Reception Conditions Directive);<sup>13</sup>
- 10) Regulation (EU) 2024/1350 of the European Parliament and of the Council of 14 May 2024 establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147.<sup>14</sup>

The above-mentioned acts provide guidelines for the implementation of the Migration Pact's previously indicated goals, including the regulation of various aspects of asylum policy: the verification of the identities of those persons who cross the EU's external borders, the procedures for submitting and processing applications, the rights of immigrants who request asylum and the rights of refugees, etc.

9 OJ L 1358, 22.05.2024, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_202401358](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401358) (accessed: July 17, 2024).

10 OJ L 1356, 22.05.2024, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_202401356](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401356) (accessed: July 17, 2024).

11 OJ L 1352, 22.05.2024, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1352> (accessed: July 17, 2024).

12 OJ L 1347, 22.05.2024, [https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=OJ:L\\_202401347](https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=OJ:L_202401347) (accessed: July 17, 2024).

13 OJ L 1346, 22.05.2024, [https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=OJ:L\\_202401346](https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=OJ:L_202401346) (accessed: July 17, 2024).

14 OJ L 1350, 22.05.2024, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1350> (accessed: July 17, 2024).

**A 'refugee' under EU law is a foreigner who has fled his or her country of origin due to a "well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group" (Article 3(1) of the Common Asylum Procedure Regulation, cf. Article 18 of the EU Charter of Fundamental Rights).**

Displaced person status should be distinguished from refugee status. The former is held by a person who has been forced to leave his or her country or region due to the situation there, particularly armed conflict or the prevalence of acts of violence. Not all such persons meet the conditions set forth above for recognition as refugees.

**This means that not every migrant from a war zone is a refugee. Individual countries may provide special forms of protection for such individuals, however.**

Relevant EU-wide legislation was introduced by the Council Directive 2001/55/EC of July 20, 2001. It was applied via the Council Implementing Decision (EU) 2022/382 of March 4, 2022 in order to grant a special right of temporary protection to migrants who were arriving en masse from war-stricken Ukraine. Although similar status was not granted to migrants from Syria, for example.<sup>15</sup> For these reasons, to a large extent migrants from Africa, Asia, and the Middle East are not actually entitled to international protection as refugees, even when they are fleeing war-affected countries.



Scenes of violence in the Planoise neighborhood of Besançon, June 2023. Source: Wikipedia.org, Toufik-de-Planoise, [https://commons.wikimedia.org/wiki/File:Violences\\_urbaines\\_Nahel\\_Besançon-Planoise\\_29-06-2023\\_oufik-de-Planoise\\_1.jpg#/media/File:Violences\\_urbaines\\_Nahel\\_Besançon-Planoise\\_29-06-2023\\_oufik-de-Planoise\\_1.jpg](https://commons.wikimedia.org/wiki/File:Violences_urbaines_Nahel_Besançon-Planoise_29-06-2023_oufik-de-Planoise_1.jpg#/media/File:Violences_urbaines_Nahel_Besançon-Planoise_29-06-2023_oufik-de-Planoise_1.jpg), CC BY-SA 4.0, <https://creativecommons.org/licenses/by-sa/4.0/>.

15 The unequal treatment of displaced persons from Ukraine and Syria was the subject of, among other things, Petition No. 0909/2022. In response, the European Commission stressed that the granting of special status to displaced persons under the 2001 Directive is not automatic and is undertaken on a case-by-case level on the basis of a careful assessment, taking into account a combination of various elements.

It is possible that some of the displaced persons under temporary protection will also receive international protection via refugee status over time. This will occur on an individual basis if the person and his family demonstrate an inability to return to their country of origin for fear of persecution because of race, religion, nationality, political beliefs, or membership in certain political groups. In the case of displaced persons from Ukraine, refugee status could apply to political and nationalist activists from areas that have been annexed by the Russian Federation who could not find refuge in the remaining territory of Ukraine in the event the latter's capitulation.

Importantly, however, in light of the Migration Pact, the possibility of returning a migrant who has been denied asylum is partially limited by the principle of *non-refoulement*. This prohibits the return of persons who are seeking protection to a country or territory where they would face threats to their lives or health, or other forms of persecution. The principle of *non-refoulement*, which is enshrined in Article 33 of the 1951 Convention Relating to the Status of Refugees,<sup>16</sup> stems from the prohibition on torture and other forms of inhumane treatment and has been reaffirmed in numerous United Nations documents and international jurisprudence.<sup>17</sup>

Once the EU compulsory solidarity procedure has been activated, it will be impossible to expel relocated displaced persons who are ineligible for refugee status. There are also many indications that, even if these individuals leave for other EU countries, those destination countries will be able to return them to the country of relocation through a readmission procedure.

## AFTER ACTIVATION OF THE COMPULSORY SOLIDARITY MECHANISM

**It will be impossible to expel** relocated displaced persons who are ineligible for refugee status.

There are also many indications that, even if these individuals leave for other EU countries, **those destination countries will be able to return them to the country of relocation** through a readmission procedure.



EU member states

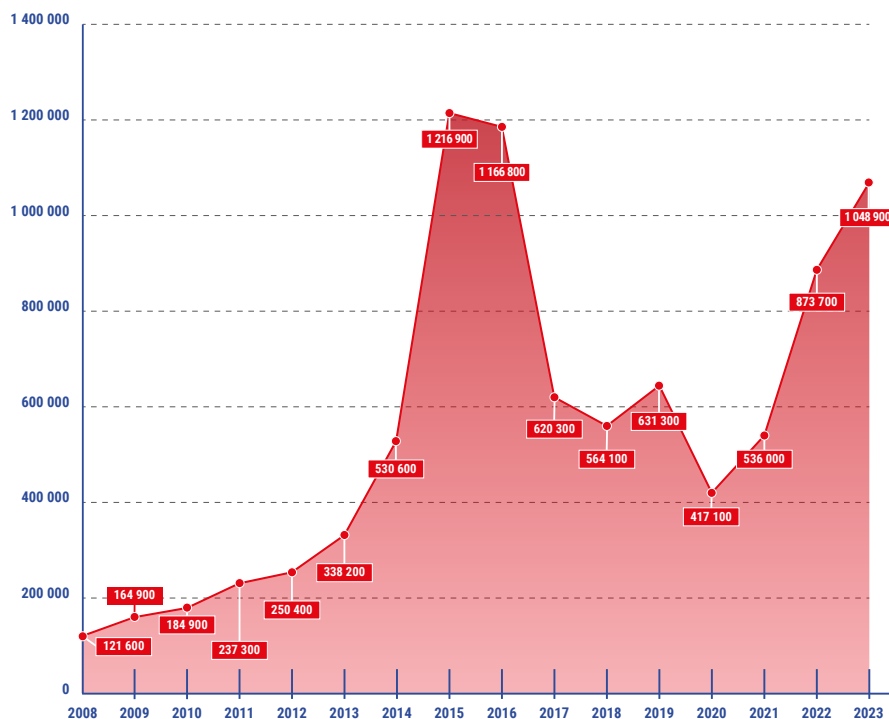
<sup>16</sup> Convention relating to the Status of Refugees, ratified in Geneva on July 28, 1951 (Journal of Laws of 1991, No. 119, items 515 and 517).

<sup>17</sup> Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: addendum, UN, <https://digitallibrary.un.org/record/679133?ln=en&v=pdf> (accessed: July 17, 2024).

## 2. Why did the European Union adopt the Migration Pact in the first place?

The Migration Pact is a response to the experience of the 2015-16 immigration crisis, when the influx of millions of migrants from African and Asian countries (in the latter case, mainly from Muslim countries in the Middle East and South Asia) began. Some were fleeing wars and persecution, and some were simply seeking greater prosperity, hoping to blend in with the refugee crowd and gain entry to a better world while riding a wave of sympathy from Western societies. In 2015 alone, some 1.3 million migrants arrived in Europe, almost all of whom applied for asylum. Despite the passage of more than eight years since the height of the crisis, the situation continues to be tense, and the asylum systems of European countries are now overwhelmed by the number of applications. In 2023 alone, more than 1.1 million migrants applied for asylum across the EU. Initially, this large number of migrants was a problem mainly for the Mediterranean countries such as Italy, Greece, and Spain, and those EU countries along the so-called Balkan route such as Hungary, Croatia, and Slovenia. After Belarus deployed „migration weapons” to put pressure on the European Union and even more so after Russia’s invasion of Ukraine, the problem began to affect Central and Eastern European countries such as Poland, the Baltic States, Czechia, and Romania as well.

**Figure 1. Number of asylum applications filed in all EU countries between 2008 and 2023**



Author's own elaboration. Data source: Eurostat. Numbers rounded to the nearest 100.

Some member states, such as Hungary, Poland, and Lithuania, pursued a firm policy of limiting illegal migration and illegal border crossings into the EU, even at the expense of violating international refugee guarantees. This was because these countries considered such guarantees to be incompatible with the modern threats posed by mass, provoked migration and their accompanying threats to public safety. This was no small factor in the adoption of the Migration Pact.

**The Pact attempts to force countries with strong border control policies into taking shared responsibility for managing the masses of migrants that have been received at other EU entry points by establishing a solidarity procedure. This undoubtedly represents another serious limitation of national sovereignty in the areas of migration and security policy. In the longer term, it will also impact the preservation of national identity and the protection of cultural and ethnic cohesion in the societies of the member states.**

Each application for refugee status requires a procedure that is both time- and cost-intensive. The large number of applications likewise places a heavy burden on national authorities, in particular:

