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ASSESSING THE IMPACTS OF THE 2025 RETURNS & SAFE COUNTRIES EUROPEAN COMMISSION PROPOSALS

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TABLE OF CONTENTS

01

EXECUTIVE SUMMARY

This Study provides an independent assessment of the 2025 European Commission Proposals on the Return Regulation, Safe Countries of Origin (SCO) and Safe Third Countries (STC). Adopted without the ex ante Impact Assessments required under the EU Better Regulation framework, the Proposals mark a significant shift in EU migration and asylum law towards a deportation-centred model that prioritises penalisation, intergovernmentalism and externalisation over current EU legal standards in primary and secondary law, including fundamental rights, proportionality and the rule of law.

The Study finds that the proposed reforms are driven largely by political agendas and pressures from some EU Member States rather than an evidence-based assessment of policy needs. The Proposals exemplify a form of 'policy-based evidence-making', lacking demonstrated necessity or proportionality and dismantling the existing EU acquis in the name of a false political urgency. As the European Ombudsman has found, invoking 'urgency' to bypass an Impact Assessment goes against the standards of good administration (Article 41 of the EU Charter of Fundamental Rights). The Proposals reduce the concept of 'policy effectiveness' in EU law-making to a narrow metric based on increasing the number of forced removals of irregularised third country nationals (TCNs) and rejected asylum seekers at all costs, overlooking legal and humanitarian obligations that require the non-issuing of a return decision and the non-enforcement of removal, completely disregarding alternative policy alternatives, and promoting a misleading 'balance metaphor' between enforcement and some fundamental rights which are absolute in nature and accept no derogation based on migration enforcement agendas.

Despite taking the form of Regulations, the three Proposals function as strange legal hybrids. Their open-ended drafting, multiple exemptions and extensive national discretion in the hands of national authorities risk deepening legislative fragmentation, differentiation and de-harmonisation across the EU. Rather than creating a common, uniform and consistent system, they reinforce and promote unilateral (nationalistic) initiatives and intergovernmental dynamics and fundamentally weaken the role of the Commission as guardian of the Treaties and EU law.

Operationally, the Proposals support a paradigm shift from voluntary departure to forced removals, despite longstanding evidence that voluntary return policies are more sustainable, efficient and humane in practice. The envisaged mutual recognition of return decisions and the European Return Order (ERO) rely on a blind presumption of automatic mutual trust among Member States' systems complying with the fundamental rights of irregularised TCNs and asylum seekers. Mutual trust is however likely to reproduce restrictive practices and structural deficits characterising national migration and asylum systems, and generate increasing cross-border legal and judicial disputes. The over-expansion of detention powers, including a permissive approach to detaining children and their families, reflects an overriding punitive logic in the Proposals which is inconsistent with international and regional human rights commitments to end the detention of minors and uphold their best interests. These measures risk normalising detention as a routine tool or 'first resort' in expulsion procedures, despite its very high costs, limited effectiveness, lack of transparency and independent monitoring, and serious human rights impacts.

The new 'obligation to cooperate' with national authorities in return procedures significantly broadens the scope for penalising individuals for circumstances beyond their control and shifts the blame towards them because of grounds justifying their non-deportation. Vague and expansive criteria for determining 'non-cooperation' or 'risk of absconding' enable disproportionate sanctions and undermine legal certainty, equality before the law and the right to human dignity. These provisions risk arbitrary and incoherent application, incentivise onward movements within the EU, and intensify the hyper-precarity and structural vulnerability experienced by irregularised TCNs across the EU.

Procedural safeguards are weakened through shorter deadlines, reduced suspensive effect of appeals,

limits on legal aid (assistance and representation) and heightened obligations on individuals to 'cooperate' on their own removal. These changes compromise the essence of effective remedies under EU law (Article 47 EU Charter of Fundamental Rights) and may turn appeals into formalities, particularly in contexts where there is ineffective access to impartial courts, or when judicial independence is fragile or under attack by national governments. Broader and longer entry bans risk functioning as additional penalties imposed without adequate individual assessments.

The three Proposals are driven by a predominant externalisation rationale consisting of a set of migration management measures – adopted unilaterally by states or multilaterally at EU level – affecting the ability of asylum seekers and irregularised people to seek asylum or other forms of humanitarian protection in the EU, and shifting responsibilities to third countries with no connections with the person, or to certain regions in their country of origin, which are artificially and politically labelled as 'safe' for the sole purpose of justifying the application of accelerated (automatic) rejection procedures and facilitating deportation.

The introduction of so-called 'Return Hubs' based on bilateral agreements or 'arrangements' would introduce far-reaching legal uncertainty and risk replicating 'the structural failures and grave human rights challenges inherent to existing unilateral externalisation migration management models – which can be qualified as worst practices – in EU Member States (e.g. Italy-Albania Protocol), or in non-EU countries like the Australian offshoring asylum non-model. These arrangements, which can be best understood as extraterritorial detention centres, raise fundamental concerns regarding (lack of) accountability, chain refoulement and arbitrary detention, ineffective judicial protection and outsourcing of obligations to poorer third countries with inadequate (non-existent or well-functioning) migration and asylum systems. They also entail tremendous financial costs with no evidence of deterrent effects or operational efficacy, and the unsuccessful evasion of legal responsibility and potential liabilities by the country authorities externalising their policies.

The Return Regulation Proposal incorporates international cooperation on readmission agreements and arrangements in EU return policy. The increasing use of EU and Member States (bilateral) non-legally binding readmission arrangements, which don't qualify as international agreements, can be expected not to overcome the differentiation and incoherency currently characterising this policy area. A coherent approach is also challenged by the increasing informalisation paradigm in EU readmission policy. The use of extra-EU Treaty policy arrangements with third countries authorities inherently challenges effective democratic accountability by the European and national parliaments, judicial control and public accountability. Furthermore, the use of multilateral or bilateral readmission deals with third country authorities cannot be expected to increase the number of expulsions or get away with the implementation challenges characterising these arrangements which depend on a wider set of interactions and interests between states, including wider foreign affairs agendas and nationality determination dilemmas. The Safe Third Countries (STC) Regulation Proposal backslides or dismantles currently existing EU legal standards, and crucially the connection criterion between the asylum applicant and the country of expulsion. This connection link is now a constitutive part of EU secondary legislation and therefore directly informs the fundamental right to asylum envisaged in Article 18 CHFR (right to asylum). All previous national experiences working under safe country arrangements lacking a connecting link criterion have led to unsafety as ripple effect and structurally dysfunctional asylum systems in the receiving countries concerned. The proposal's removal of the connection criterion indirectly entails penalisation of irregularised refugees based purely on their unauthorised entry in the Schengen area, which is expressly prohibited by Article 31 Geneva Convention.

The unilateral framing of non-EU countries as Safe Country of Origin (SCO) is based on a methodology which lacks scientific rigor and, perhaps most problematically, independence by the Commission. Despite its major implications and impacts for asylum seekers and refugees, it doesn't qualify as an independent legal analysis devoid of politicised considerations and interests which aren't protection or asylum but rather migration management driven. The SCO assessment is also affected by profound public accountability and transparency deficits. The Commission's conclusion that seven non-EU countries and all the candidate countries qualify as SCO stands in stark contradiction with the overwhelming evidence showing that the opposite is true. Furthermore, the use of the concept of 'effective protection' as the Commission's criterion for concluding the existence of 'safety' in a particular country is legally vague and contradicts the Union's obligation to fully uphold and consistently promote international refugee law standards (crucially, yet not exclusively, the 1951 Geneva Convention and its 1967 Protocol) in all its internal and external policies. The proposed EU safe

country concepts can be expected to have negative impacts on foreign affairs as they incentivise non-EU countries not to develop or strengthen their asylum capacities and well-functioning asylum systems in order to escape the EU's imposition of this label and what it presumes in the area of readmission.

By over-expanding coercive and overtly restrictive measures, lowering fundamental rights safeguards and increasing national discretion in the scope of EU law, the Proposals can be expected to deepen fragmentation, legal uncertainty and regulatory incoherence. They impose heavy administrative and financial burdens on Member States while failing to understand and address the structural causes laying behind the low enforced removal orders. A sustainable EU policy would instead require better-regulation driven (proportionate and evidence-based) policy-making that puts emphasis on policy alternatives to expulsions and detention, reinforce case management and unequivocally uphold the EU's constitutional and fundamental-rights obligations.

The three 2025 Proposals can be understood as 'ultra-solutions' as they exacerbate – rather than resolve – the challenges facing the scope and implementation of EU migration and asylum policies. They do not constitute a coherent, effective or legally sound path forward and risk worsening the very problems they purport to address, particularly irregularity across the Union. Alternative policies, ex ante human rights assessment before issuing return decisions, regularisations and the transitioning of administrative status (including a right to legal stay for human rights, compassionate or humanitarian) constitute highly effective policy options at the disposal of national governments to successfully address the structural conditions and rules which co-create or lead TCNs into irregularity in the EU. A legitimate policy approach must place EU constitutional principles, robust independent monitoring and evaluation, the protection of human dignity and effective justice under the Charter of Fundamental Rights and a merited trust cooperation system as the foundations and working parameters of the concept of effectiveness in EU migration and asylum policies.

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ABBREVIATIONS

ACP	Organisation of African, Caribbean and Pacific States
AMMR	Asylum and Migration Management Regulation
ASGI	Association for Juridical Studies on Immigration
ATR	Alternatives to Return
APD	Asylum Procedures Directive
APR	Asylum Procedures Regulation
AUD	Australian Dollar
CAMM	Common Agenda on Migration and Mobility
CHFR	EU Charter of Fundamental Rights
CIP	Common Implementation Plan
CJEU	Court of Justice of the European Union
CPR	Centro di Permanenza per il Rimpatrio
EBCG	European Border and Coast Guard (Frontex)
EMN	European Migration Network
ERO	European Returns Order
EU	European Union
EUAA	European Union Asylum Agency
EURA	EU Readmission Agreements
EP	European Parliament
EPRS	European Parliament Research Service
FRA	EU Agency for Fundamental Rights
GCR	United Nations Global Compact on Refugees
IA	Impact Assessment
IOM	International Organisation for Migration
MoU	Memorandum of Understanding
OSB	Operation Sovereign Borders
PNG	Papua New Guinea
RBPR	Return Border Procedure Regulation
RCD	Reception Conditions Directive
RPC	Regional Processing Centre
SCO	Safe Country of Origin
SIA	Substitute Impact Assessment
SIS	Schengen Information System
SOP	Standard Operating Procedure
STC	Safe Third Country
SWD	Staff Working Document
TCNs	Third Country Nationals
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the EU
UNHCR	United Nations High Commissioner for Refugees
VDL	von der Leyen, Ursula

01

INTRODUCTION: SCOPE & METHODOLOGY

The expulsion of irregularised third country nationals (TCNs)[1] and asylum seekers is one of the top policy priorities of the von der Leyen (VDL) II European Commission. The Commission measures the effectiveness of EU migration and asylum policy based on the total number of enforced removals of TCNs and asylum seekers having entered or residing irregularly in the Schengen area. This notion of 'effectiveness' follows a purely statistical exercise taking as the main indicator of policy success the number of TCNs and asylum seekers who are speedily expelled to third countries or countries of origin. Forced deportation is conceived as a panacea.

This prevailing understanding of policy effectiveness has justified a new legislative reform calling for the introduction of far-reaching restrictive revisions entailing the lowering of standards and the dismantling of safeguards envisaged in EU migration and asylum law. During the first semester of 2025, the Commission presented a new proposal for a Regulation aimed at reforming the 2008 Return Directive which lays down common standards and procedures for the return of irregularised TCNs. This was followed by two additional initiatives consisting of a targeted revision of the concept of Safe Third Countries (STC) and a common EU list of Safe Countries of Origin (SCO) so that asylum seekers can be more easily automatically rejected and expelled, which amend the 2024 Asylum Procedures Regulation under the so-called Pact on Migration and Asylum.

In the name of urgency, and the reiterated calls by some EU Member States' governments and the European Council for what they refer to as 'innovative solutions' in these policy areas, the Commission hasn't accompanied any of these proposals with an Impact Assessment (IA) or a rigorous and detailed evaluation about the soundness, value added and necessity or proportionality of their policy assumptions as well as their overall impacts, including on fundamental rights, as required by the 2016 Interinstitutional Agreement on Better Law-Making and EU Better Regulation standards. This is in spite of the fact that three initiatives can be expected to have profound impacts. The European Parliament (EP) hasn't reached the political majority to request for a Substitute (ex ante) Impact Assessment of the initiatives to the European Parliament Research Service (EPRS).

This Study aims at addressing this knowledge gap. It provides an independent and evidence-based evaluation of the most relevant impacts of the three legislative proposals, considering also more generally the policy-making dynamics characterising EU migration and asylum policies under VDL II Commission and the 10th legislative term of the European Parliament. The assessment mainly focuses on the legal and societal (fundamental rights and rule of law) impacts that could be expected to flow from the adoption of these proposals. Special attention is paid to the coherency of the proposed reforms with EU primary law (the EU Charter of Fundamental Rights and the Treaties), and EU better regulation and law-making standards. The analysis also includes some foreign affairs impacts and selected economic costs categories of some of the externalisation initiatives included in the Return Regulation Proposal, chiefly the so-called 'EU Return Hubs'. Here the Study identifies lessons learned of recent unilateral and ad hoc externalisation instruments, chiefly the Italy-Albania Protocol, and extraterritorial asylum processing in the scope of the Australia's offshoring asylum scheme.

The Study doesn't constitute a fully fleshed Substitute Impact Assessment. The methodology comprises, however, a detailed examination of the Proposals' main provisions considering the key findings and evidence from academic literature and studies, EU-funded research projects, international and regional human rights organisations and civil society actors. This has been complemented with nine semi-

1 This Study uses the notion of 'irregularised migration' following the concept of 'irregularity assemblages', whereby irregularity is not a fixed or inherent characteristic of individuals. It is the result of a nexus of nested legal systems and political and public discourses on irregularity unevenly impacting individuals depending on their origin, gender, class, or belonging to racialised communities. Refer to Gonzales, R. G., Sigona, N., Franco, M. C, and Papoutsi, A. (2019), *Undocumented Migration*, Polity Press; and S. Carrera and D. Colombi (2024), *Irregularising Human Mobility: EU Migration Policies and the European Commission's Role*, SpringerBriefs in Law.

structured interviews with representatives from the EU institutions, EU agencies, international organisations, civil society actors and academics (See Annex I of the Study). The analysis is centred on the main changes that the three Proposals aim at introducing in comparison to the status quo laid down in the current EU legal framework.

Section 2 of Study starts the examination with a critical account of the EU policy background behind the three legislative proposals. It then moves into an assessment of the institutional and law-making impacts that can be drawn from the proposals in Section 3, which include the policy-making dynamics used by the European Commission in this policy domain, and their compatibility with EU Treaty objectives and obligations (including Article 2 Treaty on European Union (TEU) principles and the EU Charter of Fundamental Rights (CHFR), as well as Better Law-Making inter-institutional commitments. The analysis then proceeds with a critique of the conceptual underpinnings steering the foundations of the proposals, particularly the narrow notion of effectiveness and the 'balance metaphor' ('fair and firm' approach) between expulsions and rights utilised by the Commission.

The following Sections of the Study offer a detailed assessment of the scope and impacts of the Proposals' main novelties in these same domains (Sections 4 to 8). Particular attention is paid to the prioritisation given by the Return Regulation Proposal to forced removals, detention, TCNs' obligation to cooperate in their expulsions, ineffective remedies and injustice, as well as the provisions related to detection of irregularised people and TCNs who are labelled as security risks. Section 9 of the Study covers the externalisation ideas advanced by the proposals, including the so-called 'Return Hubs' (Section 9.1), readmission agreements and arrangements (Section 9.2) and unsafe countries concepts (Section 9.3). Section 10 deals with alternatives to returns, which leads to the Conclusions of the Study in Section 11.

02

POLICY BACKGROUND: A LONG TALE OF REVISIONS

The adoption of the Return Directive 2008/115 in December 2008[2] aimed at adopting common EU standards and procedures for the return of irregularised TCNs in the EU. The Return Directive seeks to provide horizontal rules to facilitate a 'cohesive approach' to expulsions procedures and standards across the EU[3]. Taking the form of a Directive, it was not designed to harmonise the entirety of EU Member States rules in this field. Since its inception, the Directive was subject to criticism by scholars[4], civil society actors and non-European countries because of its overall repressiveness, inhumane and criminalisation approaches towards TCNs in irregularised status[5].

The Directive was qualified as the 'Directive of Shame'[6] particularly in light of its provisions normalising the use of detention for migration enforcement purposes up to 18 months, the use of re-entry bans for a period of 5 years and the possibility for EU Member State to detain and expel children and their families. During the last 17 years, the Directive has received a voluminous body of CJEU case law[7], which – while not changing its prevailing securitarian essence – has been considered as consolidating and, in some cases, even developing its protective elements[8], and limiting EU Member States' discretion in this field.

The Commission should have reported on the Directive's practical application every three years to the European Parliament and the Council in line with its Article 19. This obligation hasn't been always fulfilled to the detriment of accountability. The 2013 evaluation of the Directive raised concerns around the Directive's lack of influence over the adoption of harmonised domestic procedural safeguards by EU Member States, including the application of safeguards during the return processes and subsequent suspensions or postponements of removals, accessing effective remedies and the provision of legal assistance to individuals impacted[9]. In a Communication issued 2014, the Commission emphasised that a key priority should be on ensuring a 'proper and effective implementation of the Return Directive' by EU Member States[10]. While the resulting picture was one of hyper-heterogeneity and fragmentation across EU Member States, the main issue was EU Member States not correctly fulfilling their obligations in the Directive's implementation. The Commission didn't consider necessary a new legislative reform. Instead, it gave priority to issuing soft policy guidelines and recommendations to EU Member States so as 'to promote more consistent return practices'.

The Commission's position changed four years later. Following the European Council Conclusions of 28 June 2018 which underlined 'the necessity to

2 Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

3 ; Lutz, F. and Mananashvili, S. (2016), 'Return Directive 2008/115/EC' in Hailbronner, K. and Thym, D. (eds.), 'EU Immigration and Asylum Law. A Commentary', 2nd edition, Munich/Oxford/Baden-Baden: C.H.Beck/Hart/Nomos; and Peers, S., Guild, E., Acosta Arcarazo, D., Groenendijk, K. and Moreno Lax, V. (2012), *EU Immigration and Asylum Law (Text and Commentary): Second Revised Edition, Martinus Nijhoff* Publishers, pp. 483-525.

4 Acosta D. (2009), 'The good, the bad and the ugly in EU migration law: Is the European Parliament becoming bad and ugly? (The Adoption of Directive 2008/15: The Return Directive)', European Journal of Migration and Law, Vol. 11(1), Brill | Nijhoff; Baldaccini A. (2009), 'The return and removal of irregular migrants under EU law: An analysis of the Return Directive', European Journal of Migration and Law, Vol. 11(1), Brill | Nijhoff; and Baldaccini A. (2009), 'The EU Directive on Return: Principles and protests', *Refugee Survey Quarterly, Vol. 28(4), Oxford Academic;*

5 Acosta, D. (2009), Latin American Reactions to the Adoption of the Return Directive, CEPS, Policy Brief, Brussels, available at: Latin American Reactions to the Adoption of the Return Directive – CEPS According to Acosta, 'The latter constituted an unprecedented common reaction from this region to an EU measure'

6 V. Mitsilegas (2016), Immigration Detention, Risk and Human Rights, Springer.

7 M.L. Basilien-Gainche (2015), 'Immigration detention under the Return Directive: The CJEU shadowed lights', *European Journal of Migration and Law, Vol. 17(1), Brill | Nijhoff; T. Molnár (2018), 'The Place and Role of International Human Rights Law in the EU Return Directive and in the Related CJEU Case Law: Approaches Worlds Apart?', in: EU External Migration Policies in an Era of Global Mobilities: Intersecting Policy Universes, S. Carrera et al. (eds), Martinus* Nijhoff Publishers.; and M. Moraru, G. Cornelisse and P. de Bruycker (2020), *Law and Judicial Dialogue on the Return of Irregular Migrants from the European Union,* Hart.

8 Refer to G. Cornelisse and M. Moraru (2022), 'Judicial Interactions on the European Return Directive: Shifting Borders and the Constitutionalisation of Irregular Migration Governance' in L. Tsourdi, A. Ott and Z. Vankova (eds), *Special Issue of European Papers, Vol. 7, 2022, No 1, pp. 127–49; V. Mitsilegas (2013), 'The Changing Landscape of the Criminalisation of Migration in Europe: The Protective Function of European Union Law', in Maria João Guia, Maartje van der Woude and Joanne van der Leun (eds), Social Control and Justice – Crimmigration in the Age of Fear, Eleven International Publishing, page 105.*

9 European Commission (2013), Evaluation on the application of the Return Directive (2008/115/EC), Directorate-General for Migration and Home Affairs. Page 9 stated that the Commission noticed some issues in relation to 'effective legal remedy, the period of time between adopting a forced return decision and the carrying out of the actual return as well as means tests applied before granting legal assistance free of charge'.

10 European Commission (2014), Communication, on EU Return policy, COM(2014)199 final, 28.3.2014.

significantly step up the effective return of irregular migrants'[11], it chose to proceed with a new legislative reform as the preferred option, and it adopted a (recast) Return Directive Proposal in September 2018[12]. The 2018 Proposal wasn't accompanied by an Impact Assessment (IA). This was subject to concerns by the European Parliament's LIBE (Civil Liberties, Justice and Home Affairs) Committee, which asked the European Parliamentary Research Service (EPRS) to conduct a targeted Substitute Impact Assessment (SIA) of the 2018 Proposal.

The EPRS SIA, published in February 2019[13], assessed the expected positive and negative impacts of the 2018 Commission proposal, with a focus on the social and human rights impacts. It concluded that: first, there wasn't sufficient evidence substantiating the Commission's claims that the proposal was necessary and that it would increase the effectiveness of returns; second, several provisions raised serious (lack of) proportionality concerns; third, it would have negatively affected several social and human rights of irregularised TCNs, 'including likely breaches of fundamental rights' such as the principle of non-refoulement, the right to asylum, the right to an effective remedy and the right to liberty from arbitrary detention under the CHFR; and fourth, it would have created 'substantial economic costs' for EU Member States, in particular the costs of pre-removal detention. The 2018 Proposal was never formally adopted. While the Council of the EU found a partial general approach in 2019[14], the European Parliament didn't reach a common majority on the Rapporteur's position[15], and the negotiations stalled during the VDL I Commission.

Following the announcement of a 'New Pact on Migration and Asylum' in the Commission President VDL 2019 Political Guidelines, a package of nine proposals was put forward in the autumn of 2020[16]. The so-called Pact was conceived to take us back to intergovernmentalism and to mainly serve the interests of EU Member States' Ministries responsible for migration. The Commission envisaged large concessions to Member States in light of their national policy priorities and interests, including far-reaching exceptions dressed up as 'flexibility' allowing governments to apply major derogations to existing EU rules and substantially restricting TCNs fundamental rights[17]. The Pact's Proposals, which came without an IA justifying their necessity, fundamental rights-compliance and value added, were understood as a form of reversing Europeanisation in EU migration and asylum policy[18].

Seeking to find a compromise before the European elections in June 2024, a provisional political agreement was reached between the Council and the European Parliament on the five key proposals on 20 December 2023 during the Spanish Presidency of the EU[19], with its formal adoption taking place on 14 May 2024[20]. This happened despite the overwhelming concerns and numerous calls to the European Parliament by more than 160 civil society organisations[21] and more than 250 academics[22] to reject the adoption of the Pact due to its devastating effects on fundamental rights in the EU. The highly rushed inter-institutional negotiations of the Pact's files led to major concessions to EU Member States' governments at the expense of key basic safeguards and redlines called for by some of the Parliament's rapporteurs. Most of the Pact's legal acts will enter into force in the summer of 2026 (June/July), and most of them require no national transposition by virtue of being Regulations. To support the Pact's implementation process, the Commission published

11 See European Council conclusions, 28 June 2018 - Consilium The European Council welcomed 'the intention of the Commission to make legislative proposals for a more effective and coherent European return policy'.
12 European Commission, Proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals (recast) A contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018, COM(2018) 634 final, 2018/0329 (COD), 12.9.2018, Brussels.
13 European Parliament Research Service (EPRS) (2019), The Proposed Return Directive (recast), Substitute Impact Assessment, Brussels. The Substitute IA also covered the economic impacts of the envisaged revisions in four EU Member States (Belgium, Czech Republic, Germany and Italy).
14 Refer to Council of the EU (2019), Partial General Approach, 9620/19, 23 May 2019, Brussels.
15 See Carriages preview | Legislative Train Schedule See also European Parliament Draft Report on the proposal for a directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (recast) (COM(2018)0634 - C8-0407/2018 - 2018/0329(COD)), Rapporteur: Tineke Strik (Group of the Greens), 21 February 2020.
16 European Commission (2020), Communication from the Commission on a New Pact on Migration and Asylum, COM(2020) 609 final, 23 September 2020. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0609.
17 Carrera, S. and A. Geddes (2021), The EU pact on migration and asylum in light of the United Nations global compact on refugees: International Experiences on Containment and Mobility and their Impacts on Trust and Rights, European University Institute (EUI) Book, Robert Schuman Centre of Advanced Studies (RSCAS), Florence: Italy.
18 E. Brouwer et al. (2021), The European Commission's Legislative Proposals in the New Pact on Migration and Asylum, European Parliament LIBE Committee (DG IPOL): Brussels.
19 European Commission (2023), *Historic agreement reached today by the European Parliament and Council on the Pact on Migration and Asylum, News Article, 20 December 2023. Available at:* https://home-affairs.ec.europa.eu/news/historic-agreement-reached-today-european-parliament-and-council-pact-migration-and-asylum-2023-12-20_en.
20 Crucially, since December 2023 the negotiations continued informally and in an untransparent way during the first half of 2024, and it was only finally voted in favor by the Parliament at its Plenary session in Brussels in April 2024.
21 Joint Statement (2024), Civil society organisations call on MEPs to vote down harmful EU migration pact, available at JOINT STATEMENT: Civil Society Organisations call on MEPs to vote down harmful EU Migration Pact - European Network Against Racism Refer also to PICUM (2023), Over 50 NGOs pen eleventh-hour open letter to EU on human rights risks in Migration Pact, available at Over 50 NGOs pen eleventh-hour open letter to EU on human rights risks in Migration Pact - PICUM
22 See 250 Migration & Asylum Researchers Oppose the New EU Pact on Migration • Whole-Comm

its Common Implementation Plan (CIP)[23], alongside an Operational Checklist[24].

In the first semester of 2025, following the election of the VDL II Presidency, the Commission presented three additional legislative proposals: First, the Return Regulation Proposal[25]; Second, a Proposal providing a common EU list of Safe Countries of Origin (SCO)[26]; and another Proposal amending the concept of Safe Third Countries (STC)[27]. Once more, the 2025 initiatives were introduced without an IA. The European Parliament's LIBE Committee didn't reach the political majority to request a Substitute IA to the EPRS. The EP went ahead and swiftly published its own Draft Report on the Return Regulation Proposal (Rapporteur: Malik Azmani, Renew Europe Group) on 30 October 2025[28] without any independent assessment of the impacts of the Commission's text and/or its own amendments. The EP Draft Report considers that this legislative reform 'comes at the right moment' and, similarly to the Commission's starting point, quotes the 20% figure of 'rejected asylum seekers are actually returned to their country of origin' as the main indicator of policy ineffectiveness in this domain. The Rapporteur uncritically adopts the Commission's working assumptions and assumes, with no proper independent evidence and evaluation justifying the claim, that there is in fact an 'urgent need for a more effective, fast and modern approach' through a new EU legislative reform[29].

The 2025 Return Regulation Proposal's general objective is to 'to increase the efficiency of the return process by providing Member States with clear, modern, simplified and common rules for managing effectively returns and make the process clearer both for the competent authorities and the third-country national concerned'[30]. The Commission aims at establishing 'a new common, coherent and comprehensive Union approach'[31]. The Proposal pursues three specific objectives: First, setting up a more 'unified approach' across national rules on returns while overcoming differentiate practices 'by establishing a common EU system for returns and avoid that return rules can be circumvented by third-country nationals'; Second, 'streamline the return procedure, make return rules easy and efficient to apply, while improving clarity, including on procedural safeguards'; and third, incentivise TCNs' cooperation 'through a combination of obligations, incentives to cooperate and consequences for non-cooperation'.

The EU rules covering the condition for rejecting and expelling asylum seekers and refugees were left unresolved for some EU Member States under by the Pact on Migration and Asylum, and particularly under the Asylum Procedures Regulation (APR) 2024/1348[32], with some national governments calling for further restrictions under subsequent targeted legislative amendments by the Commission. This translated into the above-mentioned two 2025 legislative proposals revisiting the SCO and STC, which constitute targeted amendments to the APR even before its practical implementation has even started, and/or its actual effectiveness has been tested.

The SCO Regulation Proposal's main general objective is 'designating candidate countries and one potential candidate for EU membership as well as six other countries as safe countries of origin at Union level'. It aims at 'strengthen[ing] the practical application of the safe country of origin concept as an essential tool to support the swift examination of applications that are likely to be unfounded'[33]. The Proposal aims at ensuring, here too, 'uniformity' in the application of the SCO list and 'convergence in the examination of applications and relevant procedures' across EU Member States. It also seeks to 'deter unauthorised movements of applicants for international protection' within the Schengen area[34]. The European Commission has identified the following countries of origin as 'safe': Bangladesh,

23 European Commission (2024), Common Implementation Plan for the Pact on Migration and Asylum, Communication, COM(2024) 251 final, 12 June 2024. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2024%3A251%3AFIN.
24 European Commission (2024), Operational Checklist and List of Commission Implementing and Delegated Acts to be adopted for the Implementation of the Pact on Migration and Asylum, Commission Staff Working Document, SWD(2024) 251 final, 12 June 2024. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD%3A2024%3A251%3AFIN.
25 European Commission (2025a), Proposal for a Regulation establishing a common system for the return of third-country nationals staying illegally in the Union, COM(2025) 101 final, Strasbourg, 11.3.2025.
26 European Commission (2025b), Proposal for a Regulation as regards the establishment of a list of safe countries of origin at Union level, COM(2025) 186 final, Brussels, 16.4.2025.
27 European Commission (2025c), Proposal for a Regulation as regards the application of the 'safe third country' concept, COM(2025) 259 final, Brussels, 20.5.2025.
28 European Parliament, Draft Report on the proposal for a regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC (COM(2025)0101 – C10-0047/2025 – 2025/0059(COD)), 30 October 2025.
29 Ibid., page 101.
30 Page 3 of the Legal, Financial and Digital Statement attached to the Proposal.
31 Pages 1 and 6, and Recital 38, of the Proposal.
32 Regulation (EU) 2024/1348 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 14 May 2024 (APR).
33 Pages 1 and 2 of the Proposal.
34 Also, according to page 3 'It will also offer another tool to effectively and swiftly process asylum applications that are likely to be unfounded. Ensuring an earlier application of these provisions would also contribute to greater consistency across Member States, reducing divergences in national practices and litigation risks. By advancing their implementation, Member States would be equipped with additional tools to streamline asylum processing'.

Colombia, Egypt, India, Kosovo, Morocco and Tunisia. As expressly stipulated by the Proposal, the labelling of a non-EU country of origin as 'safe', grants the power to EU Member States to implement an accelerated examination procedure (max. 3 months), and the application of an accelerated 'border procedure' with fewer guarantees and safeguards for the asylum seekers challenging the overall fairness and legality of the asylum procedures. The European Parliament adopted its Draft Report on the SCO Proposal on 26 September 2025 (Rapporteur: Alessandro Ciriani, of the European Conservatives and Reformists Group and Fratelli d'Italia)[35] which is the extreme right party leading the Georgia Meloni's government in Italy, which is behind the Italy-Albania Protocol and the attacks to national judges reviewing unlawful expulsions as examined in Section 9 of this Study.

On the other hand, the 2025 STC Regulation Proposal aims at revising the STC concept under current EU law[36] and the APR to further 'facilitating and enhancing' its application in the EU asylum framework by EU Member States. Expulsion is here also the overriding priority. According to the Commission, the STC notion entails that 'Member States may reject asylum applications as inadmissible without examining whether the persons meet the conditions for being granted protection in the EU'[37]. It opens the possibility for the expedited transfer of the TCN to the said non-EU country. The reform pays particular attention at removing the so-called 'connection criterion' and the automatic suspensive effect of appeals against decisions rejecting an application as inadmissible on STC grounds. The European Parliament published its Draft Report (Rapporteur: Lena Düpont, European People's Party, EPP) on 17 October 2025[38]. Here too, the EP uncritically supports the need for legislative reform put forward by the Commission[39]. The Draft Report states that 'Both institutional analyses and independent expert assessments conclude that the necessary adjustments can be made without compromising international or Union law'. However, in the absence of an independent IA covering the STC Proposal, it is by and large unclear what analyses are referred to here precisely, as well as their actual legal soundness.

35 European Parliament, Draft Report on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the establishment of a list of safe countries of origin at Union level (COM(2025)0186 – C10-0069/2025 – 2025/0101(COD)), 26.9.2025, 2025/0101(COD).
36 Refer to Article 33(2)(c) of the Asylum Procedures Directive 2013/32/EU ('APD').
37 Page 1 of the Proposal.
38 European Parliament, Draft Report on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the application of the 'safe third country' concept (COM(2025)0259 – C10-0088/2025 – 2025/0132(COD)), 17 October 2025.
39 According to the Draft Report, 'Over the past decade, however, the practical use of this tool has been hindered by procedural complexity and by diverging interpretations among Member States, particularly concerning the requirement for a 'connection' between the applicant and the third country and the automatic suspensive effect of appeals'., page 13.

03

CROSS-CUTTING INSTITUTIONAL AND LAW-MAKING IMPACTS

This Section examines the impacts of the institutional and law-making dynamics characterising the adoption and inter-institutional negotiations of the three legislative proposals, particularly as regards: first, intergovernmentalism (Section 3.1); second, worst regulation (Section 3.2); and third, the conceptual underpinnings of effectiveness and the balance metaphor informing the Proposals (Section 3.3.).

3.1. INTERGOVERNMENTALISM

The three 2025 Proposals come in the shape of Regulations which, differently from Directives, constitute EU legal acts aimed at having the highest level of legislative harmonisation at Union level. Regulations are expected to leave a limited room or margin of manoeuvre in the hands of EU Member States at times of practical implementation[40]. However, the proposals are informed by a 'flexibility logic' towards EU Member States which closely follows the one introduced by the so-called Pact on Migration and Asylum[41].

While several proposals' provisions aim at unifying and streamlining procedures at EU level, the legislative texts are characterised by legal ambiguity leaving ample room for EU Member States to 'pick and choose' their preferred approach on crucial issues. The Commission's SWD underlines that the Proposal is aimed at leaving 'some flexibility to the Member States, where appropriate, for the new framework to be adapted to national specificities'[42]. This is indeed particularly so in relation to the possibility of applying restrictive policy options as well as a large number of exceptions depending on specific national preferences by governments regarding time-limits, the scope of key concepts and the possibility to keep some national procedures running in parallel with the model foreseen in the Return Regulation Proposal[43], or maintaining the optional nature of the application of the STC concept. Interviews have underlined that while the regime enshrined in the 2008 Return Directive has become the fall-back procedure in all EU Member States, the high range of exceptions granted to EU Member States runs the risk to normalise practices falling or derogating from that common system envisaged in the Return Regulation Proposal[44].

While the harmonising value lays behind the Commission's use of a Regulation and some of the Proposals' features, the 'flexibility' featuring in some central components of these proposals makes of them a strange legal hybrid regime fostering intergovernmentalism and fragmentation in EU migration and asylum policy, challenging their objective to achieve a 'truly European approach'. This has been underlined by the Meijers Committee which considers that the Return Regulation Proposal doesn't sufficiently address the current fragmentation issue characterising Member States' inconsistent interpretation and application of key concepts pertaining to EU return policy. The Regulation wouldn't 'prevent a continued divergence of Member States return practices', and it would still allow for divergent national systems to run in parallel[45].

This runs contrary to the Proposals' general objectives to ensure 'uniformity' and 'a common and integrated' European approach in the field of returns. The proposals leave the 'door open' for some EU Member States national policies challenging the very essence of the EU integration project and EU Treaty founding values enshrined in Article 2 TEU and the CHFR. They

40 According to Article 288 TFEU, a Regulation '…shall have general application. It shall be binding in its entirety and directly applicable in all Member States'. A Directive, according to that same provision, 'shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods'.

41 E. Brouwer et al. (2021), The European Commission's legislative Proposals in the New Pact on Migration and Asylum, Study for the European Parliament, Brussels. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2021/697130/IPOL_STU(2021)697130_EN.pdf

42 SWD, page 25.

43 The Return Regulation Proposal grants EU Member States to choose their preferred national regime regarding time limits covering voluntary departure, the review of postponing removal, detention and appeals.