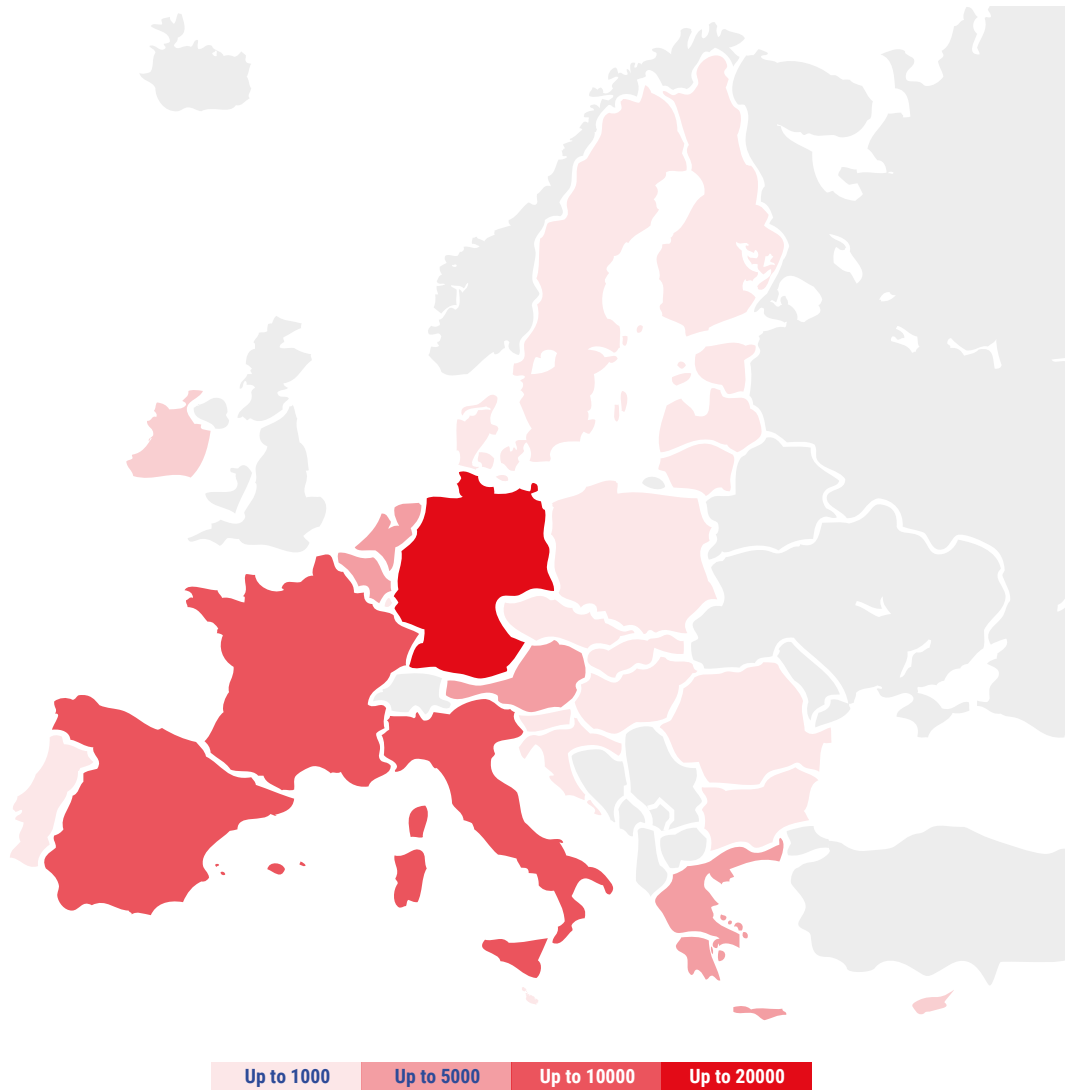
- border guards, who are responsible not only for guarding the border, but also for forwarding those asylum applications that are submitted at the border to immigration offices, as well as supervising the detention centers for those foreigners who are awaiting processing;
- immigration officials, who must interview each migrant who is requesting asylum, verify the documents he submits, and make a decision to either grant or deny refugee status or temporary protection;
- intelligence and counterintelligence officers, who must screen each immigrant in order to verify whether he is indeed at risk of persecution, has a criminal record, or has ties to criminal or terrorist organizations;
- detention center officials and social workers, who must care for these applicants for the duration of their stay in the country; as well as
- ordinary citizens, whose taxes finance the salaries of all these officials and officers, as well as the housing and food provided to newcomers until their status is established.

Two-thirds of all asylum applications filed in the European Union are submitted to just four EU member states: Germany, Spain, France, and Italy (Figures 1-3).



The so-called Jungle Camp – an illegal migrant encampment that was located in the northeastern French city of Calais, November 2016. Source: Shutterstock, Edward Crawford.

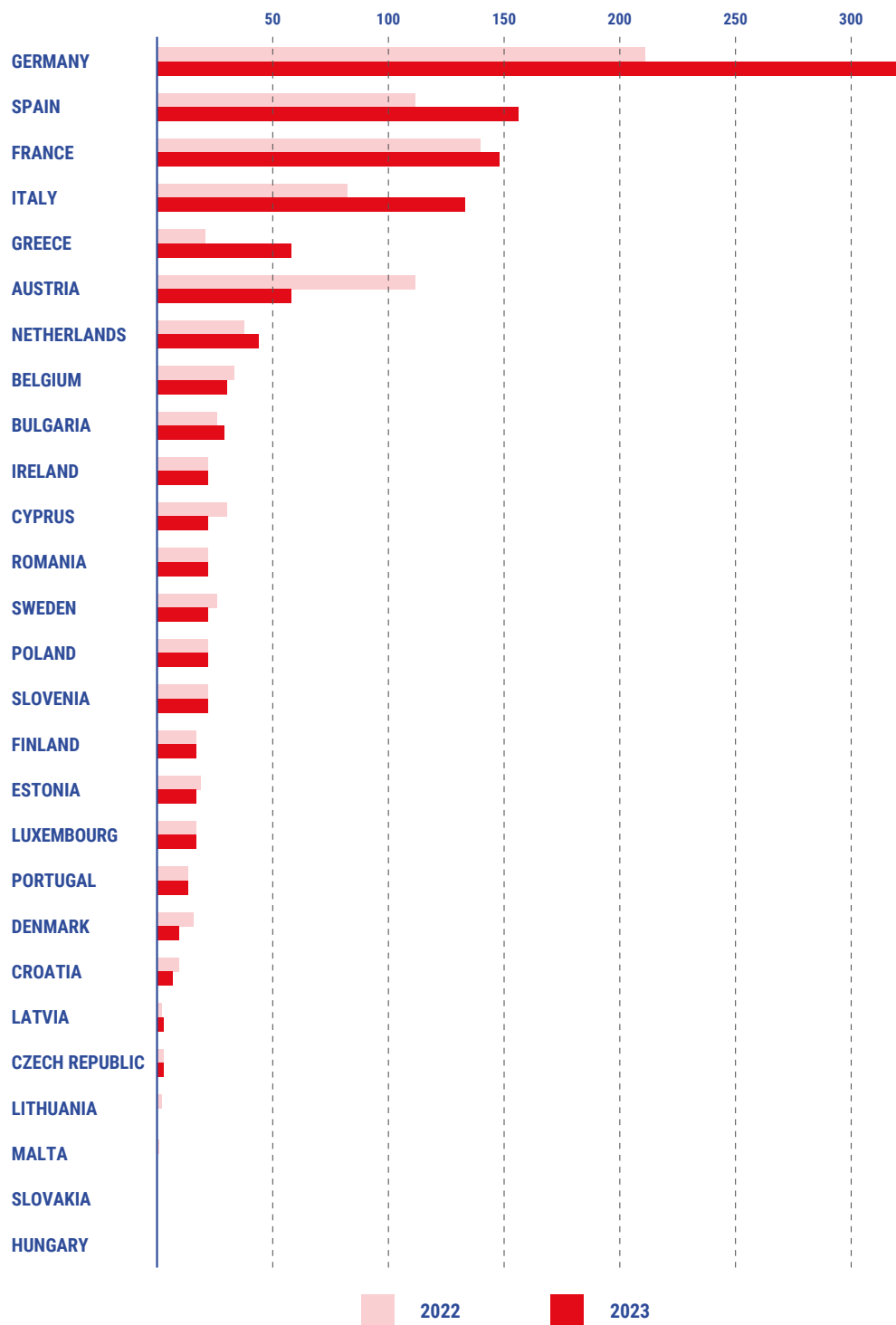
**Figure 2. Number of asylum applications by EU country in January 2024**



Author's own elaboration. Data source: Eurostat.

The Migration Pact contains solutions that are designed to strengthen border controls on the one hand, and on the other to ensure a more even distribution of incoming asylum applications among the EU's member states.



**Figure 3. Number of asylum applications in 2022-23 in each EU country (in thousands)**

Author's own elaboration. Data source: Eurostat. The data refer to first-time applications by non-EU citizens.

### 3. Does the European Union allow the entry of unvetted migrants?



Angela Merkel. Source: Wikipedia.org, [https://pl.wikipedia.org/wiki/Angela\\_Merkel#/media/File:Angela\\_Merkel\\_2023.jpg](https://pl.wikipedia.org/wiki/Angela_Merkel#/media/File:Angela_Merkel_2023.jpg), © Raimond Spekking / CC BY-SA 4.0 (via Wikimedia Commons), <https://creativecommons.org/licenses/by-sa/4.0/>.

German Chancellor Angela Merkel promoted the policy of accepting immigrants without vetting using the slogan “Wir schaffen das” (We can do it), which she first uttered on August 31, 2015 during a visit to Dresden’s migrant camp<sup>18</sup> at the height of that year’s immigration crisis. Other EU leaders have been less enthusiastic about indiscriminately accepting all the migrants who are arriving from Asia and Africa. Germany itself began to gradually withdraw from this policy in 2016. Moreover, by mid-September 2015 the German government was forced to suspend the Schengen Agreement and reintroduce controls along its border with Austria. This was because at that time it was dealing with an increasing onslaught of migrant caravans that were all heading to Germany along the so-called Balkan route. Current EU consensus holds that not all immigrants can be accepted without any vetting.

At the same time, the existing provisions of international refugee law prohibit denying assistance to those who are fleeing war and persecution. In light of these regulations, in order to separate refugees and war-displaced persons from so-called economic migrants who come merely for the advantages they can obtain in Europe, it is necessary to carry out a procedure to review asylum requests from any newcomer who applies. Moreover, as confirmed by the case law of the European Court of Human Rights (ECHR) in Strasbourg, such a request can be made via any form of communication and in any place. It is forbidden to limit the right to submit valid asylum applications to designated locations, such as border crossings or asylum offices. By the same token, it is a violation of the law governing refugees to engage in any form of pushback against migrants who are illegally crossing the border and express a desire to make an asylum claim.<sup>19</sup> This includes migrants who cross illegally across both land and sea borders.<sup>20</sup> The

18 J. Delcker, *The Phrase that Haunts Angela Merkel*, *Politico*, 19.08.2016, <https://www.politico.eu/article/the-phrase-that-haunts-angela-merkel/> (accessed: July 16, 2024).

19 There are three primary points of international law prohibiting migration pushbacks that are binding on Poland. **In the case of EU law**, it stems from the prohibition on the mass expulsion of foreigners that is described in Article 19 of the EU Charter of Fundamental Rights as well as the requirement to allow any immigrant who requests asylum to enter one’s territory, which in turn stems from Article 10(1) of the Common Asylum Procedure Regulation. In the case of the **Council of Europe**, the prohibition of pushbacks is derived from the prohibition on mistreatment (Article 3 in the European Convention on Human Rights – hereinafter: ECHR) and the prohibition on the mass expulsion of foreigners (Article 4 of Protocol No. 4 to the ECHR). In the case of **UN law**, on the other hand, the prohibition on pushbacks is derived from the principle of non-refoulement as described in Article 33 of the Refugee Convention.

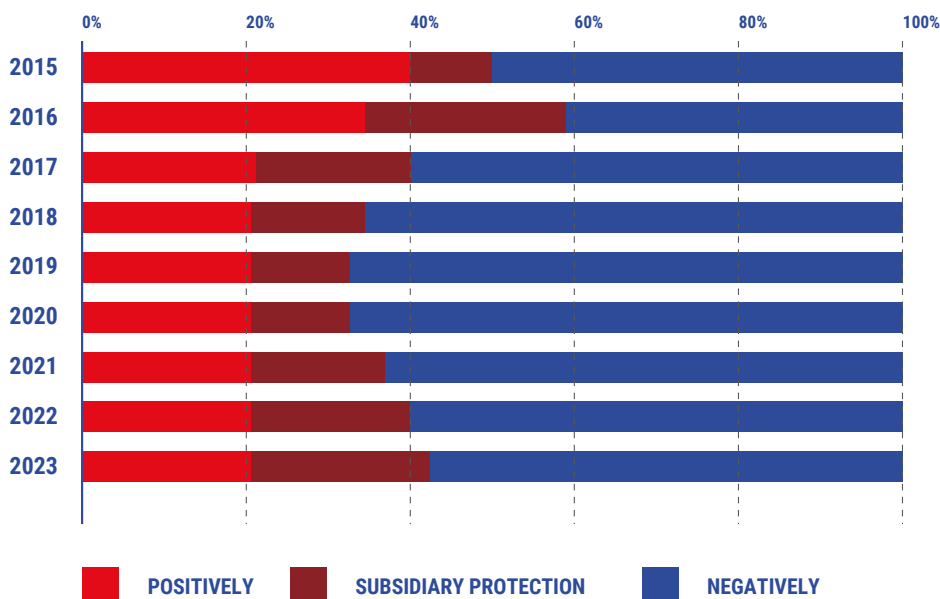
20 See, for example, the following judgments of the European Court of Human Rights: November 21, 2019, *Ilias and Ahmed v. Hungary*; from July 8, 2021, *D.A. and Others v. Poland*; from July 23, 2020, *M.K. and Others v. Poland*; from April 4, 2024, *Sherov and Others v. Poland*.

norms highlighted above were developed in times that predate the large waves of migration we are seeing today, including those that are being exploited as “weapons of mass migration”<sup>21</sup> by the Russian Federation and Belarus, not to mention the use of migration by Islamist organizations to smuggle jihadist terrorists, which was already already taking place earlier.

**To this day, however, there is no consensus on how these international regulations should be changed, and those countries and governments that have adopted assertive border policies such as Poland, Lithuania, Italy, and Hungary are often accused of violating the “rule of law” and respect for human rights, which are the guiding principles of the European Union.**

As a result, despite the growing conviction that the steady flow of migrants requesting asylum in the European Union needs to be curbed, the relevant institutions in the member states are nevertheless still obliged to receive and process the refugee claims of every migrant who approaches the border. In cases where an application submitted by a migrant who was previously allowed into the country is rejected, the member states often have no recourse by which to expel the applicant due to a lack of evidence that would allow for his country of origin to be properly identified. There is therefore limited value in the data provided by the EU Agency for Asylum showing that the majority of asylum applications are rejected. Indeed, the majority of these refusals do not result in the expulsion of the migrant from the European Union (Figure 4).

**Figure 4. How EU countries handled asylum applications between 2015 and 2023**

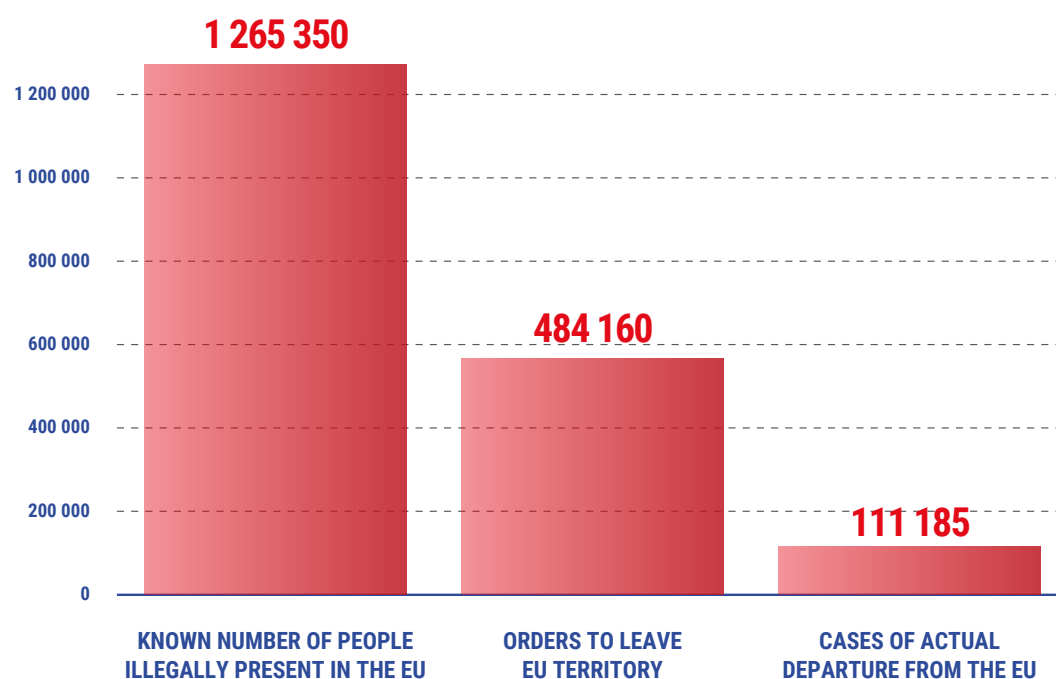


Author's own elaboration. Data source: EU Asylum Agency.

21 K.M. Greenhill, *Weapons of Mass Migration: Forced Displacement, Coercion and Foreign Policy*, Cornell University Press, Ithaca and London 2010.

As Eurostat indicates, in 2023 the member states issued 484,160 decisions that ordered people to leave the European Union, but only 111,185 – or less than 25% – actually left the EU<sup>22</sup> (Figure 5). At the same time, the number of illegal migrants who have been identified in the member states has been growing again since 2020. In 2023 alone, this number exceeded 1.2 million people.<sup>23</sup> This figure likewise only includes those illegal immigrants who are known to be on EU territory. There is also a multitude of illegal migrants whose presence remains unknown.

**Figure 5. Number of illegal immigrants actually expelled, compared to the number of orders to leave the EU (2023)**



Author's own elaboration.

This known discrepancy between the total number of irregular migrants in the European Union and the number of migrants who have been expelled from its territory, in addition to the unknown number of irregular migrants who are still being discovered in the member states, is the focus of the forced solidarity procedures that the Migration Pact seeks to impose on all the member states.

<sup>22</sup> Eurostat, *Enforcement of Immigration Legislation Statistics*, [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Enforcement\\_of\\_immigration\\_legislation\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Enforcement_of_immigration_legislation_statistics) (accessed: October 19, 2024).

<sup>23</sup> Eurostat, *Enforcement of Immigration Legislation Statistics*...

## 4. From where are immigrants coming to Europe?

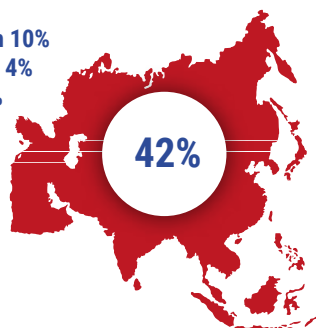
Immigrants to Europe come from all the world's continents, although the largest numbers come from Asia (more specifically, the Middle East and South Asia) and Africa (Figure 6). In 2023, the largest number came from civil war-ridden Syria (17%).

**Figure 6. Origin of migrants applying for asylum in the EU for the first time in 2023**

**In 2023, 1,129,800 asylum applications were made in the EU.  
As many as 1,049,000 were from first-time applicants.**

### ASIA

Syria 17%  
Afghanistan 10%  
Bangladesh 4%  
Pakistan 3%  
Iraq 2%



### AFRICA

Morocco 3%  
Egypt 2%  
Guinea 2%  
Ivory Coast 2%  
Somalia 2%



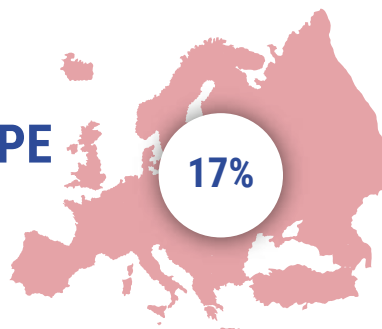
### NORTH AND SOUTH AMERICA

Venezuela 6%  
Colombia 6%  
Peru 2%



### EUROPE

Turkey 9%  
Georgia 2%  
Russia 2%



## 5. Is the Migration Pact already in effect? Why, for example, is Germany already sending migrants to Poland?

**All the legislation that has been adopted as part of the Migration Pact is already in effect, but the member states have two years to prepare for its implementation. The new regulations will be put into practice beginning in 2026 – some from June 12, and some from July 1.**

At the same time, in the second half of 2024 the Polish and German media noted that the German government was already considering sending as many as 40,000 migrants to Poland,<sup>24</sup> as well as the fact that the German police have been transporting foreigners to Polish territory and then leaving them there.<sup>25</sup>

The transfer of these migrants did not occur as a result of the Migration Pact's provisions, however, but from the earlier provisions of the Dublin III Regulation,<sup>26</sup> which provides for the return of migrants to the EU country they first entered. Indeed, in many situations migrants have continued their journey to a different destination country after applying for asylum in the country where they entered the EU. The rules of the Dublin III Regulation were intended to address such situations.

The Migration Pact strengthens the procedures established by the Dublin III Regulation, facilitating the readmission procedure and providing more time in which to return migrants to their country of entry. Data provided by the Polish Border Guard to the Interia news website show that 850 people were readmitted to Poland in 2023, while 336 people were transferred in the first five months of 2024. A veritable wave of readmissions may occur when two prerequisites are fulfilled: (i) the Migration Pact will come into force, and tens of thousands of migrants seeking to re-enter other EU countries will arrive in Poland; or (ii) in other EU countries, governments will come to power that are ready to use the Dublin III procedures in order to carry out mass readmissions both of entrants from Poland as well as migrants who have been relocated under the Migration Pact and are illegally exiting Poland.

24 J. Krzywiecki, *The Specter of the Great Migration from Germany. Berlin may send Poland thousands*, Interia, 17.10.2024, <https://wydarzenia.interia.pl/tylko-w-interii/news-widmo-wielkiej-migracji-z-niemiec-berlin-moze-wyslac-polsce-nld,7838040> (accessed: October 19, 2024).

25 *The German police transported some migrants to Poland. Donald Tusk reacts*, Rzeczpospolita, 17.06.2024, <https://www.rp.pl/polityka/art40649071-niemiecka-policja-przewiozla-migrantow-do-polski-reaguje-donald-tusk> (accessed: October 19, 2024).