44 Interview No 9 with academic, 1 December 2025. The interviewee mentioned that this risk is even higher considering the Pact's return border procedure, and the exceptions envisaged in the revised 2024 version of the Schengen Borders Code, including intra-Schengen expulsions, readmissions and push backs between EU Member States' authorities. Refer to Regulation 2024/1349 establishing a return border procedure, and amending Regulation (EU) 2021/1148, of 14 May 2024; and Regulation amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders, 2024/1717, 13 June 2024

45 Meijers Committee (2025), Comment on the Proposal for a Return Regulation, CM2505, April 2025, page 2.

take nationalistic and ad hoc unilateral ideas which by their very nature challenge Europeanisation in these domains. This is the case, for instance, and chiefly, as regards the Italy-Albania deal examined in Section 9.1 of this Study below. The Proposals aim at transforming these instruments into EU-wide standards without properly considering their lack of legitimation and evaluating the impacts that they pose to EU's constitutional and primary law founding principles.

The European Commission appears to be serving the interests of some EU Member States' governments (and specifically the European Council) instead of playing the role that it has been conferred by the EU Treaties to independently ensure that current EU legal standards are effectively and consistently upheld by all national governments[46]. Interviews conducted for the purposes of this Study have highlighted concerns on why the 'protective elements' of the Return Directive and EU asylum law, as interpreted by CJEU standards, are not enforced more effectively at present by the European Commission[47]. These same interviews have raised the question as to why is it that the Commission is instead putting forward new laws dismantling those EU standards in the hope to address the implementation gap and that national governments will then comply with their legal obligations.

The resulting differentiation picture stands at odds with the mutual recognition model or a 'common procedure for returns' envisaged by the Return Regulation Proposal. The proposed mutual recognition system too easily assumes legislative approximation or a common level playing field of procedural, administrative and judicial standards across all participating EU Member States (See Section 4 of this Study below). The Commission hasn't provided any evidence substantiating how any of the three legislative initiatives would overcome the structural dysfunctionality[48] characterising these policies across EU Member States, including those operating under a similar mutual recognition paradigm such as the formerly known 'the Dublin system', which has been reformed by the Pact's Asylum and Migration Management Regulation (AMMR)[49].

Furthermore, the proposals are being negotiated during the exact same time while EU Member States are preparing to implement the Pact's building blocks into their national legislation. This further complicates the analysis of their added value even before knowing or evaluating the extent to which the Pact's provisions are effective without the need for further legislative reforms. As a way of illustration, interviews conducted for the purposes of this Study underlined that the added value of the new Safe Country Proposals remains unclear when read in combination with the regime envisaged by APR 2024/1348[50]. This increases the already highly complex nature of the new EU legal framework under the Pact.

3.2. WORST REGULATION

The three 2025 Proposals continue with a common practice in this policy area which has been identified by previous research assessing the von der Leyen (VDL) I Commission, and which qualified it as 'worst regulation' in EU migration and asylum policy-making[51]. The proposals haven't been presented with a detailed IA[52]. This runs contrary to EU Better Regulation Guidelines/Toolbox[53] and the 2016 Interinstitutional Agreement on Better Law-making[54], which require a detailed, in-depth and evidence-based examination of the various impacts of the preferred policy options put forward in new EU legislation. The EP has raised reiterated concerns of the Commission's bad practice of not issuing IAs along with 'initiatives which are expected to have significant social, economic or environmental impacts should be accompanied by impact assessments'[55].

46 The Commission has failed to present an Implementation Report of the 2008 Return Directive which is obliged to do every 3 years. Furthermore, in 2014 the Commission reached the conclusion that the 2008 Directive was 'fit for purpose' and the main challenge was EU Member States not implementing it correctly.

47 Interviews Nos 01, 03, 05 and 07

48 Refer to Section 2.2.5 of S. Carrera (2024), Proposal for a regulation addressing situations of instrumentalisation in the field of migration and asylum: Substitute impact assessment, European Parliament Research Service (EPRS): Brussels; see also W. van Ballegooij and C. Navarra (2018), The Cost of Non-European in Asylum Policy, EPRS, Brussels; and F. Maiani (2016), The Reform of the Dublin III Regulation, European Parliament Study, DG IPOL, Brussels; See also J. Vedsted-Hansen (2017), Current Protection Dilemmas in the European Union, in C Grütters, S. Mantu and P. Minderhoud (eds), Migration on the Move, Brill Nijhoff, pp. 95-117.

49 Regulation on asylum and migration management, 2024/1351, 14 May 2024.

50 Interview No. 05 with EU agency, which questioned the value added of the SCO proposal in light of the 20% admissibility criterion under the APR.

51 S. Carrera and D. Colombi (2023), An Assessment of the State of the EU Schengen Area and its External Borders: A Merited Trust Model to Uphold Schengen Legitimacy, Study for the European Parliament, Brussels. Available at: An Assessment of the State of the EU Schengen Area and its External Borders - A Merited Trust Model to Uphold Schengen Legitimacy Carrera and Colombi concluded that 'The Commission's behaviour is contrary to the 2016 Inter-institutional Agreement on Better Law-making between the European Commission and the European Parliament313, which requires sincere and transparent cooperation, and calls for the obligation to ensure that legislative initiatives are explained and grounded on Impact Assessments and comply with legal certainty and fundamental rights standards. Moreover, the Commission's practice runs contrary to Point 32 of the Agreement which requires that the ordinary legislative procedure must be 'in line with the principles of sincere cooperation, transparency, accountability and efficiency''., page 103.

52 The Return Regulation Proposal states that 'While no impact assessment was carried out, due to the urgency of proposing new rules in the area of return, the proposal is informed by the wide range of consultations, studies and evaluations as set out above'.

53 European Commission, Staff Working Document: Better regulation guidelines. SWD(2021) 305 final. Brussels, 3.11.2021. https://commission.europa.eu/system/files/2011-11/swd2021_305_en.pdf

54 Interinstitutional Agreement between the European Parliament, the Council of the EU and the European Commission on Better Law-Making. Interinstitutional Agreement of 13 April 2016 on Better Law-Making. OJ L 123/1. 12 5 2016. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016Q0512(01)

55 European Parliament, 'Report on the interpretation and implementation of the Interinstitutional Agreement on Better Law-Making (2016/2018(INI))', rapporteurs Pavel Svoboda and Richard Corbett (15 May 2018), paragraph 22.

The Meijers Committee regretted 'the absence of an impact assessment by the EC, contrary to its own commitments', and suggested the co-legislators to consider including an 'ex ante fundamental rights assessment before negotiating a deal on a return hub', which it considered 'essential for getting a clear picture of whether a return hub can be established in the first place'[56].

The Commission tried to justify the lack of an IA on the apparent political urgency and the call expressed by the European Council for it to present a new legislative text 'as soon as possible'[57]. Yet, the Commission has no legal duty under the EU Treaties to blindly follow and serve EU Member States' wishes instead of exclusively limiting itself to advance new EU legislation that itself finds necessary and which is proven to have a clear added value following EU Better Regulation standards and the evaluation first principle. Instead of a proper IA, the Commission published in May 2025 a Staff Working Document (SWD) on the Return Regulation Proposal[58]. The SWD fails to meet the necessary quality standards to substantiate the preferred policy options beyond already taken or predetermined 'political preferences' by the current Commission's leadership, resulting in an SWD exercise that can be qualified as 'policy-based evidence-making'.

While the Commission concludes that 'However, the limits of the current legal framework have been reached'[59], the SWD doesn't provide sufficient evidence justifying the legislative reform. Both the proposal and the SWD refer to the ways in which EU funded research and civil society contributions have 'informed' the Commission's assumptions backing up the drafting of the proposals. A common letter[60] by the EU-funded projects MORE, FaiR and GAPs raised concerns about the symbolic misuses of research to unduly bring legitimacy to highly controversial proposals not corresponding with their findings or recommendations. However, the SWD doesn't properly justify how the findings have impacted the chosen approach and specific policy proposals put forward by the Commission. It doesn't include specific references backing up the specific policy proposals which have been chosen. It is therefore not possible to verify whether the assumptions – including the problem definition behind the proposals – are sound to substantiate the preferred policy options chosen by the Commission.

The European Ombudsman recently underlined that invoking political urgency does not relieve the Commission of its responsibility to follow its own Better Regulation commitments and does not justify bypassing an Impact Assessment[61]. Failing to abide by these standards risks breaching legitimate expectations and undermine transparency, evidence-based policymaking and good administration[62]. The Ombudsman also highlighted that the Better Regulation rules do not define 'urgency', which the Commission has used to derogate from its requirements, and that explanatory memoranda of recent proposals have not provided adequate reasons to justify such derogations[63]. These issues weaken predictability, consistency and legal certainty in the law-making process and go against Article 41 CHFR on the right to good administration.

Our interviews have confirmed the predominant 'political nature' of 2025 the Return and Safe Countries proposals. The ideas of the 'return hubs' and unsafe countries concepts were indirectly supported by VDL in her election as the EPP candidate for President of the European Commission[64]. They were expressly reflected in her 2024-2029 Political Guidelines[65]. The Safe Countries Proposals, and particularly the dismantling of the connection link between the candidate for international protection and the country to where they may be expelled under current EU asylum law, was a key political compromise with the

56 Meijers Committee (2025), Comment on the Proposal for a Return Regulation CM2505, April 2025, available at: CM2505.pdf

57 The Return Regulation Proposal states that 'The European Council has consistently emphasised the need for a unified, comprehensive, and effective policy on return and readmission. In October 2024, it invited the Commission to submit a new legislative proposal on returns, as a matter of urgency'. See Conclusions of the European Council of 9 February 2023, EUCO 1/23; Conclusions of the European Council of 17 October 2024, EUCO 25/24.

58 European Commission (2025), Staff Working Document (SWD), Analytical Supporting Document, C(2025) 2911 final, Brussels, 16.5.2025

59 Recital 7 of the Preamble.

60 Refer to Joint Statement from FAiR, GAPS, MIrreM and MORE in Response to the Reference to these Four Projects in the European Commission's Proposal for a Regulation Establishing a Common System for Returns – moreproject-horizon.eu

61 European Ombudsman (2025), Recommendation on the European Commission's compliance with 'Better Regulation' rules and other procedural requirements in preparing legislative proposals that it considered to be urgent (983/2025/MAS – the "Omnibus" case, 2031/2024/VB – the "migration" case, and 1379/2024/MIK – the "CAP" case), para. 39-41. https://www.ombudsman.europa.eu/en/recommendation/en/215920

62 Ibid.

63 Ibi: para. 54-55.

64 The EPP 2024 manifesto stated that 'We will conclude agreements with third countries to ensure that asylum seekers can also be granted protection in a civilised and safe way. We want to implement the concept of safe third countries. Anyone applying for asylum in the EU could also be transferred to a safe third country and undergo the asylum process there. In the case of a positive outcome, the safe third country will grant protection to the applicant onsite. A comprehensive contractual agreement will be established with the safe third country'. See Manifesto_2024.pdf See also EPP Position Paper (2025), Our Priorities for 2025: Boosting competitiveness, fighting illegal migration, and promoting security, 17 and 18 January, Berlin. The Position Paper calls for a 'turning point' in EU policy and states that 'We will support the revision of the outdated return directive and replace it with a new regulation on returns within the next six months. In this framework, we will also support proposals for return hubs outside the EU. We also support the review of the safe third-country concept so that only security concerns matter, not individual wishes to stay longer in the EU', page 3. Available at: EPP-Retreat-Priorities-2025-statement.pdf

65 European Commission (2024), *Political Guidelines 2024-2029: Europe's Choice, 18 July 2024 which stated that 'We will put forward a new common approach on returns, with a new legislative framework to speed up and simplify the process, ensure that returns take place in a dignified manner, digitalise case management and ensure that return decisions are mutually recognised across Europe. We will also further reflect on new ways to counter irregular migration, while respecting international law and ensuring sustainable and fair solutions for the migrants themselves', pages 16-17 (Emphasis added).*

current Italian government inside the Council to have the Pact and its Asylum Procedures Regulation formally adopted by the end of 2024[66]. A joint letter issued by 15 Member States' Ministries of the Interior[67] in May 2024 stated that 'returning those not in need of international protection is an equally important part of an EU-wide response to managing irregular migration'. The joint letter called for

…the strengthening of both the internal and external aspects of return, leading towards an effective EU return policy. This could include, inter alia, ensuring more effective return systems in EU Member States that fully implement return decisions and looking into potential cooperation with third countries on return hub mechanisms, where returnees could be transferred to while awaiting their final removal. With regard to the latter, we encourage the Commission and Member States alike to explore potential models within the current EU acquis, as well as considering the potential need for changes to the Return Directive. (Emphasis added).

The joint letter underlined that 'Additionally, possible place of safety arrangements … could be explored, which would be aimed at detecting, intercepting, or in cases of distress, rescuing migrants on the high seas and bringing them to a predetermined place of safety in a partner country outside the EU, where durable solutions for those migrants could be found, also building on models like the Italy-Albania Protocol'. (Emphasis added). In a Letter to the European Council of 14 October 2024[68], VDL highlighted that

We are already committed to review, by next year, the concept of designated safe third countries. UNHCR and IOM are ready to work with the EU on a whole-of-route approach, helping those seeking asylum without having to embark on dangerous journeys across the Mediterranean. We should also continue to explore possible ways forward as regards the idea of developing return hubs outside the EU, especially in view of a new legislative proposal on return. With the start of operations of the Italy-Albania protocol, we will also be able to draw lessons from this experience in practice. (Emphasis added).

The politicised and Member States-driven background of these three legislative proposals entails a serious risk and uncertainty over their overall legitimacy and value added, which can be qualified as another instance of worst regulation at EU level. Consequently, it isn't possible to objectively ascertain whether they are in fact necessary, or whether they will further nurture the identified 'problems', rather than addressing them effectively or even making some of them worse. EU return policy is framed at present as a zero-sum game where deportation is the only and most effective option. Other policy alternatives haven't been duly considered or assessed by the

Expected Impacts:

- Legislative fragmentation and differentiation across EU Member States, challenging the common nature of EU policy in these domains as required by the AFSJ Title in the EU Treaties, and failure to create a 'common system of return'.
- Growing intergovernmentalism and reversing Europeanisation by embracing nationalistic policy instruments at odds with EU Treaty founding principles and fundamental rights.
- Legal uncertainty and hyper-complexity inherent to some key legal provisions, leading to significant variations in their interpretation.
- Risk of de-harmonisation across the various national jurisdictions depending on Member States' national priorities and unilateral policy choices.
- Uncertainty on EU Member States' future compliance with the newly revised standards, challenging the idea (or illusion) that new EU legislation dismantling current legal standards – instead of effective enforcement – will lead to faithful compliance with EU migration and asylum law and the CHFR.

66 Interview No. 02 with EU Council representative.
67 Joint Letter from the undersigned Ministers on new solutions to address irregular migration to Europe, 15 May 2024, which was signed by the Ministries from Austria, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, Finland, Greece, Italy, Latvia, Lithuania, Malta, Romania and Poland. Available at: Joint Letter from the undersigned Ministers on new solutions to address irregular migration to Europe
68 Refer to October-2024-EUCO-Migration-letter.pdf

European Commission, or the European Parliament's Rapporteurs (Refer to Section 10 of this Study).

3.3. UNPACKING EFFECTIVENESS AND THE BALANCE METAPHOR

The 2025 Return Regulation Proposal starts from the premise or assumption that the current EU policy is 'ineffective' based on the statistical gap between the number of return decisions issued and those on enforced removal orders, which is said to be around 20% based on Eurostat statistics[69]. The European Commission is measuring effectiveness purely based on this numerical or quantitative exercise. Policy success is primarily measured on the number of enforced removals, and the assumption is that the highest the number of removals the more 'effective' EU policy will be[70].

The 'statistics trap' is characterised however by significant caveats which challenge the starting assumption of the current legislative reform. EU funded research has underlined the limitations of the current statistical exercise by Eurostat in this area, which shouldn't be taken at face value. The 20% figure hides serious methodological issues and limitations[71]. These include, for instance, the fact that a return decision doesn't always correspond to one single person and that there may be cases of double-counting, therefore artificially inflating the total sum. Additionally, it doesn't consider the possibility that competent national authorities may be issuing disproportionately high return decisions for individuals' cases where they should have known that they cannot be removed. The 20% figure also hides and fails to consider the number of issued return decisions which may have been withdrawn, suspended or postponed.

Crucially, a purely statistical reading disregards that there are situations where national authorities have a legal obligation not to issue a return decision, and/or not to enforce and remove return decision holders due to fundamental rights considerations and which constitute legitimate justifications for not enforcing deportations. This also includes situations where TCNs may have exercised their effective remedies by appealing before independent national authorities, including – yet going beyond – non-refoulement cases. In addition, the Return Regulation Proposal blurs the grounds where the postponement or freezing of removal is a duty, not a policy option, for EU Member States. Some of the grounds classified by the Commission as optional – including those labelled as technical[72] - may in fact entail a legal obligation for Member States not to issue a return decision, and/or not to enforce the expulsion of the persons concerned[73].

Furthermore, EU funded research has demonstrated that the current EU's understanding of effectiveness remains largely blind towards the views of national implementing actors in EU Member States. These actors vary greatly depending on the country at issue based on their role at times of issuing a returns decision, enforcing a removal order, dealing with voluntary returns, best interest of the child assessments, detention or alternatives to detention, asylum, effective remedies, etc[74]. Crucially, they have very different understandings of what effectiveness means or may entail in this policy domain, and which not always relates to enforcing removal at all costs but instead implementing 'alternatives' to expulsions[75]. The United Nations High Commissioner for Human Rights (OHCHR) has underlined that the Return Regulation Proposal doesn't foresee an obligation for EU Member States' authorities to perform an individualised assessment of human rights protection grounds prior to the issuance of a return decision, which will continue leading to an accumulation of non-enforceable return decisions[76].

According to EU Better Regulation standards, the effectiveness evaluation criterion must not be exclusively measured or assessed based on the total of people returned as the sole criterion for measuring success. EU Better Law-Making standards call for careful consideration of other weighty evaluation criteria before proposing relevant EU legislation, such as consistency and coherency with EU Treaty principles and objectives, fundamental rights and social impacts, efficacy (cost/benefit analysis) and foreign affairs impacts. Therefore, the EU public policy notion of 'effectiveness' is one which must go hand-

69 See in particular Returns of irregular migrants - quarterly statistics - Statistics Explained - Eurostat

70 According to the Proposal's Legal, Financial and Digital Statement, 'Several challenges currently undermine the efficiency and effectiveness of return, ranging from inefficient procedures at national level to insufficient cooperation from third countries in readmitting their nationals. Despite substantial efforts at political and operational level, at present, return is falling well short of a satisfactory level of implementation: only around 20% of third-country nationals ordered to leave the Union, actually leave'., page 6.

71 Refer to I. Legarda Díaz-Aguado (2025), *Resources for Journalists: Key Findings on Irregular Migration, September 2025, available at* MIrreM-resources-for-journalists-v1.pdf; See also Carrera, S. (2016), *Implementation of EU Readmission Agreements: Identity Determination Dilemmas and the Blurring of Rights*, Springer Briefs in Law, Springer International Publishers.

72 European Commission (2017). Recommendation (EU) 2017/2338 of 16 November 2017 establishing a common 'Return Handbook' to be used by Member States' competent authorities when carrying out return-related tasks. Published in the Official Journal of the European Union on 19 December 2017. L 339/135. Section 12.4. p. 53.

73 FRA (2011), Fundamental Rights of Migrants in an Irregular Situation in the European Union, Vienna.

74 Refer to Carrera, S., J. Pozce and O. Jubany (2025), A Point of No Return: A Comparative Analysis of Policy and Legal Responses to Irregularised Non-Removable Third Country Nationals in Selected EU Member States, Open Research Europe (ORE), 5:201.

75 Refer to: moreproject-horizon.eu

76 OHCHR (2025), UN Human Rights (OHCHR) observations on the European Commission proposal for the reform of the EU returns framework – Internal Working Document, Europe Regional Office, Brussels, July 2025.

to-hand with EU Treaty principles and fundamental rights.

The CJEU has held in several of its judgments that because the main objective of EU return policy is 'the establishment of an effective removal and repatriation policy that fully respects the fundamental rights and dignity of the persons concerned', EU Member States are required to respect the fundamental rights which the CHFR grants to TCNs[77]. The proposals include several formalistic references to the ways in which they safeguard a 'humane' approach and fully safeguard fundamental rights and international human rights obligations[78]. However, a proper assessment of their actual impacts on these very rights has not been properly carried out and cannot be so easily concluded. This is especially the case considering the high level of intrusiveness and restrictiveness of some the policy options advanced by the Proposals, with some of their provisions seriously interfering with various fundamental rights in the CHFR.

The Return Regulation Proposal states that it aims 'to strike the right balance between treating third-country nationals fairly and ensuring that the system cannot be circumvented by third-country nationals who aim at preventing their removal from the Union'[79]. This is packaged under the Commission's slogan of a 'firm and fair approach'[80]. The notion of fairness is misleading and legally unsound. The relevant question isn't the extent to which these proposals are fair. It is the extent to which they are lawful and would successfully pass the legality test exercised by European courts, including the CJEU.

Furthermore, the Proposals run the risk of fostering a profound misunderstanding among EU Member States' authorities that fundamental rights, including access to justice (effective legal and judicial protection before independent courts), are 'obstacles' to 'effectiveness'. They run the risk of misleading national authorities by promoting the idea that fundamental rights can be lawfully 'balanced' against equally weighty migration enforcement and security policy priorities[81]. However, some of the fundamental rights impacted by these proposals accept no derogations or exceptions in the name of 'EU return policy' as they are absolute in nature.

This includes, for instance, the principle of non-refoulement enshrined in Articles 18 and 19.2 CHFR, which according to settled case-law[82], prohibits 'in absolute terms', and irrespective of the TCN' conduct, the expulsion of an irregularised TCNs to a country 'where there is a serious risk of that person being subjected to the death penalty, torture or inhuman or degrading treatment or punishment'. This principle must be taken into due consideration by competent national authorities at all stages of return procedures[83]. Furthermore, other fundamental rights – such as the right not to be detained arbitrarily – require very strict criteria and justifications by states authorities[84].

Expected Impacts:

- Promoting a narrow notion of 'effectiveness' putting disproportionate emphasis on removing TCNs at all costs and adding political pressure on national implementing actors to increase the rate of enforced returns, while ignoring alternative policy options to returns that may be more effective and feasible.
- Framing policy choices as a 'balancing exercise' between a deportation-focused migration enforcement agenda and Member States' legal obligations under the CHFR (some of which are absolute in nature), wider primary EU law, and international human rights and refugee law.

77 CJEU, *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis), C69/21, 22 November 2022, EU:C:2022:913, paragraph 89; and CJEU, Adrar, C-313/25, 4 September 2025, EU:C:2025:647, paragraph 47.*

78 Refer for instance to Article 5 (Fundamental rights) which states that 'When applying this Regulation, Member States shall act in full compliance with relevant Union law, including the Charter, with relevant international law, with the obligations related to access to international protection, in particular the principle of non-refoulement, and with fundamental rights'.

79 See also European Commission (2024), Striking a balance on migration: an approach that is both fair and firm, COM(2024) 126 final, 12.3.2024, Brussels, which states 'The new rules [under the Pact on Migration] will put in place more effective asylum procedures with shorter time limits and stricter rules for abusive or subsequent applications. The EU will have the possibility to have lists of safe third countries and safe countries of origin, which will be used alongside national lists. These stricter rules are *balanced against important guarantees for the rights of individuals including free legal counselling throughout all procedures, with particular attention to vulnerable groups, including unaccompanied minors, as well as families with children'.*

80 According to the Return Regulation Proposal, it seeks to establish 'A common procedure for return that is firm and fair should be set up to ensure that third-country nationals who do not, or no longer fulfil the conditions for entry, stay or residence on the territory of the Member States are returned *in a humane manner and with full respect for fundamental rights as well as international law'.*

81 For a critique on the balance metaphor in EU policy refer to Carrera, S., D. Bigo, E. Guild and R. Walker (2010), *Europe's 21 Century Challenge: Delivering Liberty*, Ashgate Publishing Limited, London.

82 See, for instance, CJEU, *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis), C69/21, 22 November 2022, EU:C:2022:913, paragraph 55, and CJEU, Ararat, C156/23, 17 October 2024, EU:C:2024:892, paragraph 35.*

83 CJEU, *Adrar*, C-313/25, 4 September 2025, EU:C:2025:647, paragraph 64.

84 CJEU, *Adrar*, C-313/25, 4 September 2025, EU:C:2025:647.

04

FORCED REMOVAL AND MUTUAL RECOGNITION

The legislative reform put forward by the 2025 proposals gives particular focus to the objective of enforcing expulsions of irregularised TCNs. The Return Regulation Proposal states that it seeks 'to ensure that when someone is ordered to leave the EU, they will leave the EU, either forcibly or voluntarily if the conditions allow, while respecting fundamental rights'[85]. It expressly aims at 'reinforcing forced returns' and states that it facilitates that 'forced return becomes a clear and credible instrument'[86]. The Proposal takes us further in the involuntary realm by insisting on forced deportation, which has significant legal consequences for irregularised TCNs in the EU.

While the Proposal envisages the principle of so-called 'voluntary return' of irregularised TCNs under Article 13, it expressly prioritises, and grants 'flexibility' to EU Member States, the use of 'forced removal', including the issuing of a re-entry ban[87]. Differently from the regime currently envisaged in the 2008/115 Return Directive which foresees 'removal' 'if no period for voluntary departure has been granted', the new Proposal alters this gradation[88] and hierarchy of the provisions related to the 'enforcement of returns'. It starts by highlighting as the first guiding principle the forced nature of removal in Article 12[89].

Forced removals are framed as mandatory for EU Member States in a number of cases, including situations where the irregularised TCN refuses to cooperate with their return, TCNs engaging in intra-EU onwards mobility, TCNs considered to be 'security risks' and those not leaving on the prescribed date of return. The Proposal leaves the current 30 days maximum period for 'voluntary returns' under the 2008 Return Directive, but it removes the minimum period of 7 days currently envisaged in Article 7.1 of the 2008 Return Directive[90]. This might complicate the accessibility by TCNs to the voluntary return route in practice.

The actual voluntariness within the scope of 'voluntary returns' remains highly contested. The line between what is 'voluntary' or forced is often blurred in practice. The Proposal frames the priority given to 'forced return' as an 'incentive' for TCNs to engage with their so-called 'voluntary return'. However, the envisaged regime may in fact undermine incentives for TCNs to leave the Schengen area in real voluntary terms. EU Member States can proceed immediately with forced return procedures and the issuing of a lengthier entry ban[91]. This would be counter-productive for TCNs to leave voluntarily as they would know that they couldn't enter lawfully for a long period of time.

The newly envisaged regime stands at odds with the CJEU case law. The CJEU has recognised that the granting of a period of voluntary departure shouldn't be regarded exclusively as an 'enforcement measure' and instead be conceived as one profoundly altering the legal position of irregularised TCNs, which is informed by the obligation to ensure that their fundamental rights are upheld during this period[92].

85 Page 10 and Recital 21 of the Proposal.
86 Page 10.
87 According to Article 4.5, "removal' means the enforcement of the return decision by the competent authorities through the physical transportation out of the territory of the Member State'. Paragraph 6 of the same Article highlights that "voluntary return' means compliance by the illegally staying third-country national with the obligation to leave the territory of the Member States within the date set out in the return decision in accordance with Article 13 of this Regulation'.
88 According to the CJEU, the system currently envisaged in the 2008 Return Directive corresponds to 'a gradation of the measures to be taken in order to enforce the return decision, a gradation which goes from the measure which allows the person concerned the most liberty, namely granting a period for his or her voluntary departure, to measures which restrict that liberty the most, namely detention in a specialised facility; the principle of proportionality must be observed throughout those stages'. See CJEU, Joined Cases C636/23 [*Al Hoceima] and C637/23 [Boghni], 1 August 2025, EU:C:2025:51, paragraph 43. See also CJEU, El Dridi, C61/11 PPU, 28 April 2011, EU:C:2011:268, paragraph 41.*
89 In the 2008/115 Return Directive the order of the provisions is different: it first presents the principle of 'voluntary departure' in Article 7, and then it envisages 'Removal' in Article 8.
90 Article 7.1 of the 2008 Directive states that 'A return decision shall provide for an appropriate period for voluntary departure of between seven and thirty days'.
91 Article 10.6 and 10.7 of the Proposal state that the length of the entry ban would be of a maximum of 10 years, subject to additional extensions of maximum 5 extra years. Article 22 (consequences of non-compliance with the obligation to cooperate) includes as one of the penalties the 5-year extension. Article 16.3.a stipulates that the additional period can be extended to 10 years in cases of TCNs considered to be 'security risks'. Article 4.8 defines an entry ban as "'an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period"'.
92 CJEU, Joined Cases C636/23 [*Al Hoceima] and C637/23 [Boghni], 1 August 2025, EU:C:2025:51, paragraph 43. See also CJEU, El Dridi, C61/11 PPU, 28 April 2011, EU:C:2011:268, in paragraph 48 the Court held that 'While it is true that the third-country national continues to stay illegally during the period granted for his or her voluntary return, the fact remains that…the failure to grant a period for voluntary departure has…significant consequences on the legal position of that third-country national'.; it added in Paragraph 49 that during this time, 'the wording of Article 14(1) of that directive makes clear that…Member States are to ensure that, in relation to third-country nationals during the period for voluntary departure, the following principles are taken into account as far as possible: family unity with family members present in the territory concerned is maintained, emergency health care and essential treatment of illness are provided, minors are granted access to the basic education system subject to the length of their stay and the special needs of vulnerable persons are taken into account'.*

The Court has held in several occasions the need to prioritise voluntary over forced expulsions[93]. According to the Court, the EU general principle of proportionality must be complied with through all the stages comprising the return procedure, which includes the phase covering the issuing of a return decision 'in the context of which the Member State concerned must rule on the grant of a period for voluntary departure'[94]. TCNs must be also given the right to challenge a negative decision not granting them voluntary return before 'a court or tribunal or a similar impartial body'[95].

A Joint Statement by more than 200 civil society actors titled 'Inhumane Deportation Rules Should be Rejected' underlined that 'The proposal introduces a further shift from 'voluntary departure' to 'removals', making deportation the default option. Even though the notion of voluntariness in such circumstances remains questionable, the proposal restricts people's options and agency further'[96]. As PICUM has underlined, this constitutes a paradigm shift of the Commission's longstanding position that more humane solutions such as voluntary departure should be the preferred option[97]. The United Nations High Commissioner for Refugees (UNHCR) stated that 'voluntary returns are the most effective, dignified, and sustainable option for return and should remain the preferred approach. UNHCR therefore recommends including a provision indicating that where there are no clearly identifiable reasons to believe that this would undermine the purpose of a return procedure, voluntary return should be preferred over removal measures'[98].

The European Parliament Draft Report gives priority, contrary to the Commission's Return Regulation Proposal, to voluntary instead of forced returns. According to the Rapporteur, 'It is clear that voluntary return is more sustainable, effective and efficient'[99]. The Draft Report has introduced amendments aimed at re-positioning voluntary return 'as a primary option'[100]. That notwithstanding, and problematically, the Rapporteur still maintains the Commission's emphasis on the need to ensure enforced removals and increasing the percentage of irregularised TCNs to third countries[101]. Therefore the current EP's position doesn't consider the inherently forceable nature and inherently restrictive understanding of 'voluntariness' pursued by the Proposal. Furthermore, the Draft Report doesn't reintroduce a minimum period for voluntary departure. By retaining the Commission's removal of the current seven-day mandatory minimum, the EP suggested amendments fail to provide the essential procedural guarantee required to make voluntary return a genuinely accessible option. This omission weakens the conditions under which voluntariness can be exercised and undermines the very priority that the Rapporteur claims to pursue.

As introduced in Section 2 above, one of the key initiatives put forward by the Return Regulation Proposal is the introduction of a mandatory system of mutual recognition of return decisions among EU Member States. The Return Regulation Proposal introduces a common 'EU Return Order' (ERO) and the mutual recognition principle of return decisions among EU Member States[102]. The ERO, which would follow a common specific format and made available to relevant authorities through the Schengen Information System (SIS), would run in parallel with national return decisions which Member States would still be allowed to issue.

The ERO would be expected to facilitate the recognition of return decisions issued by another EU Member States, with the possibility to directly enforce the latter by the receiving EU Member State without the need to issue a new decision[103]. Following this priority, the ERO aims at facilitating the removal of irregularised TCNs by requiring a Member State other than that which has taken the decision to effectively expel the person. Guild (2025) has argued that 'this proposal does not appear likely to speed up human rights' compliant expulsions. Rather it is likely to result

93 Refer to CJEU, *Zh. and O., C-554/13, 11 June 2015, ECLI:EU:C:2015:377, paragraph 47; and CJEU, Mahdi, C-146/14 PPU, 5 June 2014, ECLI:EU:C:2014:1320, paragraph 38.*
94 CJEU, Joined Cases C636/23 [*Al Hoceima] and C637/23 [Boghni], 1 August 2025, EU:C:2025:51, paragraph 77.*
95 Ibid., paragraph 56 held that 'an effective remedy must be guaranteed both as regards the decision whether or not to grant a period for voluntary departure and as regards the duration of that period. Indeed, the third-country national concerned must be able to challenge before a court or tribunal or a similar impartial body a decision not to grant him or her a period for voluntary departure, adopted under Article 7(4) of Directive 2008/115, just as he or she must be able to argue that the period for departure granted to him or her in accordance with Article 7(1) of that directive is not sufficient'.
96 Refer to Final Statement_15 Sep .pdf
97 PICUM (2025), New Return Regulation Ushers in Dystopian Detention and Deportation Regime, 11 March 2025, available at New Return Regulation ushers in dystopian detention and deportation regime - PICUM
98 See UNHCR (2025a), Observations On the European Commission's Proposal For a Return Regulation – COM/2025/101, available at UNHCR Observations on the European Commission's Proposal for a Return Regulation – COM/2025/101 | Refworld
99 Page 102 of the Draft EP Report.
100 The order of Articles 12 and 13 has been switched to reflect the political priority of voluntary returns.
101 The Draft Report states that 'But even though voluntary return is the preferred way for returning third-country nationals who have no right to stay, removal is still an important part of the Regulation. Especially since not cooperating with the authorities of the Member States can result in unnecessary delays and an overburden of the system. The whole regulation resolves around returning, so when returning voluntary is not possible or the third-country national will/ is not cooperating, removal stays a possibility to put in place for the Member States', page 102.
102 See Articles 7.7, 7.8 and 9 of the Return Regulation Proposal.
103 Refer to Article 9 of the Proposal. See also Commission Recommendation (EU) 2023/682 of 16 March 2023 on mutual recognition of return decisions and expediting returns when implementing Directive 2008/115/EC of the European Parliament and of the Council. C/2023/1763. OJ L 86, 24.3.2023

in lengthy procedures fraught with cross border problems for both states'[104]. Furthermore, the Proposal fails to consider and expressly envisage the need to apply mandatory fundamental rights and rule of law exceptions derogating from the mutual recognition principle based on the experience gained in the application of the EU Dublin regime. The CJEU caselaw has developed on a merited trust model of mutual recognition cooperation instead of one assuming blind trust regarding EU Member States' compliance with fundamental rights and the rule of law[105].

An issue of particular concern in the scope of forced deportations is the so-called return flights. Available evidence shows that monitoring and safeguards remain inadequate despite the heightened risks associated with forced removals. In 2022, PICUM noted that forced-return flights involve serious risks of fundamental rights violations and that existing monitoring mechanisms are frequently underused or ineffective[106]. Serious Incident Reporting is also rarely activated even in cases where independent monitors documented clear violations – such as a 2018 Munich-Kabul joint return flight, where unauthorised restraint techniques were used without any corresponding report by Frontex staff. PICUM also stresses that the lack of accessible complaint mechanisms, the low number of submitted complaints, and the limited independence of monitoring structures all contribute to a systemic gap between legal safeguards and actual practice during return operations.

Civil society organisations have also highlighted that, over the years, traditional joint return flights have decreased while 'de facto national return operations' coordinated and financed by Frontex have expanded, often with inconsistent or insufficient oversight across participating Member States[107]. In 2021, an investigation by the European Ombudsman also identified significant limitations and shortcomings in Frontex's existing monitoring and complaint mechanisms, calling for more independence for the FRO[108], which has since then happened to some extent. These structural weaknesses reveal an accountability deficit in the planning, execution and follow-up of joint return flights, where fundamental-rights risks remain insufficiently documented, investigated or remedied.

Previous studies confirm that the shift from 'voluntary' return to forced removals can be expected to entail significantly higher economic costs for Member States. The 2019 EPRS Substitute Impact Assessment of the Return Directive recast highlighted significant financial impacts for both the EU (through Frontex) and the individual Member States at the time[109]. With the exception of Germany, for all other countries examined in the study, it was calculated that the average per-person cost of a forced return is generally higher than voluntary return. The study found that even a modest 10 to 20 per cent shift towards forced return would generate substantial additional expenditure for most Member States, which according to our interviews a majority of national governments wouldn't be able to afford[110]. In the scenarios evaluated by the EPRS study, the costs for Belgium, Czechia and Italy were estimated to grow between a minimum of EUR 88k (in the case of a 10% increase in Belgium) and a maximum of EUR 649k (for Italy in the case of a 30% increase). While Germany displayed

Expected Impacts:

- Disincentivising TCNs' engagement in voluntary return procedures due to the impossibility of lawfully re-entering the Union's area, including through long-term re-entry bans.
- Increasing risks of fundamental rights violations associated with the use of force in removal procedures and operations.
- Increasing administrative responsibilities and costs sustained by EU Member States, which are structurally linked to the organisation and implementation of forced returns (for example, return flights and associated logistics).