26 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 (recast), OJ L 180, 29.06.2013.



## 6. What is the so-called solidarity mechanism?

**The solidarity mechanism is a procedure for agreeing on the mandatory measures to be taken by the member states in support of those countries that are most experiencing migration problems.**

Member states will have a choice of three types of so-called solidarity measures, which are forms of assistance they must offer to those countries that are facing migration problems (Article 56 of the Asylum and Migration Management Regulation):

- 1) The relocation of migrants from countries that are most burdened by the number of refugees as well as the number of incoming asylum applications to countries that are less burdened in this regard. The minimum pool of people to be relocated in a given year on an EU-wide basis is at least 30,000 migrants (Article 12(2)(a) of the Asylum and Migration Management Regulation), but the Council can set a higher number. According to Eurostat data, 1.13 million asylum applications were filed in the EU in 2023, including 1.05 million first-time applications, which was an increase of 18% compared to 2022 and 62% compared to 2019, which was before the COVID-19 pandemic.<sup>27</sup>
- 2) Financial assistance is aimed mainly at projects in the fields of migration or border management and asylum, or at projects in third countries that can directly affect migration flows at the EU's external borders or that can improve the asylum, reception, and migration systems in place in third countries. This includes programs for assisted voluntary return and reintegration measures, as well as for combating human trafficking or human smuggling. The minimum threshold for EU financial assistance is at least €600 million (Article 12(2)(b) of the Asylum and Migration Management Regulation), but the Council may establish a higher "Solidarity Pool".
- 3) Operational assistance, including alternative measures to enhance the member states' capabilities in relation to asylum, reception, and return procedures, as well as external considerations.

Examples of operational assistance could include deploying additional services to the EU's external borders, sending equipment, assisting patrol boats that operate in the Mediterranean, deploying border guards to assist a country with border protection problems, providing legal advice on return and reintegration options to unlawfully residing third-country nationals, supporting the voluntary return and reintegration of irregular migrants, and facilitating talks with third countries that could stem the flow of migrants by offering them safe asylum in those territories.

<sup>27</sup> European Commission, *Statistics on Migration to Europe*, 11.04.2024, [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-life/statistics-migration-europe\\_en#seeking-asylum-in-europe](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-life/statistics-migration-europe_en#seeking-asylum-in-europe) (accessed: October 23, 2024).



Illegal migrants on the Italian island of Lampedusa. Source: Shutterstock, photofilippo66.

## 7. Does the solidarity mechanism disadvantage a country that has an assertive policy against illegal immigration?

The solidarity mechanism first and foremost cedes enormous power over migrant relocation policy to the European Commission and the European Council, which decides its member states' actual commitments by qualified majority.

### GIVING AWAY A HUGE AMOUNT OF POWER

The solidarity mechanism **cedes a huge amount of power over migrant-relocation policy to the European Commission and the EU Council, which decide on the final commitments of member states by a qualified majority.**

EU member states



Presented as a support system for countries experiencing difficult immigration situations – the so-called beneficiaries – provided by countries in good standing, the solidarity mechanism is also sometimes presented in Central European countries that are pursuing assertive policies against illegal immigration as a response to the challenge of managing refugees from war-stricken Ukraine.

**This ignores the fact that, while migration from Ukraine is temporary and will probably decrease in importance before the Migration Pact comes into force (in 2026), migration from Africa, Asia, and the Middle East is permanent and structural – and is trending upwards, if only due to demographics. Thus, the Central European countries, with their hitherto cautious migration policies and firm border policies, will become relocation depositories for those countries that are being burdened by migration from those source regions. Likewise, a Western or Southern European country that wants to wage a tougher fight against illegal immigration in the future will also quickly become a relocation destination. This is because the calculation of the quotas for migrant relocation will primarily consider refugee immigration data from the previous year, rather than the total number of migrants who have historically been admitted to that country.**

## 8. What will the relocation of migrants look like in practice?

In theory, member states will not simply send others “their migrants” as part of the relocation framework. Only two “strictly” defined groups of immigrants who have recently arrived in a member state are to be relocated:

- refugees (whose persecution in the country of origin has been confirmed); and
- asylum seekers (who claim they are at risk of persecution, but where this has not yet been formally confirmed by the immigration service).

The latter group of immigrants will be the largest, as the vast majority of illegal arrivals request asylum in order to avoid expulsion.

**As already mentioned, processing tens – and sometimes even hundreds – of thousands of asylum applications requires a significant number of officials and lengthy procedures. Relocation thus essentially involves a member state taking over responsibility for processing an asylum application that has been filed in another country which is being flooded with them.**



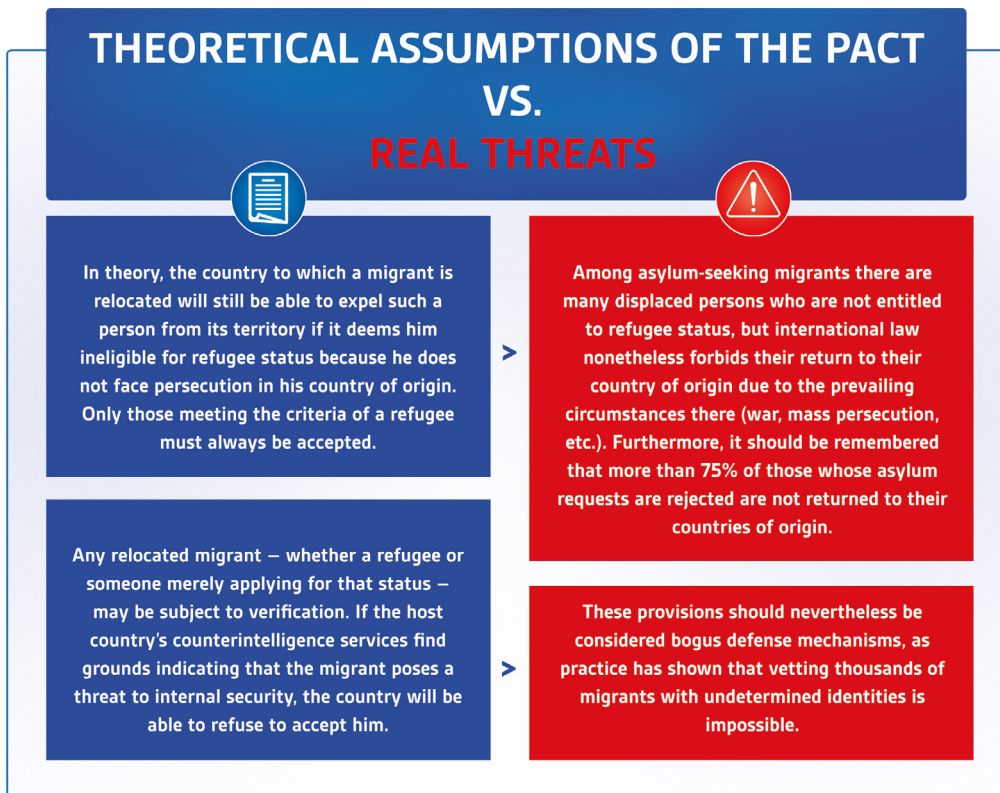
Scenes of violence in the Planoise neighborhood of Besançon, June 2023. Source: Wikipedia.org, Toufik-de-Planoise, [https://commons.wikimedia.org/wiki/File:Violences\\_urbaines\\_Nahel\\_Besançon-Planoise\\_29-06-2023\\_oufik-de-Planoise\\_3.jpg](https://commons.wikimedia.org/wiki/File:Violences_urbaines_Nahel_Besançon-Planoise_29-06-2023_oufik-de-Planoise_3.jpg), , CC BY-SA 4.0, <https://creativecommons.org/licenses/by-sa/4.0/>.

The relocation of an asylum seeker will therefore not be unconditional. In theory, the country to which a migrant is relocated will still be able to expel such a person from its territory if it deems him ineligible for refugee status because he does not face persecution in his country of origin. Only those meeting the criteria of a refugee must always be accepted (Article 68(4) of the Asylum and Migration Management Regulation). As previously noted, however, among asylum-seeking migrants there are many displaced persons who are not entitled to refugee status, but international law nonetheless forbids their return to their country of origin due to the prevailing circumstances there (war, mass persecution, etc.).

Furthermore, it should be remembered that more than 75% of those whose asylum requests are rejected are not returned to their countries of origin.<sup>28</sup> Most often, this is due to the absence – including as a result of intentional destruction – of evidence indicating the migrant's origin, or else the origin countries' refusal to take back their own citizens. The latter phenomenon often applies to African and Muslim countries. This particularly affects France, for example, which has reported that fewer than 10% of deportation orders have been executed in recent years, as most illegal immigrants residing in France come from such countries. Thus, to take an example, by theoretically relocating 50,000 migrants to Poland via these asylum procedures, the European Union assumes that more than 38,500 of said migrants will remain on Polish territory.

According to the provisions of the Migration Pact (Article 67 (2) and (9) of the Asylum and Migration Management Regulation), any relocated migrant – whether a refugee or someone merely applying for that status – may be subject to verification. If the host country's counterintelligence services find grounds indicating that the migrant poses a threat to internal security, the country will be able to refuse to accept him. These provisions should nevertheless be considered bogus defense mechanisms, as practice has shown that vetting thousands of migrants with undetermined identities is impossible.

28 Eurostat, *Enforcement of Immigration Legislation Statistics*.



## 9. Is it true that the member states will have to pay a €20,000 fine for each immigrant they refuse to admit?

No regulation prescribes in advance the amount of fees incurred for not accepting immigrants. Nothing prevents setting even higher amounts for financial solidarity contributions.

The €20,000 figure cited by some commentators comes from dividing the minimum total financial commitment of each member state to the EU's Asylum, Migration and Integration Fund (€600 million) by the minimum number of migrants to be relocated (30,000).

**One should also note that both the way in which the financial solidarity contribution as well as the procedure for the provision of alternative solidarity measures will be determined is not strictly defined in the Migration Pact. A great deal of leeway is being left to the European Commission's discretion.**

The amount of the financial solidarity contribution itself will be determined by the European Commission on a case-by-case basis, depending on the needs of the beneficiary countries as well as the population size and GDP of those countries (Article 66 of the Asylum and Migration Management Regulation).



Given the demonstrable arbitrariness of previous European Commission decisions, it is likely that, notwithstanding the real need to support migration-burdened countries (beneficiaries), the threat of demanding payments from countries obliged to provide solidarity benefits will also be used for other purposes.

Our experience with the European Commission's selective use of the so-called rule of law mechanism, as well as its allocation of the special fund for rebuilding the bloc's economy after the COVID-19 lockdowns, suggests that, first, this pressure will serve as an effective tool for coercing member states that are net beneficiaries of the EU budget – specifically, the countries of Central and Eastern Europe; and second, EU institutions will be able to use it to advance ideological goals unrelated to immigration.