104 Guild explains how according to human rights standards states have an obligation to carry out an up-to-date risk assessment before proceeding with the enforcement of a return decision and that 'This duty will apply to the expelling Member States in spite of the fact that the issuing state may have carried out such an assessment'. E. Guild (2025), *European Return Orders and the European Human Rights Convention: The Commission's Proposal for a Return Regulation, EU Law Analysis, available at* EU Law Analysis: European Return Orders and the European Human Rights Convention: The Commission's Proposal for a Return Regulation

105 Mitsilegas, V. (2015) 'The Symbiotic Relationship Between Mutual Trust and Fundamental Rights in Europe's Area of Criminal Justice', *New Journal of European Criminal Law (special issue), p. 22; Mitsilegas, V. (2019) 'Joined Cases C-404/15 and C-659/15 PPU – Pál Aranyosi and Robert Caldararu v Generalstaatsanwaltschaft Bremen Resetting the Parameters of Mutual Trust: From Aranyosi to LM', in V. Mitsilegas, A. Di Martino, and L. Mancano (eds) The Court of Justice and European criminal law: leading cases in a contextual analysis. Oxford ; New York: Hart Publishing (Modern studies in European law, volume 91), pp. 421–436; and Mitsilegas, V. (2021) 'Mutual Recognition and Fundamental Rights in EU Criminal Law', in S. Iglesias Sánchez and M. González Pascual (eds) Fundamental Rights in the EU Area of Freedom, Security and Justice.* 1st edn. Cambridge University Press, pp. 253–271.

106 https://picum.org/wp-content/uploads/2022/09/PICUM-Submission-on-the-evaluation-of-the-European-Border-and-Coast-Guard-Regulation.pdf

107 https://jrseurope.org/wp-content/uploads/sites/19/2020/07/position_paper_return.pdf

108 https://www.ombudsman.europa.eu/en/decision/en/143108

109 EPRS, (2019), The Proposed Return Directive (recast): Substitute Impact Assessment, pp. 114-151.

110 Interview No 6 with European Commission representative.

05

DETENTION

The Return Regulation Proposal envisages the possibilities for EU Member States' to use detention in the scope of expulsion procedures 'when there is a risk that third-country nationals abscond, when third-country nationals hamper or avoid return, or when they pose a security risk, or do not comply with alternatives to detention, or detention is necessary to determine or verify identity or nationality'[111]. Article 29.3.d of the new Proposal expands the grounds justifying the use of detention, such as for the purpose 'to determine or verify his or her identity or nationality'. The detention shall not exceed 12 months in a given Member State (Article 32.3). Detention may be extended for a period not exceeding a further 12 months in a given Member State where the return procedure is likely to last longer owing to a 'lack of cooperation' by the TCN, or delays in obtaining the necessary travel documentation from third countries[112].

Article 16.3.d, which covers the return of irregularised TCNs posing 'security risks'[113], allows EU Member States to exceed the 24 month period, subject to judicial review every 3 months[114]. Furthermore, Article 47 (Emergency situations) permits EU Member States to derogate from these provisions and 'to take urgent measures in respect of the conditions of detention' in cases qualified as 'exceptionally large number of third country nationals to be returned placing an unforeseen heavy burden to their capacities', including their detention facilities or in Member States' administrative and judicial staff.

The newly envisaged detention provisions envisaged by the Return Regulation Proposal have raised serious concerns by civil society organisations which have declared that it is 'disproportionate and ineffective, and would only deepen harm to people's rights, dignity and health'[115]. Additionally, PICUM has underlined that the proposal introduces 'emergency' possibilities for EU Member States to disregard procedural safeguards during detention and to limit access to judicial review of detention decisions, including for families and children, when there are many people awaiting their deportation'[116].

The CJEU had defined 'detention' under EU law as consisting of 'the confinement of a person within a particular place, requiring him or her to remain permanently within a restricted and closed perimeter, isolating him or her from the rest of the population and depriving him or her of his or her freedom of movement'[117]. The Court has held that 'any detention in the scope of a return procedure' within the scope of the Return Directive 2008/115 involves 'a serious interference with the right to liberty of the person concerned', enshrined in Article 6 CHFR[118], and it must be 'strictly circumscribed'[119]. Any TCN detained unlawfully must be released immediately, which includes cases when there is no 'reasonable prospect of removal for legal or other considerations'[120]. According to the CJEU, the concept of 'legal considerations', while not defined under the 2008/115 Directive, 'covers any rule of law the observance of which is binding on Member States when removing' irregularised TCNs[121].

Moreover, it is settled case law that effective judicial protection over the use of detention must be ensured by EU Member States at all relevant procedural stages, and which may include non-refoulement

111 Recital 32 and Articles 29.3.d and Article 32.3 of the Proposal.
112 Article 32.3.
113 The Proposal defines TCNs posing a 'security risk' in Article 16.1 as follows: 'a. they pose a threat to public policy, to public security or to national security; b. there are serious grounds for believing that they have committed a serious criminal offence as referred to in Article 2(2) of Council Framework Decision 2002/584/JHA48; c. there are clear indications of his or her intention to commit an offence pursuant to point (b) of this paragraph in the territory of a Member State'.
114 It states that '3. By way of derogation from the relevant provisions of this Regulation, third-country nationals falling within the scope of this Article may be: d. subject to detention for a period that exceeds the maximum duration referred to in Article 32(3) and that is determined by a judicial authority taking into account the circumstances of the individual case, and that is subject to a review by a judicial authority at least every three months'.
115 See Final Statement_15 Sep .pdf
116 PICUM (2025).
117 CJEU, *Staatssecretaris van Justitie en Veiligheid (Ex officio review of detention), C704/20 and C39/21, 8 November 2022, EU:C:2022:858, paragraph 73 and the case-law cited.*
118 Ibid., paragraph 72 and the case-law cited.
119 CJEU, *Landkreis Gifhorn, C519/20, 10 March 2022, EU:C:2022:178, paragraph 62, and CJEU, Staatssecretaris van Justitie en Veiligheid (Ex officio review of detention), C704/20 and C39/21, 8 November 2022, EU:C:2022:858, paragraph 75.*
120 CJEU, Adrar, C-313/25, 4 September 2025, EU:C:2025:647, paragraphs 55 and ss.
121 Ibid., paragraph 58.

considerations too[122]. When detention has been ordered by administrative authorities, EU Member states must allow for judicial review of its lawfulness. This must include a periodic review 'at reasonable intervals of time'. The Return Regulation Proposal envisages this safeguard in Article 33 (Review of detention orders), which provides for speedy judicial proceedings no later than 15 days thereafter, and the obligation to inform upon detention the irregularised TCN of the possibility to initiate judicial proceedings. An increased use of administrative detention orders can be expected to lead to a higher volume in the number of cases reaching national courts, which would increase the workload of judicial authorities with competence to carry out the review.

An over-prioritisation of detention runs contrary to its objective in the 2008 Return Directive, which as the Court has found, 'is not the prosecution or punishment of criminal offences', but it is instead 'intended only to ensure the effectiveness of the return procedure and does not pursue any punitive purpose'[123]. The punitive approach inspiring the Return Regulation Proposal can be seen to defeat this general purpose. The current prioritisation given to using detention for migration-related purposes is more generally highly questionable and debatable. This firstly relates to its inherent criminalisation and penalisation artificially expanding irregularised status towards the scope of criminal law. EU-funded research with national implementing actors shows that the use of detention is generally seen as ineffective, counter-productive and unsuited to dealing with situations of administrative irregularity[124].

Furthermore, the proposal doesn't prohibit and therefore grants EU Member States the possibility to detain children and their families. Article 35 of the Proposal formally grants EU Member States the option to detain minors and families with minors 'as a measure of last resort and for the shortest appropriate period of time and taking into account the best interests of the child'. At the same moment Article 5 of the Proposal requires EU Member States to implement the Regulation in full compliance with fundamental rights, including those of the child enshrined in Article 24 CHFR, and considering the 'best interests of the child', which shall be a 'primary consideration' (Article 18). The detention of minors envisaged by the Commission runs contrary to international human rights commitments and standards which consider that detention is never in 'the best interests of the child'[125]. These standards have been quoted and used by the Luxembourg Court's case law, which has concluded that they apply to all decisions and actions directly or indirectly affecting children in the context of return procedures, including their family members irregularly present in the Member State at issue[126].

The Proposal wrongly reframes 'best interest of the child' obligation and assessments from a law enforcement angle focused on or prioritising enforcing expulsions. UNHCR has clearly stated that 'children must not be detained for reasons related to their (or their parents') immigration status. Detention is never in their best interests and must be avoided in all situations, including emergency situations'[127]. According to PICUM, 'Detaining children for reasons related to their or their parents' migration status conflicts with the best interests of the child. Immigration detention is never in the child's best interests and should always be forbidden'[128]. PICUM has stated that while the Commission refers to 'the best interests of the child' being central to the application of the proposed return regulation (in the opening memorandum on fundamental rights), it then allows for immigration detention of children. In such a manner, the proposal is factually incorrect as it does not take into consideration what the 'best interests of the child' really means now concerning immigration detention (e.g. never to detain)[129].

The EP Draft Report on the Return Regulation Proposal pays particular attention to ATD 'to ensure that regular detention remains a measure of last

122 CJEU, Adrar, C-313/25, 4 September 2025, EU:C:2025:647, paragraphs 67 and ss. Paragraphs 71 and 72 lay down the scope of judicial review. Further, in this case the Luxembourg Court held in paragraph 77 that 'a national rule or practice under which the full examination of the principle of non-refoulement may be carried out only in the context of a procedure for international protection would be contrary to Articles 5 and 15 of Directive 2008/115, read in conjunction with Article 19(2) of the Charter'.

123 CJEU, *Landkreis Gifhorn, C-519/20, judgment of 10 March 2022, EU:C:2022:178, paragraph 38.*

124 Refer to moreproject-horizon.eu

125 Refer to the 2017 joint general comment on migrant children from the UN Migrant Workers' Committee and the UN Committee on the Rights of the Child which has stated that detention is never in a child's 'best interests'.; see also the 2018 UN Global Compact on Migration in which states committed in Objective 13 to 'work to end immigration detention of children'. Refer also to the UN Special Rapporteur on the Rights of Migrants, Report, *Children are children first and foremost: protecting child rights in migration contexts, A/79/2013, 22 July 2024, which underlines in Paragraph 33 that 'immigration detention of any child violates children's rights and always contravenes the principle of the best interests of the child. 88 Article 37 (b) of the Convention on the Rights of the Child establishes the general principle that a child may only be deprived of liberty as a last resort and for the shortest appropriate period of time. However, offences concerning irregular entry or stay cannot under any circumstances have consequences similar to those derived from the commission of a crime. Therefore, the possibility of detaining children as a measure of last resort is not applicable in immigration proceedings as it would conflict with the principle of the best interests of the child and the right to development'.* Available at Document Viewer

126 CJEU, *M.A.*, C-112/20, EU :C :2021: 197. The Court quoted in paragraphs 37 and 38 Article 3(1) of the International Convention on the Rights of the Child, and the UN Committee on the Rights of the Child, in particular the General Comment No. 14 (2013) of the Committee on the Rights of the Child on the right of the child to have his or her best interests taken as a primary consideration CRC/C/GC/14, paragraph 19.

127 UNHCR (2025a).

128 PICUM (2023), *Working together to end immigration detention: A collection of noteworthy practices*, Brussels. Available at Working-together-to-end-immigration-detention_A-collection-of-noteworthy-practices.pdf

129 Interview No 07 with civil society actor, 19 November 2025.

resort'[130]. It states that 'After all, statistics show that detention is effective only in cases where a person can be returned quickly'[131]. The proposed amendments revise the time-limits suggested by the Commission and brings them back to those currently envisaged by the 2008 Return Directive 'because of positive results'[132]. Problematically, the EP's Rapporteur argues to keep the Commission's proposal call of envisaging the detention of minors and minors with families 'to overcome the misuse of minors'. It is completely unclear what is meant precisely by 'misuse of minors', and why such a consideration would affect in any way or form its negative impacts identified above.

The EU general principle of proportionality is very much stake in the new detention-related provisions enshrined in the Return Regulation Proposal, and the EP Draft Report. While it is often proclaimed that detention for migration enforcement purposes must only be a 'measure of last resort following consideration of less coercive alternatives'[133], previous EU research and evidence show that in practice detention is in fact a 'first resort' policy by competent national authorities across EU Member States. The scope of the detention phenomenon in the EU is very little known, and official statistics about it are currently lacking. The Proposal fails to provide an accurate quantitative picture of how many TCNs are detained across EU Member States, and the specific configurations and conditions of the detention phenomenon in the EU. This comes along with the lack of efficient and independent monitoring and public scrutiny of detention conditions covering irregularised TCNs across EU Member States.

While the proposal envisages the possibility for EU Member States to use 'alternatives to detention' (ATDs), they aren't really obliged to do so first. The provision covering the so-called alternatives aren't really 'alternatives', as they are still captured by an enforcement-driven logic which isn't separate from detention-related and other coercive options, including electronic monitoring and reporting obligations[134]. If the irregularised TCNs is considered to not have complied with ATDs, the Proposal expressly foresees the possibility to use detention[135]. More than 200 civil society organisations have concluded that 'The 'alternatives to detention', or non-custodial measures, as proposed by the Commission would not serve their purpose as genuine alternatives, and would not need to be considered before applying detention'[136]. According to UNHCR, 'the Regulation should explicitly require that alternatives to detention be explored first', and ATDs based on electronic monitoring 'should comply with the principle of minimum intervention and should not be modelled on criminal law bail arrangements that carry connotations of the criminal system, such as wrist or ankle bracelets'[137].

PICUM highlights that community-based, non-coercive approaches, offer a more humane and effective alternative to detention-based migration control[138]. It emphasises that case-management models strengthen trust, improve access to information and support people to engage meaningfully with migration procedures while living in the community[139]. Drawing on its involvement with the European Alternatives to Detention Network, PICUM notes that evaluations of community-based pilot projects across Europe demonstrate positive outcomes and confirm the value of cooperation-focused approaches that enable participants to work towards resolving their cases[140]. PICUM also observes that long-term, rights-respecting and stability-oriented strategies tend to lead to more sustainable and dignified outcomes than enforcement-led policies centred exclusively on detention and deportation[141].

Previous studies underline that detention is one of the most costly components of return systems, with expenditure rising sharply as reliance on pre-removal detention increases. The EPRS Substitute IA of the Return Directive recast shows that daily costs vary significantly across Member States, and even moderate increases in detention use create significant additional financial burdens[142]. The study found that, across all Member States analysed, the additional

130 It proposes to change the order of the articles inside the proposal by moving what is Article 29 of the Commission's Proposal (Grounds for Detention) as part of Article 31 (Alternatives to Detention). The revised version of Article 31 states that '1. Member States shall provide for alternative measures to detention in national law. Such measures shall be ordered only where at least one of the grounds for detention listed in Article 31a(3) applies'.
131 Page 103 of the EP Draft Report.
132 Ibid.
133 UNHCR (2025a).
134 According to the Commission's Proposal 'The Regulation also frames the use of alternatives to detention as, while alternatives to detention are less invasive than detention, such measures nevertheless entail restrictions of liberty', page 9.
135 Article 29.3.e.
136 Refer to Final Statement_15 Sep .pdf
137 See UNHCR (2025), Observations On the European Commission's Proposal For a Return Regulation – COM/2025/101, available at UNHCR Observations on the European Commission's Proposal for a Return Regulation – COM/2025/101 | Refworld
138 PICUM, Recommendations for Humane Return Policies in Europe,: p. 4.
139 PICUM, Annual Report 2020: p. 10.
140 Ibid.
141 PICUM, Recommendations for Humane Return Policies in Europe,: p. 4.
142 EPRS (2019), The proposed Return Directive (recast): Substitute Impact Assessment: pp. 14-16, 142-144.

costs for pre-removal detention would range between a minimum of EUR 1.1m in Czechia to a maximum of EUR 138.6m in Belgium. These costs would arise both from the costs of detention itself, but also from the necessary construction of new detention centres to detain additional people[143]. Evidence cited in the Substitute IA study also shows that longer detention periods do not increase return effectiveness, meaning that higher spending does not translate into improved outcomes[144].

Instead, detention often incurs significant opportunity costs compared to less expensive and more sustainable alternatives such as assisted voluntary return or community-based and case management initiatives. These patterns are consistent with findings from the 2023 EPRS SIA on the Instrumentalisation Proposal, which identified pre-removal detention as one of the main cost drivers for Member States, with limited or uncertain benefits in practice[145]. Similarly, a 2018 EPRS study on the Cost of non-Europe in Asylum Policy found that the use of detention is more costly than regular reception conditions, with the average daily cost of detention per asylum-seeker in the EU being four times higher than for organised reception[146].

Expected Impacts:

- Increasing use of detention by EU Member States.
- Higher levels of litigation and judicial workload related to the review of the lawfulness of detention.
- Decreasing use of 'alternatives to detention' by EU Member States.
- Greater criminalisation and stigmatisation of irregularised TCNs, increasing their precarity and vulnerability.
- Increasing detention of minors and undermining assessments of the best interest of the child due to the frequent lack of capacity and knowledge among national authorities.
- Detriment effects of pre-removal detention policies on international relations due to its incompatibility with EU and national political commitments and international legal obligations to end detention (including that of minors and families with minors).

143 Ibid.: p. 143
144 Ibid.: p. 144
145 S. Carrera et al. (2024), EPRS, Proposal for a regulation addressing situations of instrumentalisation in the field of migration and asylum: Substitute impact assessment, page 3.
146 EPRS (2018), The Cost of non-Europe in Asylum Policy: p. 119.

06

OBLIGATION TO COOPERATE

The Return Regulation Proposal starts with the assumption that TCNs are the ones to blame for the non-effective enforcement of their own removal to non-EU countries, including their own country of origin. The obligation to cooperate with competent national authorities on their own return is envisaged in Articles 21 (Obligation to cooperate) and 22 (Consequences in case of non-compliance with the obligation to cooperate). As mentioned in Section 2 of this Study, one of the key specific objectives of the Proposal is to 'Incentivise cooperation by the third-country nationals concerned through a combination of obligations, incentives to cooperate and consequences for non-cooperation'[147].

The notion of 'cooperation' in Article 21 puts especial emphasis on the obligation for TCNs to remain on the territory of the EU Member State which is responsible for the return procedures and not to move inside the Schengen area to another country. The Proposal also includes a set of criteria for determining the 'risk of absconding'[148]. However, some of the sanctions which are expressly foreseen by the Proposal may turn up acting as drivers for TCNs to move and find safety and dignity elsewhere inside the Union's territory. As argued by Vedsted-Hansen (2025), onward movements within the EU 'are de facto promoted by inadequate reception conditions and protection standards, resulting from insufficient harmonisation of asylum law and policy as well as lacking enforcement of existing standards'[149].

The so-called 'incentives to cooperate' include penalties covering the reduction of certain 'benefits and allowances… unless this would lead to the persons' inability to make provision of their basic needs' (Emphasis added). It also covers the reduction of incentives promoting voluntary returns, as well as so-called 'reintegration programmes'[150]. Additional penalties include seizing of TCNs' identity and travel documents, while providing them with a copy, the refusal or withdrawal of work permit, extending the duration of the entry ban and financial penalties. If national authorities conclude that the TCN is not cooperating, the Proposal foresees the extension of detention in its Article 32.

Why shaming and penalising a person by depriving them of their liberty and socio-economic human rights for issues which may extend beyond their actual reach and direct responsibility? The Proposal stigmatises TCNs as 'non-cooperative' individuals who want to prevent their return and passes the blame onto them through a punitive approach in the hands of EU Member States' authorities based on sanctions which range from cutting-off essential socio-economic rights. The notion of 'non-cooperation' with authorities pursues a predominant punitive approach for people to enjoy their human dignity. This may include cases where there are legally binding grounds for postponing, suspending or halting the enforcement of expulsions. The notion of 'non-cooperation' is also blurrily constructed. It provides disproportionately large margins of maneuver by relevant national authorities at times of interpreting what is precisely non-cooperative behavior and the actual scope of the envisaged sanctions, which is incompatible with the need to ensure legal certainty and equality before the law by every person. For instance, the scoping of the 'risk of absconding' is extremely broad by introducing an exhaustive and residual list of criteria to assess its potential existence under Article 30 of the Proposal. The 'risk of absconding' includes criteria which are

147 Page 3 of the Legal, Financial and Digital Statement of the Proposal.
148 According to the Proposal 'absconding' means 'the action by which the third-country national does not remain available to the competent administrative or judicial authorities, such as by leaving the territory of the Member State without permission from the competent authorities, for reasons which are not beyond the third-country national's control'.
149 J. Vedsted-Hansen (2025), European governance of deterrence and containment. A legal perspective on novelties in European and Danish asylum policy, Journal of Ethnic and Migration Studies, 51:8, pp 2015-2032.
150 Article 46.3 of the Proposal.

intrinsic to the structural vulnerability of irregularised TCNs, such as 'lack of residence' in Article 30.2.a of the Proposal, and which can be expected to further increase their precarity.

This uncertainty includes, for example, what is considered as 'information and legal documentation' to be provided, or the 'explanation in case they are not in possession of an identity or travel document'. Similarly, the Proposal requires irregularised TCNs to provide 'all information and statements in the context of requests lodged with the competent authorities of relevant third countries for the purpose of obtaining travel documents and cooperate with these authorities of third countries'[151]. At the same moment it isn't clear how the 'basic needs' criterion will be interpreted and assessed by relevant national authorities before proceeding to cut access to socio-economic rights. To a large degree, the Return Regulation Proposal is over-stretching what 'non-cooperation' may entail, as well as the obligations on TCNs not to be penalised. The Commission hasn't taken into proper consideration whether there may be any legitimate cases where the TCN can be legitimately not expected to fulfil any of these obligations, and where no penalties should be imposed. The Proposal, here too, frames rights as conditional, only to be granted if the TCNs cooperate with the competent authorities, even to their own detriment, such as cooperating to enable their own removal at the expense of their own human rights.

The Proposal envisages a so-called 'Right of information' under Article 24. This right includes information on 'the available legal remedies and the time-limits to seek those remedies' and 'their procedural rights and obligations throughout the return procedure in accordance with this Regulation and national law, in particular the right to legal assistance and representation pursuant Article 25' of the Proposal[152]. However, this provision fails to pass the effective legal protection test, as it made co-dependent or subordinate to the 'obligation to cooperate'. The so-called 'right to information' should also include information on access to rights in cases where removals have been postponed or suspended, as well as information to have access to transition statutes, regularisations and autonomous residence permits, long-stay visa or other authorisation offering a right to stay for compassionate, humanitarian or other reasons as envisaged in Article 7.9. of the Proposal (See Section 10 of this Study below).

Civil society actors have highlighted that 'With no effective way to challenge the determination that they are not cooperating sufficiently or to ensure that people are not penalised for circumstances beyond their control – such as statelessness, digital or literacy barriers, age, health or trauma – these measures risk being applied arbitrarily and disproportionately punishing people in vulnerable socio-economic situations'[153]. As the Meijers Committee has underlined, 'The determination of (non-)cooperation largely depends on how the

Expected Impacts:

- Prioritisation of punitive approaches and expansive interpretation of 'non-cooperation with national authorities'.
- Shifting responsibility onto TCNs even when non-removal is due to legal obligations, circumstances beyond their controls, or situations where cooperation may negatively affect their human rights.
- Introducing legally uncertain criteria to determine non-cooperation and apply penalties.
- Envisaged penalties may push TCNs to engage in intra-EU mobility to seek safety and dignity and avoid societal exclusion and punishment.
- Increasing administrative burdens on Member States' national authorities responsible for implementing and enforcing the 'obligation to cooperate' criteria and the envisaged penalties.
- Increasing the structural hyper-precarity characterising the situation of irregularised TCNs in the EU.

151 The participation in reintegration and return counselling is also framed as an obligation by the Proposal. Refer to Article 46 of the Proposal (Support for return and reintegration).

152 Article 24.2 states that "'The information provided shall be given without undue delay in simple and accessible language and in a language which the third-country national understands or is reasonably supposed to understand including through written or oral translation and interpretation as necessary. That information shall be provided by means of standard information sheets, either in paper or in electronic form"'.

153 See Final Statement_15 Sep .pdf

necessity and proportionality assessment is performed in each individual case'[154]. Furthermore, the practical application of this penalisation approach can be expected to increase or deepen the structural hyper-precarity and exclusion experienced by irregularlised TCNs across the EU. The EP Draft Report doesn't address any these concerns. The Rapporteur underlines that 'Without these measures, the system would remain ineffective, and we would be unable to exceed the current return rate of around 20 percent. In this way, the framework becomes more balanced and effective', and he concludes, without further evidence or explanations, that 'These consequences are proportionate and fair within the context of the proposal'[155].

The combined effect of the obligation to cooperate, expansive detection practices and the broad reliance on 'security risk' categories risks contributing to the criminalisation of TCNs on the sole basis of unauthorised entry or stay. This runs counter to international refugee law, including Article 31 of the 1951 Geneva Convention, which prohibits penalising people seeking protection for their mode of entry (See also Section 9.3.1. below). The Commission's proposals therefore blur the line between administrative irregularity and criminal conduct, with serious implications for fundamental and refugee rights compliance.

154 Meijers Committee (2025), page 5.
155 Page 103 of the EP Draft Report.

07

INEFFECTIVE REMEDIES AND INJUSTICE

Article 27 of the Return Regulation Proposal limits access to judicial review by removing the suspensive effect of appeals beyond a judicial authority of first instance, reducing deadlines and making it conditional to 'upon request' by the applicant[156]. Furthermore, the Proposal requires the TCN to request the suspensive effect along with appeal, which can be granted as well ex-officio. The suspensive effect is of crucial relevance to ensure that EU Member States authorities don't expel irregularised TCNs if the appeal against it is still in progress. Regarding the envisaged time-limits for appeals, the Proposal doesn't expressly foresee a mandatory minimum time and only envisages a maximum deadline that shouldn't exceed 14 days. Civil society organisations have expressed concerns about it, as 'Member States could make it impossible for people to effectively challenge deportation orders in practice, against the established jurisprudence of European courts'[157].

EU Member States are under the obligation to ensure 'effective judicial protection' of the rights that TCNs derive from EU law considering Article 47 CHFR[158]. Undermining the essence of the EU right to effective remedies in Article 47 CHRF. Article 47 EU Charter requires EU Member States to respect the fundamental right of fair trial and effective remedies before an independent court or tribunal 'when implementing EU law'. A joined reading of Articles 2 and 19 TEU and Article 47 CHFR, and common standards developed by the Luxembourg Court case-law covering 'judicial independence' in the EU legal system. Every national court and tribunal must uphold EU judicial independence benchmarks in the application and interpretation of EU law.

The Proposal fails to consider some EU Member States attacks against the independence and impartiality of national judges and tribunals in reviewing removal decisions (See Section 9.1.1. below on the Italy-Albania Protocol). The increasing pressures by some national governments on judicial authorities in the area of expulsions constitute a direct challenge to Article 2 TEU on the rule of law and Article 19 TEU on effective legal/judicial protection of everyone. EU law is based on the presumption that national courts in the EU member states mee the requirement of effective judicial protection, which includes the independence and impartiality of the courts (LM, paragraph 58). The Court concluded that the 'executing authority' is thus required to assess whether there is a 'real risk' that the individual concerned will suffer a breach of his fundamental right to a fair trial if surrendered. (LM, para.59).

Article 26.3. Member States shall ensure that compliance with the requirements arising from the principle of non-refoulement is verified by the competent judicial authority, at the request of the TCN or ex officio. Article 27.1 (Appeal before a competent judicial authority) states that the period for lodging an appeal before a judicial authority of first instance shall not exceed 14 days. The limits on legal aid (assistance and representation) currently envisaged in Article 25 of the Return Regulation Proposal run raise a direct challenge to the fundamental right to effective remedies under the CHFR. The Return Proposal relies heavily on effective legal and judicial protection in EU Member states. However, compliance with the rule of law by all EU national governments cannot be taken for granted at all as independence of the judiciary is increasingly contested by some EU governments[159].

The Proposal maintains broad grounds for limiting or excluding legal assistance, particularly at appeal stage. Combined with shortened deadlines and the conditional nature of suspensive effect, these restrictions materially hinder the ability of individuals to challenge removal decisions in time and with adequate support. The lack of effective procedural safeguards heightens the risk of refoulement, both

156 For an analysis of appeal procedures under the APD refer to J. Vedsted-Hansen (2022), Asylum procedures: seeking coherence within disparate standards, in E. Tsourdi and P. De Bruycker (eds), Research Handbook on EU Migration and Asylum Law, Elgar Publishing, pp. 243-262.

157 See Final Statement_15 Sep .pdf

158 CJEU, *Staatssecretaris van Justitie en Veiligheid (Ex officio review of detention), C704/20 and C39/21, 8 November 2022, EU:C:2022:858, paragraph 81.*

159 Refer to Italy, where concerns over attacks to judges are proliferating (1680b205f5 and Section 9.1.1. of this Study below), or Belgium where the non-implementation of Court judgments has been identified as an issue of serious concerns (Belgium - Asylum Information Database | European Council on Refugees and Exiles

under the Return Regulation Proposal and in the parallel frameworks on STC and SCO, where access to remedies is indispensable for preventing unlawful transfer or removal.

As regards financial impacts, previous studies consistently highlight that measures which restrict access to appeals or shorten procedural time limits carry significant legal and financial risks for EU Member States. The 2019 EPRS assessment of the Return Directive recast finds that reduced deadlines undermine the quality of appeal submissions, limit access to interpreters and legal aid, and generate higher downstream costs due to increased numbers of low-quality or protective appeals. The study also cautions that such compressed timelines do not reduce appeal rates and may even trigger litigation costs linked to violations of the right to an effective remedy under EU and ECHR standards. These concerns are echoed in the EPRS study of the instrumentalisation proposal, which notes that the introduction of non-suspensive or 'substandard' appeals would likely fall short of Article 47 of the Charter and CJEU requirements for effective judicial protection, exposing Member States to increased legal uncertainty and potential compensation claims. Across both assessments, weakening appeal safeguards is shown to offer no measurable gains in return effectiveness while heightening legal liability and creating additional administrative, judicial and financial burdens.

Expected Impacts:

- Limiting access to effective legal and judicial review by reducing deadlines (expediting procedures) and only granting suspensive appeal only 'upon request' by the applicant.
- Interference with the essence of the fundamental right on effective remedies under Article 47 CHFR.
- Attacking the independence and impartiality of national judges and tribunals in reviewing removal decisions and applicability of safe country concepts.
- Weakening appeal safeguards, generating higher levels of legal liability and creating additional administrative, judicial and financial burdens on national authorities.

08

DETECTION & SECURITY RISKS

Article 6 of the Return Regulation Proposal deals with 'Detection and initial checks'. It allows EU Member States to detect people who could be undocumented by competent national enforcement authorities. Article 6 also foresees the use of risk assessments for additional security verifications. It remains unclear how the envisaged 'measures to detect' irregularised TCNs inside EU Member States' territories, and 'any additional verifications needed', will comply with the prohibition of discrimination and racism, so that racialised communities aren't the main target of these law enforcement or police checks. This Article could also negatively impact on Member States doing their own legislation to allow access to rights and services irrespective of regular status. It may also raise barriers or limit Member States' capacities to issue regularisations and humanitarian statuses.

Previous European Parliament studies have underlined how the discretionary power conceded to law enforcement officers when conducting identity checks on persons within the territory of a Member State has led to racial profiling and discriminatory selection of the people being checked. There is a high risk that racialised communities will be disproportionately targeted, and that persons will be unlawfully checked based on indicators related to race or ethnicity – such as skin colour[160]. EU-funded research and civil society found that racialised communities – especially young male – are among the most targeted by migration enforcement policies[161].

The Return Regulation Proposal includes far reaching restrictions on the rights of irregularised TCNs who may be considered as 'security risks'. The Meijers Committee has concluded that 'The detention of persons posing security risks is based on broad and vague criteria, leading to a lack of legal certainty at odds with Article 5 (1) ECHR and potentially violates the principle that pre-removal detention can only be a measure of last resort'[162]. Majcher has rightly argued that the security risk provisions of the Proposal envisaging detention problematically 'blur the lines between (administrative) immigration detention and criminal detention'[163]. This runs contrary to the CJEU case-law which has held that the 2008 Return Directive regime doesn't permit EU Member States to use detention on public order or safety grounds[164].

More than 200 NGOs have expressed concerns about the increasing conflation between migration management, asylum and policing, with the Proposal foreseen and deepening access by law enforcement authorities to irregularised TCNs in the scope of the so-called 'European Return Order' to be included in the Schengen Information System (SIS). The same NGOs have underlined that "There are documented patterns of data abuse and non-compliance with legal standards on privacy and protection of personal data by authorities under SIS, increasing the likelihood of data breaches and misuse' contrary to EU data protection law standards[165].

Expected Impacts:

- Leading to more racial profiling and discriminatory policy checks of racialised communities.
- Increasing conflation of irregularised human mobility with policing and security.
- Increasing the risk of data misuse and violations of EU privacy and data protection standards.
- Expanding criminalisation of TCNs considered to be 'security risks'.

160 S. Carrera, D. Colombi and R. Cortinovis, 2023), An Assessment of the State of the EU Schengen Area and its External Borders: A Merited Trust Model to Uphold Schengen Legitimacy, Study for the European Parliament, Brussels, Section 5.4, pp. 88-95. pp. 124 and 125.

161 From the I-CLAIM Horizon project, see N. Sigona, S. Piemontese, S. Soares Mendes and A. Achi (2025), Irregularised migrant workers in the UK food delivery sector. https://i-claim.eu/project/irregularised-migrant-workers-in-the-uk-food-delivery-sector/ ; N. Sigona and S. Piemontese (2025), Delivery riders caught between algorithms and immigration raids. *OpenDemocracy*. https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/delivery-riders-caught-between-algorithms-and-immigration-raids; On EU-level gendered and racialized discourse and narratives on irregular migration, see D. Colombi (2025), Discourses about irregularised migrants at the EU level: Representation and narratives in the European Commission, the European Parliament and civil society. https://cdn.ceps.eu/wp-content/uploads/2025/03/I-CLAIM-WP4-EU-long_MODIF.pdf; See also PICUM (2024), Racial profiling, policing and immigration control. https://picum.org/blog/racial-profiling-policing-immigration-control/

162 Meijers Committee (2025), Comment on the Proposal for a Return Regulation CM2505, April 2025, available at: CM2505.pdf

163 I. Majcher (2025), The New EU 'Common System for Returns' under the Return Regulation: Evidence-Lacking Lawmaking and Human Rights Concerns, EU Law Analysis, Available at EU Law Analysis: The New EU 'Common System for Returns' under the Return Regulation: Evidence-Lacking Lawmaking and Human Rights Concerns

164 CJEU, *Kadzoev, Case C357/09 PPU, 30 November 2009. Paragraph 70 of the ruling.*

165 Refer to Final Statement_15 Sep .pdf

09

EXTERNALISATION

The three Proposals can be understood as pursuing a prominent externalisation rationale with specific mechanisms embedded in foreign affairs or international relations instruments which generally aim at shifting responsibilities over irregularised TCNs – including asylum seekers – towards third country authorities and actors. 'Externalisation' has been used in the academic literature to describe migration management measures – adopted unilaterally or multilaterally by states – affecting the ability and agency of asylum seekers and irregularised people to seek asylum or other forms of humanitarian protection and shifting responsibilities (in part or as a whole) outside the territories of the receiving state[166].

9.1. RETURN HUBS

Article 4.3.g of the Return Regulation Proposal includes a revised concept of 'country of return' in comparison to the current definition outlined in the 2008 Return Directive. It expressly includes the possibility for EU Member States to deport an irregularised TCN to 'a third country with which there is an agreement or arrangement on the basis of which the third-country national is accepted, in accordance with Article 17 of this Regulation'[167]. Article 17 of the Return Proposal envisages 'Return to a third country with which there is an agreement or arrangement' which has come to be known as 'Return Hubs'. This provision stipulates the possibility for irregularised TCNs to be removed to a non-EU country with which there is 'an agreement or an arrangement' either by the EU or bilaterally by an EU Member State[168]. The proposal excludes from its personal scope 'unaccompanied minors and families with minors'[169]. As explained by the Commission's SWD accompanying the Return Regulation Proposal, 'The current definition of return would not allow to return third-country nationals to countries different from their country of origin or transit, except in the cases detailed in the Return Directive'[170].

According to the Proposal the 'agreement or arrangement' shall include provisions dealing with the applicable transfer procedures, conditions of stay 'including the respective obligations and responsibilities of the Member State and of that third country', the modalities of 'onward return' to the country of origin or 'to another country where the third-country national voluntarily decides to return, and the consequences in the case where this is not possible', and the consequences in cases of violations of the 'agreement or arrangement' by any of the parties. Article 17.1 states that 'Such an agreement or arrangement may only be concluded with a third country where international human rights standards and principles in accordance with international law, including the principle of non-refoulement, are respected'. It remains unclear what is here included as 'international law' precisely, and it is noticeable that there is no reference to complying with EU law fundamental rights standards.