Source: Adobe Stock.

## 10. What will determine a country's obligations to the other member states in terms of immigration policy?

Each year, the EU will make use of a three-stage process to determine the so-called solidarity pool – i.e., the number of immigrants that require relocation – as well as the extent of financial and operational assistance that is required by those countries which are in immigration distress. This solidarity pool will likewise determine the scale of the contributions that each member state will have to make.



## SOLIDARITY POOL

EACH YEAR, IN A THREE-STAGE PROCEDURE, THE EU WILL DETERMINE THE SO-CALLED **SOLIDARITY POOL**, I.E.

- ✓ the number of immigrants requiring relocation;
- ✓ the extent of financial and operational assistance needed by countries in immigration distress;
- ✓ the scale of contributions that each member state will have to make.



THE EU COUNCIL WILL SET THE AMOUNT OF THE SOLIDARITY POOL BY QUALIFIED MAJORITY THROUGH AN IMPLEMENTATION ACT



ACTING ON A PROPOSAL FROM THE EUROPEAN COMMISSION



CONSIDERING AGREEMENTS BETWEEN STATES AT THE SO-CALLED HIGH-LEVEL SOLIDARITY FORUM



**THERE WILL BE NO VETO POWER OVER THIS PROCEDURE.**

A qualified majority of the European Council will set the amount of the solidarity pool through an implementation act. This act will be proposed by the European Commission and will take into consideration the agreements between states that have been made at the so-called “High-Level EU Solidarity Forum,” a body composed of representatives of the member states which will be chaired by the member state then holding the Council’s presidency (Articles 13 and 57 of the Asylum and Migration Management Regulation). There will be no ability to veto this procedure.

**Western European countries, which are currently suffering from an acute migration crisis as a result of decades of misguided decisions and inaction, will very easily be able to use the solidarity pool to act against the interests of Poland, Hungary, and their potential allies in Central Europe. The same could be true of those countries that may decide to embrace more assertive policies toward illegal immigration in the future.**



Refugees try to break through the police barricade at a makeshift camp in Idomeni in order to reach Greece's border with Macedonia, February 2016.  
Source: Shutterstock, Giannis Papanikos.

## 11. Can a country somehow evade participating in the solidarity mechanism?

In theory, each member state has the option to opt out of the solidarity mechanism – as long as it meets the legally-defined conditions. The decisions remain in the hands of the majority, however, and depend on a political decision made by the EU Council, as well as the negotiating capacity of the government of the country seeking permission to opt out. Such a member state would indeed have to convince a majority of the member states of the seriousness of the migration situation it is facing at home.

It should be noted that the formulation of criteria for assessing a state's migration situation does not favor a country that is successfully fighting more effectively against the presence of illegal immigrants on its territory. This is because these criteria emphasize the number of immigrants received in a given year and the previous year, as well as the number of asylum applications to be processed. The cumulative number of immigrants a country has received over a long period is less important.

## 12. What conditions will a member state have to meet in order to obtain an exemption from participating in the solidarity mechanism?

The decision to grant a request for exemption from participating in the solidarity mechanism is discretionary. It is taken by a political body – the Council of the EU – on the basis of a recommendation from the European Commission.

The Migration Pact points to certain premises as general guidelines on the matter. Member states that are experiencing serious problems related to the **current** influx of migrants can apply for an exemption.

EU law divides countries experiencing such problems into two categories: countries “under migratory pressure” (Article 61(1) of the Asylum and Migration Management Regulation), and countries facing a “significant migratory situation” (Article 62(1) of the Asylum and Migration Management Regulation). They are the ones that are supposed to be the beneficiaries of the solidarity mechanism in the first place, and they are also the ones that will be able to apply for full exemption from the mechanism's obligations.

**Migratory pressure** means a situation brought about by arrivals by land, sea, or air, or else applications of third-country nationals or stateless persons that are of such a scale that they lead to disproportionate obligations for a Member State – taking into account the overall situation in the European Union – even when it has a well-prepared asylum, reception, and migration system, and thus requires immediate action (Article 2(24) of the Asylum and Migration Management Regulation). In other words, such a case must entail a disproportionate burden on a given member state due to an influx of non-EU foreigners that therefore requires immediate remedial action. The assessment of this burden's scale will take into account not only the situation in the country in question, but also the overall migration situation in the EU, including the scale of illegal migration between member states.

A less serious form of migration problems is a **significant migration situation**. This is a situation in which the cumulative effect of both the current and previous arrivals of foreigners each year causes a well-prepared asylum, reception, and migration system to reach the limits of its capacity (Article 2(25) of the Asylum and Migration Management Regulation).

In short, the key is the number of arrivals in a given year and the number of asylum applications. The number of refugees a country has previously accepted is less important.



The migration crisis on the Polish-Belarusian border. Source: screenshot from: Border\_-\_recording\_8112021.MP4 [video], Gov.co.uk, *Situation across the eastern border*, Videos, <https://www.gov.pl/web/granica/materialy-wideo>, CC BY-NC-ND 3.0 PL, <https://creativecommons.org/licenses/by-nc-nd/3.0/pl/deed.pl>.

An EU member state that effectively protects its borders from being crossed by illegal immigrants will have to be very skillful in convincing the other member states that it qualifies as a country that is under migration pressure or is in a significant migration situation, despite its low number of asylum applications. As often happens in negotiations in the Council of the EU, this could be exploited by other countries in order to force concessions from that country's government in areas that are not directly related to illegal immigration.



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## 13. What will be the procedure for applying for an exemption from the solidarity mechanism?

A country will have to submit a relevant application to the European Commission and the Council of the EU, which will then be processed in two stages: first, the Commission will present its assessment of the application (Article 61(3) of the Asylum and Migration Management Regulation); and then the Council of the EU will decide, by means of an implementation act, to reduce the contribution, exempt the contribution, or deny the application (Article 61(4) of the Asylum and Migration Management Regulation). The regulations do not imply that the Council is bound by the Commission's assessment. Thus, hypothetically the Council can decide to grant the state's application even if the Commission's assessment is negative.

As a rule, the state's request should be justified in detail, including:

- a description of how the full or partial deduction of its pledged contributions would help to stabilize the situation;
- whether the pledged contribution could be replaced with a different type of solidarity contribution;
- how that Member State will address any possible identified vulnerabilities in the area of responsibility, preparedness, or resilience;
- a duly substantiated case for the existence and extent of migratory pressure upon the requesting Member State (Article 61 (2) of the Asylum and Migration Management Regulation). In the case of a country that is facing a significant migration situation, the regulation requires "a duly substantiated reasoning pertaining to the area of the asylum, reception and migration system in which the capacity has been reached, and how reaching the limits of the capacity of that Member State in the specific area affects its capacity to fulfil its pledge" (Article 62(2) of the Asylum and Migration Management Regulation).

**The opt-out option will more easily be exercised by those countries that the Commission has previously granted the status of being under migratory pressure or facing a significant migratory situation as the result of a decision made via an early-warning procedure (Article 11 of the Asylum and Migration Management Regulation).**

States granted the status of being subjected to migratory pressure are exempt from the requirement to provide detailed justification for such a request (*a contrario* from Article 61(2) of the Asylum and Migration Management Regulation). By contrast, countries granted the status of facing a significant migration situation always have to submit a detailed, reasoned application including the four components listed above, but they do not have to document the seriousness of their migration situation (*a contrario* from Article 62 (3), sentence 1 of the Asylum and Migration Management Regulation).



## 14. When will the European Union decide whether to release a member state from its obligations under the solidarity mechanism?

Most likely, the European Council will decide on a full or partial waiver of obligations under the solidarity mechanism in late 2025 or early 2026. As early as May 2025, the European Commission will begin collecting information from the member states on their migration situation. In October, it will then classify countries as either being under migration pressure or facing a significant migration situation.<sup>29</sup>

As previously noted, the Council will consider the Commission's views in this regard when deciding on full or partial waivers. The European Council schedule for 2025-2026 is not yet known, so it is difficult to predict the date when such a decision will be made.

## 15. Will there be any consequences for non-compliance with the Migration Pact?

Yes, in principle, any violation of EU law can be grounds for the European Commission to initiate treaty infringement proceedings (Article 258 of the Treaty on the Functioning of the European Union) and for the European Court of Justice to impose financial penalties on said state (Article 260 of the Treaty on the Functioning of the European Union).

### ANY VIOLATION OF EU LAW CAN BE GROUNDS FOR:



**The initiation of treaty-infringement proceedings**  
by the European Commission.



**Imposition of financial penalties on the country**  
by the EU Court of Justice.

<sup>29</sup> Common Implementation Plan for the Pact on Migration and Asylum, (SWD(2024) 251 final), pp. 2-3, [https://eur-lex.europa.eu/re-source.html?uri=cellar:1d7a409a-2948-11ef-9290-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/re-source.html?uri=cellar:1d7a409a-2948-11ef-9290-01aa75ed71a1.0001.02/DOC_1&format=PDF) (accessed: July 16, 2024).



## 16. Does European Union law require a member state to admit all immigrants who are gathered at the EU's external border?

No, it does not require this. From the standpoint of both EU and international law, there is no such thing as a “right to immigration,” “right to cross a border,” or “right to escape poverty.” A clear distinction should be made between economic migrants and refugees: no country has to admit the former, while a destination country must, as a rule, take in the latter.

**Member states have the right and obligation to provide controls at borders with countries that are not members of the European Union. Countries such as Spain, Greece, Bulgaria, Hungary, Poland, and Lithuania, for example, were therefore entitled to build barbed-wire fences and other obstacles along their external EU borders in response to numerous attempts to illegally invade their territory.**

The difficulty, however, is that distinguishing an economic migrant from a refugee entitled to protection and thus admission into the EU can only be carried out after an asylum application has been examined. Hence, both international law and the jurisprudence of the European Court of Human Rights (ECHR) in Strasbourg emphasize the illegality of obstructing or preventing migrants from making asylum claims.

**The ECHR allows the practice of so-called pushbacks in certain situations. For example, they are permitted if migrants try to cross a border illegally instead of taking advantage of the possibility that is effectively given to them to apply for asylum at an official border crossing.<sup>30</sup> At the request of the European Commission, the Court of Justice of the European Union (hereinafter: CJEU) has nevertheless stated in several of its decisions against Hungary that a person attempting to cross a border illegally must not be restricted from filing an asylum application, and that such a person must not be held in a closed facility while such an application is being processed.<sup>31</sup>**

30 The case of N.D. and N.T. v. Spain (applications 8675/15 and 8697/15), ECHR Grand Chamber judgment of February 13, 2020.

31 In its December 17, 2020 judgment in Case C 808/18, the CJEU found that Hungary had violated directives 2008/115, 2013/32, and 2013/33 because it had introduced: (i) a rule that immigrants arriving from Serbia could only apply for asylum in one of the two transit zones in Röszke or Tompa; (ii) daily numerical limits on the number of people allowed into these zones; (iii) automatic detention of the immigrants who were allowed into these zones; and (iv) a simplified procedure for the expulsion of illegal immigrants as well as additional conditions under which a migrant could remain in Hungary. In its November 16, 2021 judgment in Case C821/19, the CJEU found that Hungary had violated directives 2013/32 and 2013/33 because it: (i) introduced the option to reject an asylum application for a reason not provided under EU law, i.e., the applicant's arrival from a country where he was not at risk of persecution or threat of serious harm; (ii) penalized the actions of those who support migrants who are arriving from safe countries in making inadmissible asylum applications; and (iii) prohibited such persons from entering border areas. In its June 13, 2024 judgment in Case C 123/22, the CJEU fined Hungary €200 million for failure to comply with the December 17, 2020 judgment, and €1 million in penalties per day until the judgment's implementation.

In many cases, the inability to detain asylum seekers in detention centers for an extended period of time renders the decision on whether or not to grant asylum irrelevant, since the asylum seeker is already illegally in another EU country (with the risk that he will sooner or later be returned to his country of entry or, once the Migration Pact comes into force, his relocation country if he has previously been relocated).

In an era of mass, weaponized migration, these norms are becoming a tool in the hands of those who are provoking and organizing migration (namely the Russian Federation, Belarus, jihadist groups, and migration mafias).



Illegal immigrants storm the Polish-Belarusian border. Source: screenshot from: 8.11.2021 - footage from Kuźnica [embed KPRM video from YouTube], Gov.pl, Situation across the eastern border, Video footage, <https://www.gov.pl/web/granica/materialy-wideo>, CC BY-NC-ND 3.0 PL, <https://creativecommons.org/licenses/by-nc-nd/3.0/pl/deed.pl>.

## 17. Why can't the immigrants attempting to cross Latvia's, Lithuania's, and Poland's eastern border simply stay in Belarus?



Illegal immigrants on the Polish-Belarusian border. Source: BelTA News Agency (YT), Helicopter, water cannons, barbed wire and waiting | What's happening on the border with Poland NOW, <https://www.youtube.com/watch?v=CUUKrTN7MBU>, CC BY 3.0, <https://creativecommons.org/licenses/by/3.0/legalcode>.

This is because international law requires the provision of asylum or temporary protection to anyone on the territory of a country that is not recognized as a so-called safe country.

**According to numerous international bodies, Belarus does not constitute a so-called safe country.**

First, it treats immigrants as objects – as tools in a hybrid war. Thus, it can be said that they are threatened by the Belarusian security services, which do not hesitate to use violence to force these migrants across the border into Poland, Lithuania, or Latvia. Second, Belarus does not have an effective asylum system, because immigration officials there do not assess asylum applications fairly. They are guided primarily by the ruling party's whims, which results in decisions to deport people to obviously dangerous countries such as Syria or Afghanistan (see statements by the European Court of Human Rights,<sup>32</sup> the U.S. State Department<sup>33</sup> and Human Rights Watch<sup>34</sup>).

<sup>32</sup> ECHR judgments of July 23, 2020, *M.K. and Others v. Poland*, § 177-178; of July 8, 2021, *D. A. and Others v. Poland*, § 63-64; of June 30, 2022, *A.I. and Others v. Poland*, § 40-41.

<sup>33</sup> *2022 Country Reports on Human Rights Practices: Belarus*, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/belarus/> (accessed: July 16, 2024).

<sup>34</sup> *"Die Here or Go to Poland. Belarus' and Poland's Shared Responsibility for Border Abuses*, HRW, 24.11.2021, <https://www.hrw.org/report/2021/11/24/die-here-or-go-poland/belarus-and-polands-shared-responsibility-border-abuses> (accessed: July 16, 2024).

## 18. If an immigrant is caught crossing the border illegally, can Polish, Lithuanian or Latvian law enforcement detain him and take him back to Belarus?

The authorities can indeed detain him, but they cannot return him to Belarus if he has applied for asylum (even if only verbally).

**Returning an immigrant to the country from which he came constitutes a so-called pushback (repatriation), which is prohibited by EU law.**

Many immigrants may very well interpret this as an incentive to cross the border illegally: at best, they will get into the destination country without having to undergo verification, and at worst, they will apply for asylum. In a situation in which a large number of people systematically attempt to force their way across the border in violation of the law during a given period, a strict ban on turning them back is an unreasonable solution.

In light of the current migration crisis, the pushback ban, which is also in effect at land borders, appears to be a restriction on the fundamental right of states to self-defense and the maintenance of their public security. Hence, further acts violating this norm may, over time, lead to a political effort to change the system of international refugee guarantees.

**Poland, for example, would be particularly entitled to raise this issue internationally. Until that happens, however, as successive reports by the European Border and Coast Guard Agency (Frontex) have already shown, the relative certainty of economic migrants that, once they enter the European Union, they will not be able to be deported is a powerful pull factor reinforcing further waves of migration, just as it is for the migration routes that pass through the Mediterranean, where pushbacks are inherently much more difficult.**



**IN LIGHT OF THE CURRENT MIGRATION CRISIS, THE BAN ON PUSHBACKS APPEARS TO BE A RESTRICTION ON THE FUNDAMENTAL RIGHT OF STATES TO SELF-DEFENSE AND ASSURANCE OF PUBLIC SAFETY.**



## 19. Does the right to asylum also apply to an immigrant who is caught trying to cross the border illegally?

**Yes, even an immigrant caught in the act of illegally crossing the border can apply for asylum. Of course, this doesn't mean he'll automatically get it. In order to receive asylum, he must establish the fact that he faces persecution in his country of origin.**

An immigrant who has illegally crossed the border must be subjected to a so-called screening check. Then his asylum application is processed under the so-called return border procedure (Article 43(1)(b) of the Common Asylum Procedure Regulation).

Screening includes, among other things, a health check (Article 12 of the Screening Regulation); identification via documents, biometrics, and an EU data repository (Article 14 of the Screening Regulation); and verification of threats to internal security, including a review of existing arrest warrants as well as the criminal records of both EU countries and Interpol databases (Articles 15-16 of the Screening Regulation).



Migrants traversing the Balkan route from Serbia to Hungary, August 24, 2015. Source: Wikipedia.org, Gémes Sándor/SzomSzed, [https://en.wikipedia.org/wiki/Illegal\\_immigration#/media/File:Migrants\\_in\\_Hungary\\_2015\\_Aug\\_003.jpg](https://en.wikipedia.org/wiki/Illegal_immigration#/media/File:Migrants_in_Hungary_2015_Aug_003.jpg), CC BY-SA 3.0, <https://creativecommons.org/licenses/by-sa/3.0/>.

His asylum application is then processed under the so-called return border procedure (Articles 43-54 of the Common Asylum Procedure Regulation). The hallmark of this procedure is the possibility to deny an immigrant entry into a country's territory (Article 43(2) of the Common Asylum Procedure Regulation) and obliging him to remain in a designated place at the border, in the vicinity of the border, or in transit zones until his application is examined (Article 54(1) of the Common Asylum Procedure Regulation).

12 weeks after the application is submitted, however, the EU member state of entry must admit such an immigrant if it has not had time to make a negative decision (Article 51(2) of the Common Asylum Procedure Regulation).

## 20. Who is entitled to asylum?

As already mentioned, any foreigner who has fled his country of origin due to a well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group is entitled to asylum (Article 3(1) of the Common Asylum Procedure Regulation, cf. Article 18 of the EU Charter of Fundamental Rights).

**A foreigner seeking asylum must substantiate his application for international protection and fully cooperate with the national immigration service in order to establish the circumstances behind the fear of said persecution.**

To prove these circumstances, the foreigner should provide evidence, which may be limited to his personal explanations, even if they are unsupported by documents. EU law is flexible in this regard and leaves the national immigration services with a great deal of discretion, but with the caveat that a foreigner cannot be denied asylum simply because he has no documents to support his concerns (Article 4 of the Qualification Regulation).

## 21. Does the mere submission of an asylum application give the immigrant any rights?

Yes, simply filing an asylum application gives an immigrant five basic rights:

- 1) the right to remain on the territory of the Member State pending the examination of the application (Article 10(1) of the Common Asylum Procedure Regulation);
- 2) the right to apply for employment in a member country on an equal footing with citizens of that country, even though the state may postpone the granting of this right for six months after the registration of an asylum application (Article 17(1) of the Reception Conditions Directive);
- 3) in cases involving the poor, the right to so-called material benefits: i.e., housing, food, clothing, personal hygiene items, and money, vouchers, or other forms of exchange for so-called daily expenses, thus ensuring a minimum degree of self-reliance (Article 19 of the Reception Conditions Directive);
- 4) in cases involving working people, the right to social security benefits on an equal footing with citizens of a member state (Article 17(5) of the Reception Conditions Directive);
- 5) the right to free health care for adults, at least in emergencies, as well as for children, in full on a par with citizens of a member state (Article 22 of the Reception Conditions Directive).



## 22. Does European Union law grant immigrants more rights than the citizens of some member countries?

No, in some cases immigrants have the same entitlements (as in the case of social security or child health care), and sometimes they have fewer entitlements than citizens of a member state.



Migrants gathered at a logistics center on the Belarusian side of the border. Source: Shutterstock, Djordie Kostic.

## 23. Isn't it risky to allow every immigrant into the country even before his asylum application has been processed?

Yes, it is risky. A small number of applicants could be admitted without much risk, provided they were gathered for necessary and individualized processing in detention centers. Prolonged detention is being challenged in ongoing proceedings before the European Court of Human Rights,<sup>35</sup> however, and the arbitrary and indiscriminate placement of migrant asylum seekers in detention centers violates the prohibition on the arbitrary deprivation of liberty.<sup>36</sup>

<sup>35</sup> More than 30 proceedings against Poland, Lithuania, and Latvia, including Case C. O. C. G. and Others v. Lithuania (application No. 17764/22).

<sup>36</sup> The CJEU ruled on June 30, 2022 that EU law precludes legislation that, in response to a mass influx of migrants, an alien who has entered the territory of a member state illegally and is staying there illegally may be effectively deprived of the opportunity to submit an application for international protection (C-72/22 PPU), <https://curia.europa.eu/juris/document/document.jsf?mode=DOC&page-Index=0&docid=261930&part=1&doclang=EN&text=&dir=&occ=first&cid=1810519> (accessed: October 21, 2024).

**When facing a large number of applicants, the state is therefore forced to admit migrants on their word of honor. The migrant indicates his temporary place of residence to the host country's authorities and promises to remain available until a decision is made.**

In the event of a negative decision, the migrant is then obligated to leave the state's territory. In practice, however, there is nothing to stop an immigrant from breaking his word, leaving his designated place of residence, and moving to another part of the country, or even to another EU member state.