Article 17 constitutes another example of a strange legal hybrid inside the proposal. While it comes in the form of a Regulation, the actual scope of this 'idea' is very loose and left so open-ended by the Commission's text, which the exact scope and final shape of this legal creature is simply impossible to clearly ascertain considering the Commission's proposal text. For instance, the Article doesn't clearly foresee, or clarity, crucial issues related to jurisdiction and the applicable legal regime in these detention centres, which in turn opens fundamental questions

166 See S. Als, S. Carrera, N. Feith Tan and J. Vedsted-Hansen (2022), Externalisation and the UN Global Compact on Refugees: Unsafety as Ripple Effect, European University Institute (EUI), Policy Paper, Florence. Available at: content Refer also to 6 International Journal of Refugee Law (2022), Vol 34, No 1, 114-119. https://doi.org/10.1093/ijrl/eeac022

167 This definition largely follows the 2019 Council Partial General Approach on the 2018 Return Proposal, which included in Article 3.3.(e) that a 'country of return' may mean that 'as a last resort, if the return to a third country referred to in points (a) to (d) cannot be enforced due to lack of cooperation in the return process either of the third country or of the third country national, to any third country with which there is an EU or bilateral agreement on the basis of which the third country national is accepted, and is allowed to remain, where international human rights standards according to the International Covenant on Civil and Political Rights are respected, and provided that no international, European or national rules prevent the return. When the return is carried out to a third country, which has a common border with a Member State, the prior agreement of that Member State is required before starting negotiations on any such bilateral agreement'. Refer to Council of the EU (2019), Partial General Approach, 9620/19, 23 May 2019, Brussels.

168 Article 17.3 states that 'Prior to concluding an agreement or arrangement pursuant to paragraph 1, Member States shall inform the Commission and the other Member States'.

169 Article 17.4.

170 European Commission (2025), Staff Working Document (SWD), Analytical Supporting Document, C(2025) 2911 final, Brussels, 16.5.2025, page 29.

regarding the obligation to ensure effective judicial oversight and protection and the obligation to guarantee that TCNs would have the right to appeal before a court against a return decision. It isn't clear whether EU law would apply or not abroad and henceforth have extraterritorial reach. In addition, the procedural guarantees envisaged in Article 17 remain weak[171]. This raises serious questions regarding the compatibility of this Article with the requirement of upholding legal certainty and foreseeability of laws, which are conditions for upholding the rule of law and better regulation standards in EU policy-making.

The concept of 'Return Hubs' is misleading and blurry overall. While it comes along the label of 'return', evidence from past and current externalisation initiatives (See Sections 9.1.1 and 9.1.2 below) show that they can be expected to become extraterritorial detention centres in non-EU countries. And while the Commission argues that the Proposal doesn't expressly foresee detention in Article 17[172], it doesn't explicitly prohibit it either and leaves the door wide open for its misuse. PICUM concluded that this initiative 'Opens the door for member states to set up deportation centres outside the EU, leading to automatic arbitrary detention, accountability and human rights monitoring challenges, risks of chain deportations towards unsafe countries and numerous other violations of human rights and international law'[173].

The label of 'hub' is equally misleading as it assumes that people will be travelling (swiftly coming and going as in airports) to and from those detention facilities, instead of staying there indefinitely due to legal, operational or human rights-related grounds making deportations to their countries of origin unfeasible. Moreover, the label 'return' is equally incorrect since any targeted individual would have never been present (or in transit) in the non-EU countries where s/he would be forcibly sent. Therefore, they wouldn't be 'returning' to places where they have never been before in the first place.

A combined reading of the returns and safe third country legislative proposals could mean that expulsions would take place to countries where TCNs have no link whatsoever (e.g. transit) following the Italy-Albania deal 'non-model'.

The Proposal envisages that the 'agreement or arrangement' shall come along an independent monitoring 'body or mechanism' to monitor its effective implementation. However, based on the challenges characterising the ineffectiveness of some national Independent Monitoring Mechanisms (IMM) such as those in Greece and Croatia[174], or the limited scope to 'border controls' at EU external borders of the monitoring mechanism envisaged by the Pact on Migration and Asylum in the pre-entry Screening Regulation[175], it is unclear the extent to which such a new 'body or mechanism' would be effective in practice. It is also uncertain the exact ways in which it could successfully address the by-design deficits, including those emerging from the responsibility blurring and shifting, inherent to the externalisation of detention and forced expulsions to non-EU countries. Moreover, the legal and operational challenges inherent to transplanting monitoring mechanisms and actors to non-EU countries which are supposed to be intermediaries in the return procedures shouldn't be underestimated.

The EP Rapporteur of the Return Regulation Proposal calls for a Frontex-led (European Border and Coast Guard) 'European monitoring mechanism of removals' that would cover 'the whole return process', including removals not coordinated or involving Frontex[176]. However, Frontex cannot be realistically expected to be the medicine to all evils. A fully independent monitoring body (which would also monitor Frontex own activities in this same field) would be instead necessary to effectively perform this task. While the shapes and internal monitoring competencies of Frontex Fundamental Rights Office (FRO) have positively developed over the last years[177], the FRO does not constitute an effective and independent monitoring mechanism following existing international

171 One interviewee expressed that while Article 17 states that "'Such an agreement or arrangement may only be concluded with a third country where international human rights standards and principles in accordance with international law, including the principle of non-refoulement, are respected"', the extent to which these safeguards and rights would be implemented in practice remains to be seen. The interview recommended that this Article should have include a clear assessment of non-refoulement. Interview No 9 with academic.

172 Interview No 6 with European Commission representative.

173 See PICUM (2025), New Return Regulation Ushers in Dystopian Detention and Deportation Regime, 11 March 2025, available at New Return Regulation ushers in dystopian detention and deportation regime - PICUM

174 S. Carrera, D. Colombi and R. Cortinovis (2023), An Assessment of the State of the EU Schengen Area and its External Borders: A Merited Trust Model to Uphold Schengen Legitimacy, Study for the European Parliament, Brussels, Section 5.4, pp. 88-95.

175 The monitoring mechanism under the Screening Regulation doesn't cover 'border surveillance' activities which often result in push backs. Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 establishing the screening of third-country nationals at the external borders and in certain inland situations and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240, (EU) 2019/817 and (EU) 2019/818, OJ L 147, 22.5.2024, pp. 1–63.

176 Refer to the amendments 79-84 revising Article 15 of the Return Regulation Proposal.

177 Interview No 04 with EU Agency

and regional standards[178]. This could be ensured by granting that power to actors external to Frontex. These could include, for instance, the FRA, the European Ombudsman and their networks of human rights organisations and ombudspersons across Member States, as well as civil society actors. In this context, it would be central to develop ex ante human rights accountability (clear and binding criteria for the EU not to conclude 'deals' with third countries), ongoing accountability (to freeze operationalisation and funding) and ex post accountability (to draw legal consequences, including responsibility and liability) as unequivocal pre-conditions for EU financial support to EU Member States and third countries[179].

Described by the Commission as an 'innovative feature of the proposal', the SWD states that 'a number of strategic discussions with Member States and the input of civil society, international organisations and the EU Fundamental Rights Agency (FRA), to arrive at a solution that is both practically feasible and in respects of fundamental rights'[180]. This is another clear instance where the inputs and contributions from civil society and Ios are being instrumentalised and not duly considered by the European Commission. Further, the FRA is equally used a source of legitimation for arguing that a fundamental rights-respectful option would be feasible, without completely discarding the very idea of the 'Hubs' at front[181].

The FRA issued a Position Paper on the Return Hubs in February 2025 which concluded that 'EU law does not ban the creation of return hubs but imposes considerable limitations… However, it exposes the agency to a constant risk of operating in violation of the principle of non-refoulement enshrined in Articles 18 and 19 CHFR. To mitigate such risk, robust and clear fundamental rights safeguards must be in place'[182]. The FRA pointed out that 'any agreement which may be concluded with third countries envisaging the establishment of return hubs should include provisions on independent and effective human rights monitoring mechanisms'. At the same time, it outlined several 'pre-conditions' for the Return Hubs, instead of disregarding all together the very idea as incompatible with the CHFR.

The European Parliament Draft Report on the Return Regulation Proposal (2025/0059(COD) keeps the idea of 'return hubs' within the scope of the Proposal. According to the Rapporteur, 'Because of the importance of actually returning someone out of the Schengen borders, the option proposed by the Commission for returning a third-country national to a country with which there is an agreement is still on the table'[183]. Among the most noticeable touches made by the Rapporteur to the Commission's proposal, the Draft Report removes the possibility to use 'arrangements' and instead advocates for the exclusive use of international agreements presenting 'strict conditions', and which in turn would ensure democratic accountability by national parliaments and the EP. Further, the Rapporteur argues that 'Return Hubs' would only serve 'as a matter of last resort', introducing an 'order of priority' on the criteria laid down in Article 4.3 of the proposal which covers the meaning of 'country of return'[184].

While the use of international agreements, instead of non-legally binding arrangements, could in principle have positive impacts from a democratic accountability viewpoint, the Italy-Albania deal examined in Section 9.1.1 below shows that using legally binding agreements do not ensure their success in passing the constitutionality and legality test, which must be in any case amenable to independent judicial review by national and European courts. It is also unlikely that the proposed amendments will overcome the most significant impacts inherent to the very idea of the 'hubs'.

The expected impacts of the EU Return Hubs can be examined by looking at the lessons learned and impacts of the Italy-Albania Protocol (Section 9.1.1) and the Australian Offshoring Asylum scheme (Section 9.1.2). Furthermore, the economic impacts of these two case-studies are also informative of the economic costs that could be expected from the implementation of initiatives similar to the Return Hubs (Section 9.1.3 of this Study below).

9.1.1. ITALY AND ALBANIA

178 Refer to Carrera, S. and Stefan, M. (2018), Complaint Mechanisms in Border Management and Expulsion Operations in Europe: Effective Remedies for Victims of Human Rights Violations? Brussels: CEPS, p. 22; See also Carrera, S. and M. Stefan (2020), Fundamental Rights Challenges in Border Controls and Expulsions of Irregular Immigrants in the EU, Routledge Human Rights Series. See also FRA (2022), 'Establishing national independent mechanisms to monitor fundamental rights compliance at the EU external borders', https://fra.europa.eu/en/publication/2022/border-rights-monitoring

179 Interview No 1 with EU agency; and Interview No 4 with EU Agency..

180 Page 43 of the Commission's SWD.

181 Interview No. 6 with European Commission representative.

182 EU Agency for Fundamental Rights (FRA) (2025), Position Paper 'Planned Return Hubs in Third Countries: EU Fundamental Rights Law Issues, 1/2025, Vienna.

183 Page 102 of the EP Draft Report. The Rapporteur underlines that 'It has not gone unnoticed that the proposal for this has raised significant concerns. Nevertheless, it reflects a broad desire among the European Union since it can be a safeguard for Member States in dealing with illegal migration and serves as a valuable incentive to encourage the preferred voluntary returns or cooperation. It is necessary to create a sustainable system that works on a long time basis'.

184 Furthermore, the EP Draft Report redrafts Article 17.1 as follows: 1. Return within the meaning of Article 4, first paragraph, point (3)(g) of illegally staying third-country nationals requires an agreement to be concluded with a third country and shall only be considered for those who, despite adequate support, do not return voluntarily or cannot be forcibly returned to one of the other countries of return in accordance with the order of priority set out in Article 4(3).

Announced in November 2023 and presented as an 'innovative solution' by Italian officials[185], the Italy-Albania Protocol initially sought to establish asylum processing centres on Albanian territory in Shëngjin and Gjadër. The deal was immediately framed as operating 'outside EU law'[186]. The Italian government presented it as a political arrangement or Memorandum of Understanding (MoU). Following calls regarding its unconstitutionality and its required ratification from the Parliament under Article 80 of the Italian Constitution[187], the Italian Parliament approved Law 14/2024 which ratifies and executes the Protocol[188]. On the Albanian side, the Protocol was challenged by the opposition before the Albanian Constitutional Court, which found no violation of Albania's national territorial integrity[189], and was finally ratified by the Albanian Parliament[190].

The Protocol was initially supposed to apply to TCNs from the list of 'safe countries of origin' (SCO) set by the Italian Ministry of Foreign Affairs, together with the Ministries of the Interior and Justice. The list initially included Albania, Algeria, Bangladesh, Bosnia-Herzegovina, Cameroon, Cape Verde, Colombia, Côte d'Ivoire, Egypt, Gambia, Georgia, Ghana, Kosovo, Morocco, Montenegro, Nigeria, North Macedonia, Peru, Senegal, Serbia, Sri Lanka and Tunisia. According to Standard Operating Procedures set by the Ministry of the Interior, the application of the Protocol excluded by default women, minors, people affected by visible health issues and disabilities, elderly, and people who submit their valid passport or ID voluntarily to the authorities[191].

Since the first transfer of TCNs on 14 October 2024, the implementation of the Italy-Albania Protocol has triggered multiple legal and operational challenges, primarily concerning the designation of 'safe countries' and the extraterritorial application of Italian law. A series of court rulings either rejected the legality of detention, referred preliminary questions to the CJEU, or required return to Italy for proper asylum processing.

On 18 October 2024, the Court of Rome refused to validate the detention of 12 asylum seekers from Egypt and Bangladesh[192]. Based on a previous CJEU judgement[193], the Court found that these two countries could not be considered 'safe' as they are not safe in their entirety and for all people, including LGBTIQ+ people, victims of female genital mutilation, ethnic and religious minorities and political opponents[194]. Because of this, the Court found that the TCNs concerned should never have been channelled into the accelerated border procedure in Albania and were brought back to Italy. The Italian government reacted to this judgement by revising the list of Safe Countries of Origin and removing Cameroon, Colombia and Nigeria – but keeping Egypt and Bangladesh, among others[195].

This revision of the SCO list sparked new legal challenges unrelated to the application of the Italy-Albania Protocol, but still relevant to the application of the accelerated border procedure. On 30 October 2024, following the denial of asylum to a Bangladeshi national (unrelated to the Albania Protocol), the Court of Bologna sought the intervention of the CJEU to clarify the application of EU legal standards and previous case law in the definition of 'safe countries

185 F Florio, Migranti, il governo insiste sui centri in Albania: «Continuare con le 'soluzioni innovative'». Le opposizioni: «Un miliardo di euro nel cesso» (23 December 2024) Open Online https://www.open.online/2024/12/23/centri-migranti-albania-governo-meloni-soluzioni-innovative/

186 J Liboreiro, 'Italy–Albania migration deal falls 'outside' EU law, says Commissioner Ylva Johansson' (15 November 2023) *Euronews* https://www.euronews.com/my-europe/2023/11/15/italy-albania-migration-deal-falls-outside-eu-law-says-commissioner-ylva-johansson

187 See ASGI, *Accordo ItaliaAlbania: è incostituzionale non sottoporlo al Parlamento* (14 November 2023) https://www.asgi.it/asilo-e-protezione-internazionale/accordo-italia-albania-asgi-illegittimo-parlamento/. Article 80 establishes that 'the Chambers authorise by law the ratification of international treaties [cf. Article 87, paragraph 8] that are of a political nature, or provide for arbitration or judicial settlements, or involve changes to the territory, financial burdens, or modifications to laws [cf. Articles 72, paragraph 4; 75, paragraph 2; and Article V]'.

188 Italian Law No. 14 of 21 February 2024, Ratifica ed esecuzione del Protocollo tra il Governo della Repubblica italiana e il Consiglio dei ministri della Repubblica di Albania per il rafforzamento della collaborazione in materia migratoria, fatto a Roma il 6 novembre 2023, nonché norme di coordinamento con l'ordinamento interno, Gazzetta Ufficiale No. 44 of 22 February 2024. https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2024;14

189 Integrazionemigranti.gov.it, *Albania, la Corte Costituzionale convalida l'accordo con l'Italia sui migranti* (31 January 2024) https://integrazionemigranti.gov.it/itit/Ricercanews/Dettaglionews/id/3629/AlbanialaCorteCostituzionaleconvalidal'accordoconl'Italiasuimigranti

190 Il Post, Il parlamento dell'Albania ha approvato l'accordo sui migranti con l'Italia (22 February 2024) https://www.ilpost.it/2024/02/22/parlamento-albania-approvazione-accordo-migranti-italia/

191 Available here: https://inlimine.asgi.it/wp-content/uploads/2024/11/SOP-attivita-condotte-in-mare-Protocollo-Italia-Albania.pdf. In practical terms, the original version of the Protocol established that, upon being rescued in international waters, people would be received onboard of an Italian Navy ship by the sanitary personnel, given a bracelet with an identification number and photographed; they would then undergo a sanitary screening carried out by the sanitary personnel with the support of cultural mediators and – in case of resistance – the police; the police, together with cultural mediators, would then carry out the pre-identification, evaluation of the country of origin, of vulnerabilities and familial relationship, followed by a security control of the person and their belongings. To clarify uncertain situations, additional health and vulnerability checks could be carried out onboard upon docking and after disembarkation in the screening centre in Shengjin. Following the screening, the TCNs in question would be then transferred to the centre in Gjadër to undergo the accelerated asylum border procedure.

192 A De Leo, Does the Rome court's refusal to validate the detention order of the first asylum seekers brought to Albania mark the end of the Italy–Albania deal? (24 October 2024) ECRE OpEd https://ecre.org/op-ed-does-the-rome-courts-refusal-to-validate-the-detention-order-of-the-first-asylum-seekers-brought-to-albania-mark-the-end-of-the-italy-albania-deal/

193 Case C406/22 *CV v Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky ECLI:EU:C:2024:789, judgment of the Court (Grand Chamber) of 4 October 2024, paras 1 ff.*

194 L Biarella, *Trattenimento dei migranti in Albania: perché non è stato convalidato* (Tribunale di Roma, Decreto n. 42256/2024), *Altalex*. https://www.altalex.com/documents/news/2024/10/22/trattenimento-migranti-albania-perche-non-stato-convalidato

195 G Zampano, 'Italy adopts a new decree to overcome hurdles jeopardising its migration deal with Albania' (21 October 2024) *Associated Press* https://apnews.com/article/italy-albania-migration-deal-decree-safe-countries-detention-centers-a642ef177497ca3d3952d624038ba104; Italian Decree-Law No. 158 of 23 October 2024, *Disposizioni urgenti in materia di procedure per il riconoscimento della protezione internazionale, Gazzetta Ufficiale No. 249 of 23 October 2024.* https://www.gazzettaufficiale.it/eli/id/2024/10/23/24G00177/SG

of origin'[196]. Waiting for the CJEU's verdict, the Court of Catania took a similar position on the case of a Bangladeshi national in early November 2024[197].