Illegal immigrants storm the Polish-Belarusian border. Source: screenshot from: Kuźnica\_08\_11\_2021\_1.mp4 [video], Gov.co.uk, Situation across the eastern border, Videos, <https://www.gov.pl/web/granica/materialy-wideo>, CC BY-NC-ND 3.0 PL, <https://creativecommons.org/licenses/by-nc-nd/3.0/pl/deed.pl>.

**As early as 2023, the Ordo Iuris Institute prepared an analysis in which it drew attention to the risk of abuse in the form of cascading asylum applications submitted by economic migrants who, despite knowing that they do not meet the prerequisites for international protection, will apply for it in hope of being permitted to enter the territory of a member state.**

Considering that, with such a large number of applicants, most migrants are living in private residences on the state's territory (due to the limited number of places in immigration detention centers), and are thus outside the control of the national immigration institutions, the Ordo Iuris Institute expressed concern that many of them will disperse throughout the country or leave for another member state without waiting for the application to be processed.<sup>37</sup> This is what has been happening in practice for years across all the EU countries. It is also worth recalling that illegal immigrants carried out a number of bloody Islamist attacks in Western Europe after 2015. Among the bloodiest were the attacks in Paris in November 2015, Brussels in March 2016, Nice in July 2016, and the Berlin Christmas market in December 2016, to mention only a few.

<sup>37</sup> See the Ordo Iuris Institute's analysis: *The asylum and immigration system of the European Union de lege lata and de lege ferenda - from the Dublin III Regulation to enforced solidarity*. Ordo Iuris analysis, Warsaw 2023, pp. 37-38 (Polish version), IN English: [https://ordoiuris.hr/wp-content/uploads/2024/04/Asylum-migration\\_Pact.pdf](https://ordoiuris.hr/wp-content/uploads/2024/04/Asylum-migration_Pact.pdf), Polish: [https://ordoiuris.pl/sites/default/files/inline-files/Analiza\\_mechanizmu\\_relokacji\\_migranta%CC%81w\\_w UE.pdf](https://ordoiuris.pl/sites/default/files/inline-files/Analiza_mechanizmu_relokacji_migranta%CC%81w_w UE.pdf), (Polish version accessed: July 13, 2024).

## 24. Are there exceptions to the rule that any immigrant who applies for asylum into the country must be admitted?

Yes. A country does not have to allow such an immigrant onto its territory if:

- his asylum application was rejected in one member state, and he filed another application based on the same circumstances in a second member state, or he filed another application in the same member state for the sole purpose of slowing down the proceedings;
- if he is being prosecuted by any country for the commission of a crime, including if he has been extradited, or is subject to a European arrest warrant or an arrest warrant issued by the International Criminal Court;
- he poses a threat to public order or national security (Articles 10(4) and 56 of the Common Asylum Procedure Regulation).

### A COUNTRY DOES NOT HAVE TO ADMIT AN IMMIGRANT IF:



His application for asylum has been denied in one member state and he has filed another application based on the same circumstances in a second member state, or he has filed another application in the same member state for the sole purpose of slowing down the proceedings.



He is being prosecuted by any country for the commission of a crime: he has been extradited, or he is the subject of a European arrest warrant or an arrest warrant issued by the International Criminal Court.



He poses a threat to public order or national security (Article 10(4) and Article 56 of the Common Asylum Procedure Regulation).

Evaluation of these premises is not discretionary, however. Any refusal must be duly justified by the state, especially in cases where there is a threat to public order or national security, which allows for the refusal of a migrant suspected of criminal, espionage, or terrorist activities. As already mentioned, this requires significant involvement by the country's intelligence and counterintelligence services.

## 25. Can the processing of asylum applications be “suspended”?



Donald Tusk. Source: Gov.pl, [https://pl.wikipedia.org/wiki/Donald\\_Tusk#/media/Plik:Donald\\_Tusk\\_KPRM\\_HQ.jpg](https://pl.wikipedia.org/wiki/Donald_Tusk#/media/Plik:Donald_Tusk_KPRM_HQ.jpg), CC BY 3.0 pl, <https://creativecommons.org/licenses/by/3.0/pl/deed.en>.

Polish Prime Minister Donald Tusk announced a “temporary suspension of asylum applications” in October 2024, arguing that “the right to asylum is being exploited in this war and has nothing to do with human rights.”<sup>38</sup> In doing so, he cited a Finnish law from mid-2024.

One should note that, while it is permissible under international law to temporarily suspend the processing of asylum applications, especially during an emergency migration crisis, this does not mean that migration can be stopped altogether, however. Indeed, such a suspension applies only to the procedure leading to the granting or refusal of asylum protection to refugees, not to the obligation to grant so-called temporary protection to any migrant who requests that his or her asylum application be processed at the state’s border.

**Any arbitrary and indiscriminate halting of the flow of migrants across a state border is a violation of guarantees under treaty-based international law concerning refugees. Without the development of an international agreement on the (undoubtedly necessary!) modification of refugee law, effective protection against mass migration will not be possible.**

The issue of the permissibility of a more decisive suspension of guarantees under the international convention on refugees in the midst of “weapons of mass migration”<sup>39</sup> has in the past been the subject of analyses and recommendations by the Ordo Iuris Institute<sup>40</sup> and was discussed at the international seminar entitled “The Response of International Law to ‘Weapons of Mass Migration.’”<sup>41</sup>

International law contains no provision providing for the right of states to suspend their obligations under the international, treaty-based guarantees on refugee rights. Nevertheless, both the

38 D. Tusk [@donaltdtusk], Temporary suspension of requests..., Twitter, post dated 13.10.2024, <https://x.com/donaltdtusk/status/1845458550308356424> (accessed: 10/20/2024). Full text of the post: “A temporary suspension of asylum applications was introduced in May in Finland. It is a response to the hybrid war that was declared on the entire Union – including, above all, Poland – by the regimes in Moscow and Minsk, and entails the organizing of mass people-smuggling across our borders. The right to asylum is being exploited in this war and has nothing to do with human rights. Border control and the territorial security of Poland is, and will continue to be, our priority. Our decisions and actions will absolutely be subject to this.”

39 K.M. Greenhill, *Weapons of Mass Migration...*

40 *The Asylum and Immigration System of the European Union...*, [https://ordoiuris.pl/sites/default/files/inline-files/Analiza\\_mechanizmu\\_relokacji\\_migrantów\\_w\\_UE.pdf](https://ordoiuris.pl/sites/default/files/inline-files/Analiza_mechanizmu_relokacji_migrantów_w_UE.pdf) (accessed: 10/20/2024).

41 *International law response to „Weapons of mass migration” – seminar with experts*, Ordo Iuris, 26.11.2021, <https://ordoiuris.pl/dzialalnosc-miedzynarodowa/odpowiedz-prawa-miedzynarodowego-na-bron-masowej-migracji-seminarium-z> (accessed: October 20, 2024).



doctrine and practice of international law indicate widespread agreement that the right to partial, temporary, and proportional suspension<sup>42</sup> of these guarantees derives, among other things, from articles 8 and 9<sup>43</sup> of the Geneva Convention Relating to the Status of Refugees of July 28, 1951. The effect of this suspension, however, is not the right to “pushbacks” of migrants at the border, nor is it the right to automatically stop accepting refugees, but merely the right to implement temporary replacement measures that provide migrants with an alternative form of temporary protection during an emergency (i.e., a migration crisis).

In extreme situations, the right to halt, either completely or partially, the acceptance of refugee applications due to the abuse of refugee guarantees by a third country in order to exert migratory pressure can be classified as falling under a country's natural right of self-defense. Thus, each country can take necessary measures for maintaining peace and security.

**Accordingly, the system of treaty-based refugee guarantees should be amended accordingly to explicitly allow for a broader range of options for such suspension.**

In response to Donald Tusk's announcements, dozens of social organizations sent an open letter to the head of the Polish government, drawing attention to the unacceptability of suspending asylum applications.<sup>44</sup> Ursula von der Leyen expressed a different opinion when she stated at a press conference following the EU summit that “if the measures taken by member states are proportionate and temporary, they are legitimate.”<sup>45</sup> The concluding remarks made in the European Council meeting of October 17, 2024 stated that “Russia and Belarus, or any other country, cannot be allowed to abuse our values, including the right to asylum, and to undermine our democracies. The European Council expresses its solidarity with Poland and with Member States facing these challenges. Exceptional situations require appropriate measures (...) [The European Council] reaffirms its commitment to countering



Ursula von der Leyen. Source: European Parliament / flickr.com, [https://www.flickr.com/photos/european\\_parliament/53866532691/](https://www.flickr.com/photos/european_parliament/53866532691/), CC BY 2.0, <https://creativecommons.org/licenses/by/2.0/>.

42 A summary of the permissibility of temporary measures, including temporary protection, can be found in, among others: A. Edwards, *Temporary Protection, Derogation and the 1951 Refugee Convention*, *Melbourne Journal of International Law* 2012, Vol. 13, No. 2; D. Turkozu, *Two Sides of the Same Coin: Temporary Protection as a Practical but Unsettled Concept*, *Die Friedens-Warte* 2017-2019, Vol. 92, No. 3/4.

43 Article 9 of the 1951 Geneva Convention stipulates that “[n]othing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.”

44 Amnesty International, *together with other organizations, appeals to PM concerning the suspension of the right to asylum*, Amnesty International, 14.10.2024, <https://www.amnesty.org.pl/amnesty-international-wraz-z-innymi-organizacjami-apeluje-do-premiera-ws-zawieszenia-prawa-do-azylu/> (accessed: October 20, 2024).

45 P. Pacuła, *EC chief agrees to Polish proposal to suspend asylum rights temporarily*, *Oko.press*, 18.10.2024, <https://oko.press/szefowa-ke-przystaje-na-polska-propozycje> (accessed: October 20, 2024).

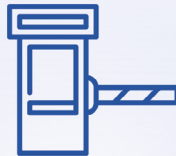
the instrumentalisation of migrants for political purposes (...) In addition, new ways to prevent and counter irregular migration should be considered, in line with EU and international law.”<sup>46</sup>

**It is clear that, in the documents cited above, the European Union has not affirmed the possibility to refuse refugee applications or Poland's right to physically detain migrants en masse at the border. The EU's position should only be understood as confirming that the possibility of temporarily replacing the existing asylum procedures with temporary protection measures exists.**

In conclusion, international law, as it stands, only provides for the possibility of temporarily replacing a migrant's right to submit an asylum application with the offer of another form of temporary protection. The challenge facing states affected by the “weapons of mass migration” crisis is how to bring about appropriate changes in the international,<sup>47</sup> treaty-based refugee guarantee system so that the obligations of signatory countries cannot be used as a means of destabilizing them.

**Such a systemic change would not only safeguard the interests of the states, but would also predictably regulate the circumstances under which refugee guarantees are waived in emergency situations.**

## EFFECTIVE DEFENSE IN THE WAKE OF THE “WEAPONS OF MASS MIGRATION” CRISIS



The challenge facing countries affected by the “weapons of mass migration” crisis is to orchestrate changes in the international, treaty-based system of refugee guarantees, so that the obligations of state parties cannot be used as a means of destabilization.



**WITHOUT THE DEVELOPMENT OF AN INTERNATIONAL AGREEMENT ON THE  
(UNDOUBTEDLY NECESSARY) MODIFICATION OF REFUGEE LAW, EFFECTIVE  
PROTECTION AGAINST MASS MIGRATION WILL BE IMPOSSIBLE!**

<sup>46</sup> Conclusions of the European Council meeting of October 17, 2024, paragraphs 38 and 39, <https://www.consilium.europa.eu/media/2pebccz2/20241017-euco-conclusions-en.pdf> (accessed: October 20, 2024).

<sup>47</sup> Concerning this, see: J.F. Durieux, J. McAdam, Non-Refoulement through Time: *The Case for a Derogation Clause to the Refugee Convention in Mass Influx Emergencies*, “International Journal of Refugee Law,” 2004, Vol. 16, No. 1.



## 26. Do EU institutions deserve our trust in fighting illegal immigration?

The Migration Pact, which is the next step in transferring more powers to the EU's institutions under the purview of fighting illegal immigration, raises serious concerns.

Ceding sovereignty in this realm will lead to a reduction in the ability of member states to change their migration policies in accordance with public opinion and their national democratic procedures.

The EU institutions' behavior, as well as the assumptions behind the the Migration Pact that were quoted earlier, boils down not so much to fighting illegal immigration, but to trying to merely "manage" this phenomenon. In the eyes of the European Commission (as well as many Western European politicians), this is something that is not only inevitable, but even desirable.

### EU INSTITUTIONS AND ILLEGAL IMMIGRATION



The assumptions of the migration pact and the practices of EU institutions focus not so much on combating illegal immigration as on attempting to "manage" the phenomenon.



**IN THE EYES OF THE EUROPEAN COMMISSION  
(AS WELL AS MANY WESTERN EUROPEAN POLITICIANS),  
ILLEGAL MIGRATION APPEARS TO BE SOMETHING  
NOT ONLY INEVITABLE, BUT EVEN DESIRABLE.**

Fabrice Leggeri, the former director of the EU's border protection agency, Frontex, during 2015-2022 indicated that he had heard Interior Commissioner Ylva Johansson say in 2019: "Migrants come out of love, and your job is to welcome them. Europe is an aging continent, and whether you like it or not, you have to welcome them."<sup>48</sup> Eventually, Leggeri had to resign from his post due to accusations from the European Parliament and the European Commission that Frontex was actively supporting the pushback policy that was being pursued by some countries, including Greece, at the Union's external borders.



Source: Wikipedia.org, European Parliament, [https://commons.wikimedia.org/wiki/Category:Ylva\\_Johansson#/media/File:Hearings\\_Ylva\\_Johansson\\_\(Sweden\)\\_Home\\_affairs\\_\(48826433018\)\\_\(cropped\).jpg](https://commons.wikimedia.org/wiki/Category:Ylva_Johansson#/media/File:Hearings_Ylva_Johansson_(Sweden)_Home_affairs_(48826433018)_(cropped).jpg), CC BY 2.0, <https://creativecommons.org/licenses/by/2.0/>.

**"Migrants come out of love [...]. Europe is an aging continent, and whether you like it or not, you have to welcome them."**

The words of Ylva Johansson  
quoted by Fabrice Leggeri,  
Director of the EU border protection agency  
Frontex from 2015 to 2022

For many months, the European Parliament blocked an agreement that was reached in 2023 by Italian Prime Minister Giorgia Meloni and European Commission President Ursula von der Leyen with Tunisia. Under this agreement, Tunisia was to receive financial support from the European Union in exchange for increased efforts to stop migrants flowing into Italy. The European Parliament raised – and continues to raise – objections to the deal due to what it believes are insufficient standards of democracy, rule of law, and human rights in the country for migrants to be detained there. Such reasoning could contribute to preventing the necessary widespread deportations of illegal immigrants to their countries of origin or to transit countries in the future, if the EU institutions were to have the final say in the matter.

Sweden's Ylva Johansson's predecessor as Interior Commissioner, Greece's Dimitris Avramopoulos, said in March 2017 at the University of Geneva that "Europe will need six million immigrants," and that this is why the Commission intends to "open offices in all countries on the southern shore of the Mediterranean and in West Africa. This is the best way to fight smugglers."<sup>49</sup> Then, in Decem-

48 O. Bault, *Exclusive: Former Frontex chief tells Remix News the inside story behind the EU commission's push for mass immigration and open borders*, Remix News, 26.02.2024, <https://rmx.news/european-union/exclusive-former-frontex-chief-tells-remix-news-the-inside-story-behind-the-eu-commissions-push-for-mass-immigration-and-open-borders/> (accessed: February 21, 2025).

49 A. Allemand, *"L'Europe va avoir besoin de 6 millions d'immigrés." Le commissaire européen Dimitris Avramopoulos était à Genève ce lundi soir. Rencontre avec un "minister" en pleine crise de l'UE*, TdG, 7.03.2017, <https://www.tdg.ch/leurope-va-avoir-besoin-de-6-millions-dimmigres-873972586724> (accessed: July 19, 2024).

ber 2017 he published an article in Politico in which he explained that illegal “migrants are here to stay” and that “we cannot and will never be able to stop migration,” so we should “collectively change our way of thinking.”<sup>50</sup>



**“Europe will need six million immigrants.”**

**“We cannot and will never be able to stop migration.”**

Dimitris Avramopoulos

Source: Wikipedia.org, DoD Photo By Glenn Faw-cett, [https://pl.wikipedia.org/wiki/Dimitris\\_Avramopoulos#/media/File:Dimitris\\_Avramopoulos\\_at\\_the\\_Pentagon\\_April\\_2012.jpg](https://pl.wikipedia.org/wiki/Dimitris_Avramopoulos#/media/File:Dimitris_Avramopoulos_at_the_Pentagon_April_2012.jpg), public domain.

Federica Mogherini of Italy, the second vice president of the European Commission as well as the Union’s High Representative for Foreign Affairs and Security Policy, warned at the EU-G5 Sahel Summit that was held in Brussels in June 2018 against trying to stop immigration, as “without immigration, some of Europe’s economic sectors would simply stop functioning overnight.”<sup>51</sup>



**“[...] without immigration, some of Europe’s economic sectors would simply stop functioning overnight.”**

Federica Mogherini

Source: Wikipedia.org, [https://commons.wikimedia.org/wiki/File:Federica\\_Mogherini\\_Official.jpg](https://commons.wikimedia.org/wiki/File:Federica_Mogherini_Official.jpg), CC BY 2.0, <https://creativecommons.org/licenses/by/2.0/>.

50 D. Avramopoulos, *Europe’s Migrants Are Here to Stay*, Politico, 18.12.2017, <https://www.politico.eu/article/europe-migration-migrants-are-here-to-stay-refugee-crisis/> (accessed: July 19, 2024).

51 C. Cartaldo, Mogherini: “No fermare migrazioni ma combattere traffici,” *Il Giornale*, 18.06.2018, <https://www.ilgiornale.it/news/cronache/mogherini-non-si-fermino-migrazioni-1542493.html> (accessed: July 19, 2024).

It is also worth recalling the words of former European Commissioner Peter Sutherland when he addressed a committee of the British House of Lords in 2012. Sutherland, who at the time was chairman of Goldman Sachs bank, chairman of the European section of the Trilateral Commission, and UN Special Representative for Migration, said that the European Union's member states should, among other things, use both legal and illegal mass migration to "undermine" the "homogeneity and difference from others." He also said that immigration is "a crucial dynamic for economic growth," "however difficult it may be to explain this to the citizens of those states."<sup>52</sup>



Source: Wikipedia.org, DoD Photo By Glenn Faw-cett, [https://pl.wikipedia.org/wiki/Dimitris\\_Awra-mopoulos#/media/Plik:Dimitris\\_Avramopoulos\\_at\\_the\\_Pentagon\\_April\\_2012.jpg](https://pl.wikipedia.org/wiki/Dimitris_Awra-mopoulos#/media/Plik:Dimitris_Avramopoulos_at_the_Pentagon_April_2012.jpg), public domain.

**"[The] sense of our homogeneity and difference from others [...] is precisely what the European Union, in my view, should be doing its best to undermine."**

**"[Migration is] 'a crucial dynamic for economic growth' [in some EU countries], 'however difficult it may be to explain this to the citizens of those states.'"**

Peter Sutherland

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## Author's biography



### Jerzy Kwaśniewski

Graduate of the Faculty of Law and Administration at the University of Warsaw, visiting fellow at the University of Copenhagen (International Commercial Law, Comparative Constitutional Law), he has also completed courses organized by the Center for Ethics and Culture at the University of Notre Dame and the Catholic University of Leuven. President and co-founder of the Ordo Iuris Institute for Legal Culture and Chairman of the Board. Creator of the Institute's Process Intervention Center. Advocate and managing partner

at Parchimowicz & Kwaśniewski Law Firm. He has many years of experience in civil and criminal proceedings involving the protection of civil rights and freedoms, family rights, and children's rights.



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Poland's border with Belarus, which is also the eastern border of the European Union, has been under unprecedented pressure from migrants since 2021. The Belarusian and Russian authorities, in their effort to open a new channel of mass migration from the Middle East and Africa to the European Union, have promoted several waves of migrants. This 'weapon of mass migration' constitutes a phenomenon that can be described as an abuse of international treaty obligations regarding refugee protections, aimed at destabilizing the countries targeted by its use. Modern international law does not offer simple tools for dealing with this new threat.

Under these circumstances, the so-called 'Migration Pact'—a set of ten pieces of legislation that were prepared by the European Commission— does not address these problems through effective border protection. It instead represents a determination to create rapid, smooth migration processes, given that it accepts as givens the inevitability of mass migration as well as its positive impact on the European society, economy, and culture. As a result, the implementation of the Migration Pact will lead to more efficient legalization of migration and a more 'equitable' distribution of the burden of hosting millions of illegal immigrants among EU member states under the so-called solidarity mechanism. However, it will not help resolve the crisis at the EU's external borders—whether at the eastern frontiers or the southern Mediterranean coast.

**The purpose of this report is to familiarize the reader with the regulations collectively known as the Migration Pact and to explain their concrete implications for EU member states. The report also advocates for EU national governments affected by uncontrolled mass immigration to pursue reforms to the international refugee protection system, ensuring that the obligations of state parties cannot lead to their destabilization.**

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