On 31 October 2024, the Court of Rome referred to the CJEU two cases involving two of the Bangladeshiationals who had been brought to Albania[198]. The Court submitted four preliminary questions asking if EU law (i) prevents national legislature from designating countries as 'safe'; (ii) requires the publication of the sources used for the designation; (iii) allows national courts to use independent sources other than the ones set in the Asylum Procedures Directive (APD) to assess whether a country meets the conditions to be considered 'safe'; and (iv) prevents Member States to designate a country as 'safe' if some groups are not safe there.

In December 2024, the Court of Cassation intervened upon a request of the Court of Rome on the case of one the Egyptian nationals who had been taken to Albania in October as part of the first transfer[199]. While waiting for the sentence from the CJEU on the SCO notion, the Cassation found that it is up to the legislature to define the safe countries, in accordance with EU law, but the judge must protect the fundamental rights of the asylum seeker in the individual cases. While judges cannot replace the Minister of foreign Affairs nor can they completely suspend the governmental decree, they may disapply the 'safe country' designation on a case-by-case basis where there is clear evidence that the country in question does not meet the required standards in the individual case, to protect individuals' liberty under urgent judicial review.

Following a third attempt by the government to bring TCNs to Albania in January 2025, the Court of Appeal of Rome did not validate the administrative detention of 43 asylum seekers from Bangladesh and Egypt and requested clarifications from the CJEU[200]. All 43 people were therefore brought back from Albania to Italy. On 28 March 2025, the Italian government revised the application of the Protocol to encompass not only asylum-seekers subject to the accelerated asylum border procedures, but also TCNs in administrative detention and undergoing a return procedure[201]. In other words, the centre in Gjadër was turned from an asylum processing centre to a 'multifunctional' infrastructure'[202] serving as an asylum processing centre for 'non-vulnerable' people from 'safe countries' rescued in international waters, as a pre-removal detention facility, or CPR (Centro di Permanenza per il Rimpatrio), and as a proper prison. New provisions also allow for the transfer of TCNs already 'in custody' in the CPRs on the Italian territory and the continuation of the ongoing procedures and deprivation of liberty during said transfer[203]. EU officials distanced themselves, insisting that the centre in Gjadër should not be seen as a Return Hub under the proposed 2025 Return Regulation Proposal. However, they did not condemn or criticise the Italian government's actions[204].

On 19 April 2025, the Court of Appeal of Rome ruled that the Italy-Albania Protocol and its ratifying law cannot be applied to TCNs who apply for asylum while in Albania[205]. The case concerned a Bangladeshi national who had been in Italy since 2009 and was transferred to the CPR in Gjadër. The Court found that, upon applying for asylum in Albania, the person's legal status changed from a returnee to an asylum seeker. Since the Protocol only applies to persons rescued by Italian authorities in international waters (and who have not entered the Italian territory yet) or already detained in CPRs in view of return, the Court concluded that their detention of an asylum seeker in Albania lacked a legal basis. As a result,

196 InfoMigrants, 'EU Court suspends Bologna case, aggregates trials' (26 November 2024) *InfoMigrants* https://www.infomigrants.net/en/post/61383/eu-court-suspends-bologna-case-aggregates-trials

197 Available here: https://www.sistemapenale.it/pdf_contenuti/1730797521_tribcatania-3112024-non-convalida-trattenimento-disapplica-dl-23102024-ok-ok.pdf

198 Case C758/24 Alace – LC v Commissione Territoriale per il riconoscimento della Protezione Internazionale di Roma – Sezione procedure alla frontiera II, pending, https://curia.europa.eu/juris/showPdf.jsf;jsessionid=5AF11FB2669C5FC7B17977756EB541F0?text=%25222013%252F32%252FEU%2522anddocid=293118andpageIndex=0anddoclang=ENandmode=reqanddir=andocc=firstandpart=1andcid=22452136; Case C759/24 Canpelli – CP v Commissione Territoriale per il riconoscimento della Protezione Internazionale di Roma – Sezione procedure alla frontiera II, pending https://curia.europa.eu/juris/document/document.jsf?text=anddocid=294678andpageIndex=0anddoclang=ENandmode=lstanddir=andocc=firstandpart=1andcid=11227572 . For an overview of the hearing, see M. Zamboni, 'The Italy–Albania protocol before the Court of Justice of the European Union – hearing of the CJEU' (19 March 2025) EU Law Analysis https://eulawanalysis.blogspot.com/2025/03/the-italy-albania-protocol-before-court.html

199 Available at: https://www.cortedicassazione.it/resources/cms/documents/34898_12_2024_civ_oscuramento_noindex.pdf

200 ANSA, 'Tutti liberi i 43 migranti portati in Albania, tornano sabato sera a Bari'. (31 January 2025) https://www.ansa.it/sito/notizie/cronaca/2025/01/31/tutti-liberi-i-43-migranti-portati-in-albania-tornano-sabato-serra-a-bari_9b66b48d-fe6f-4836-bf7b-17905884c868.html

201 Italian Decree-Law No. 37 of 28 March 2025, *Disposizioni urgenti per il contrasto dell'immigrazione irregolare, Gazzetta Ufficiale No. 73 of 28 March 2025, converted with amendments by Law No. 75 of 23 May 2025, Gazzetta Ufficiale No. 118 of 23 May 2025.* https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2025;37. See also A. Camilli, 'Tutte le criticità dei nuovi centri di espulsione in Albania' (14 April 2025) *Internazionale* https://www.internazionale.it/notizie/annalisa-camilli/2025/04/14/cpr-albania-migranti-trasferimento

202 ANSA, 'Piantedosi: 'Il CPR c'è già in Albania, lo attiveremo. Le strutture sono polivalenti''. (24 March 2025) https://www.ansa.it/nuova_europa/it/notizie/nazioni/albania/2025/03/24/piantedosi-il-cpr-ce-gia-in-albania-lo-attiveremo_587d95e0-7c9b-4259-be09-56db01536cf4.html

203 In Italian law, a key distinction exists between *detenuti (detainees) and trattenuti (held persons). Detenuti typically refers to individuals deprived of liberty following a criminal conviction and held in prison under the penal code. In contrast, trattenuti refers to TCNs in administrative detention in the CPRs pending return or asylum procedures. This form of deprivation of liberty is not considered punitive but preventive, and therefore subject to different safeguards and judicial oversight. In practice, the distinction is often blurred, particularly in settings like the Gjadër centre in Albania, where administrative detention mirrors carceral conditions without the procedural protections afforded to detenuti under criminal law. See G. Campesi, 'Regulating mobility through detention: Understanding the new geography of control and containment at the Southern European border' (2024) 28 Theoretical Criminology* 554 https://doi.org/10.1177/13624806241249665

204 S De La Feld, 'La saga dei centri italiani per migranti in Albania che diventano CPR. Per l'Ue si può fare, ma non sono return hubs'. (31 March 2025) *Eunews* https://www.eunews.it/2025/03/31/centri-migranti-albania-italia-cpr-ue/

205 R Ferrara, 'Corte d'Appello di Roma: è illegittimo il trattenimento in Albania per chi richiede asilo. La lacuna normativa che potrebbe compromettere il funzionamento del 'modello Albania''. (28 aprile 2025) *Melting Pot Europa* https://www.meltingpot.org/Corte-dAppello-di-Roma-e-illegittimo-il-trattenimento-in-Albania-per-chi-richiede-asilo.html

the Court did not validate the detention and required the person to be returned to Italy for the processing of their asylum application. On 10 May 2025, the Italian Court of Cassation overturned the previous ruling by the Court of Appeal of Rome, holding that detention in the Gjadër CPR remains lawful even after an individual submits an asylum application[206]. The Court accepted the government's appeal, arguing that Gjadër should be treated as equivalent to an Italian CPR, and that the asylum request was potentially strategic.

On 24 May 2025, the government adopted Law No. 75/2025, which expands the grounds for detention of asylum seekers in Albania, even when they apply for international protection 'with the aim of delaying or hindering the execution of the return order' after being transferred[207]. The law also introduces a mechanism allowing for a second detention order to override a previous refusal by a judge. Additionally, it also broadens the use of accelerated border procedures in Albania for all asylum cases subject to fast-track processing, not just those involving people from 'safe countries' or caught at the border. Just a few weeks later, on 29 May 2025, the Court of Cassation suspended its own decision of 10 May, referring two questions to the CJEU and raising serious doubts about the compatibility of the Protocol with the Return Directive and the Reception Conditions Directive[208].

Civil society and human rights groups, including the Association for Juridical Studies on Immigration (ASGI), the Tavolo Asilo e Immigrazione (TAI) and ActionAid, have strongly criticised the Albania arrangement[209]. In its initial configuration, concerns focused on the lack of legal clarity, extraterritorial application of Italian law and deprivation of fundamental rights. Civil society has flagged cases of prolonged detention without judicial review, coercive transfers and the transformation of the facilities into de facto prisons[210]. In the Albanian centres, at least 20 critical incidents were recorded in the first days, including self-harm; 'vulnerabilities' and special reception needs are not sufficiently evaluated and respected; phones are confiscated; legal consultations are restricted; selection criteria are opaque; and procedural guarantees are routinely undermined[211].

Reports found extreme opacity and lack of transparency over the government's communication on the situation of the people detained in the CPR. During a visit to the centre by an Italian MP and MEP, 16 out of the 41 people who had been taken to the Albanian CPR could not be accounted for[212]. Upon further investigation, it was established that four people had been returned to their country of origin without media attention or official communication, one never entered the CPR, 11 were taken back to Italy due to mental and physical health issues making them unfit for administrative detention or following the refusal of judges to validate their administrative detention – some upon applying for asylum[213]. Reports also found that, among the staff of the centres, the risk of breaching the duty of confidentiality produced fears of reporting potential abuses as it could lead to legal action or dismissal[214].

On 9 May 2025, Italian authorities carried out the first direct deportation operation from Albanian territory[215]. Five Egyptian nationals held in the Gjadër CPR were boarded onto a chartered flight departed from Rome, with a stopover in Tirana and directed to Cairo. According to reports, the Italian government deliberately avoided publicising the removal, which was executed under the coordination of the Ministry of the Interior. Civil society organisations, including ASGI and ActionAid, have denounced the move as a grave jurisdictional breach, arguing that transferring individuals from detention to an airport in Albanian territory falls outside the scope of Italian legal control and lacks judicial oversight[216].

206 *Il Post*, 'Una sentenza della Cassazione che cambia un po' le cose per i migranti detenuti in Albania' (10 maggio 2025) https://www.ilpost.it/2025/05/10/sentenza-cassazione-migranti-detenuti-centro-gjader-albania/

207 SL Frugoni, C Cirillo and M Limoni, 'Immigrazione: la L. 75/2025 rafforza le misure sul trattenimento dei richiedenti asilo' (4 June 2025) *Altalex* https://www.altalex.com/documents/2025/06/04/immigrazione-l-75-2025-rafforza-misure-trattenimento-richiedenti-asilo

208 ANSA, 'I dubbi della Corte di Cassazione sul piano Albania, due rinvii alla Corte UE' (30 May 2025) https://www.ansa.it/sito/notizie/politica/2025/05/30/i-dubbi-della-corte-di-cassazione-sul-piano-albania-due-rinvii-alla_7b151dfa-d7c3-4972-a198-13e90cc4c506.html ; see CJEU, Case C-414/25 [Sedrata] iRequest for a preliminary ruling. https://curia.europa.eu/juris/showPdf.jsf?text=&docid=303466&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5155785

209 ASGI, *Il Laboratorio autoritario delle politiche migratorie italiane: una prima analisi giuridica del D.L. 37/2025* (April 2025) ASGI https://www.asgi.it/wp-content/uploads/2025/04/DL-37_2025-ASGI.pdf; Tavolo Asilo e Immigrazione, *Oltre la frontiera. L'accordo ItaliaAlbania e la sospensione dei diritti* (25 February 2025) Tavolo Asilo e Immigrazione https://www.asgi.it/wp-content/uploads/2025/02/Rapporto-Albania_web_25-febbraio.pdf; Interview with F Ferri (ActionAid), *«Il 'modello Albania' è un dispositivo di punizione e deterrenza»* (24 April 2025), *Melting Pot Europa* https://www.meltingpot.org/2025/04/il-modello-albania-e-un-dispositivo-di-punizione-e-deterrenza/; InfoMigrants, 'Rights organisation points out 'serious issues' with Italy's repatriation center in Albania' (16 April 2025) *InfoMigrants* https://www.infomigrants.net/en/post/64029/rights-organisation-points-out-serious-issues-with-italys-repatriation-center-in-albania

210 Tavolo Asilo e Immigrazione, *Oltre la frontiera* cit.

211 Ibid.

212 F Amabile, 'Il giallo dei migranti spariti dal CPR in Albania: 'Sedici svaniti nel nulla''. (28 April 2025) *La Stampa* https://www.lastampa.it/politica/2025/04/28/news/il_giallo_dei_migranti_spariti_dal_cpr_in_albania_ne_mancano_16-15123023/

213 G Merli, 'Nel CPR in Albania sono rimasti 25 migranti' (29 April 2025) *il Manifesto* https://ilmanifesto.it/nel-cpr-in-albania-sono-rimasti-25-migranti

214 https://euobserver.com/eu-and-the-world/ar124e4323

215 L Rondi and K Millona, 'La prima operazione di rimpatrio del governo italiano direttamente dall'Albania', *Altreconomia* (23 June 2025) https://altreconomia.it/la-prima-operazione-di-rimpatrio-del-governo-italiano-dallalbania/

216 Ibid.

Italian media reported that, on 18 June 2025, the Italian Court of Cassation's Civil Division circulated a 48-page internal report on the constitutional and legal implications of the Italy–Albania Protocol. Although not binding case law, the document outlined a detailed legal analysis of the Albanian centres in Shëngjin and Gjadër[217]. The report highlighted that, beyond the issues already raised in litigation, the Protocol raises incompatibilities with both the Italian Constitution and EU and international law. It identified potential violations of Articles 3 (equality before the law), 10 (right to asylum), 13 (personal liberty) and 24 (right to defence) of the Italian Constitution. It also emphasised the legal vacuum around key issues such as the selection criteria for transfers, the lack of written and reasoned decisions and the absence of alternatives to detention. Of particular concern is the likely occurrence of 'detenzione sine titulo', i.e., the unlawful deprivation of liberty once the legal basis for detention expires, with no immediate mechanism for release. The Cassation report also stressed the asymmetry between the legal guarantees available to TCNs held in Italy and those transferred to Albania, reinforcing concerns about discriminatory treatment and double legal standards. While the Protocol claims to preserve Italian jurisdictional control, in practice it creates a 'juridical imbalance', where core constitutional guarantees are effectively suspended by distance.

On 1 July 2025, MEPs from the Left, Greens/EFA and S&D submitted a question for a written answer on the return of the Egyptian nationals directly from Albanian territory, asking the European Commission if it was aware of this development, if it considered the action of the Italian government to be in line with or against EU law, and if it planned to take action to compliance with the EU return acquis and the uniform application of migration and asylum law[218]. Commissioner for Home Affairs Magnus Brunner replied on 15 September 2025, confirming that the Commission was aware of the return operation, that the Commission was monitoring the situation and its compatibility with the Return Directive reiterating that Member States are expected to act fully in line with EU and international law. Brunner also noted the pending case before the CJEU and recalled that the next Schengen evaluation of Italy is scheduled for 2027.

In the meantime, on 1 August 2025, the CJEU published its judgement on Joined Cases C758/24 Alace and C759/24 Canpelli on the designation of safe countries of origin[219]. The Court found that, based on the Asylum Procedures Directive (APD), Member States may designate third countries as 'safe' through legislative acts, provided that this designation remains subject to effective judicial review ensuring compliance with the conditions laid down in Annex I of the Directive and the right to an effective remedy (Article 47 CHFR). The CJEU further clarified that Member States must ensure adequate access to the information sources used to designate safe countries of origin to allow applicants to effectively challenge the decision and courts to properly review the legality of the designation. National courts may indirectly verify whether the designation meets the criteria in Annex I and may use their own reliable information sources, provided the adversarial principle (the right of both parties to comment on evidence) is respected. Finally, the Court held that a Member State cannot designate a third country as a safe country of origin if it fails to meet the required conditions for certain categories of persons.

As of 7 October 2025, only 17 people were detained in Gjadër[220]. Interestingly, when questioned about the possibility of UK-led return hubs, Albanian PM Edi Rama publicly confirmed that: 'When it comes to the hubs, or whatever they are called, I've said it, and I repeat – never in Albania'[221]. At the European Council meeting of 23 October 2025, the Prime Ministers of Italy, Denmark[222], and the Netherlands agreed to continue discussing so-called 'innovative solutions' in Rome on 5 November 2025[223]. At the time of writing, it is unclear whether this meeting ever took place. On 10 December 2025, Member States' ministers will discuss migration and the

217 G Merli, 'L'analisi della Cassazione svela tutte le falle del progetto Albania' (30 June 2025) *il Manifesto* https://ilmanifesto.it/nella-relazione-della-cassazione-tutte-le-falle-del-progetto-albania

218 Parliamentary question- - E-002653/2025, Returns of migrants from detention centres in Albania and breach of Directive 2008/115/EC by the Italian Government. 1 July 2025. https://www.europarl.europa.eu/doceo/document/E-10-2025-002653_EN.html

219 CJEU, Judgment of the Court (Grand Chamber) of 1 August 2025 (requests for a preliminary ruling from the Tribunale ordinario di Roma – Italy) – LC, CP v Commissione territoriale per il riconoscimento della protezione internazionale di Roma – sezione procedure alla frontiera II. (Joined Cases C-758/24 and C-759/24, Alace and Canpelli). https://curia.europa.eu/juris/document/document.jsf?text=&docid=303022&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5590515 . For a detailed assessment, see M. Zamboni (2025), The judgment of the Grand Chamber of the Court of Justice of the European Union on the Italy-Albania Protocol, *EU Law Analysis*. https://eulawanalysis.blogspot.com/2025/09/the-judgment-of-grand-chamber-of-court.html

220 L. Rondi, L. Figoni, K. Millona, Italy-Albania migrant deal: Millions spent, few results. *EUObserver*. 14 October 2025. https://euobserver.com/eu-and-the-world/ar124e4323

221 InfoMigrants, Western Balkans: Managing migration and return hubs discussed at London summit. 22 October 2025. https://www.infomigrants.net/en/post/67663/western-balkans-managing-migration-and-return-hubs-discussed-at-london-summit

222 Denmark has been exploring the possibility of establishing 'transit points' to facilitate the return of TCNs in Uganda. See C. Van Campenhout, Netherlands and Uganda sign letter of intent on return hub deal for rejected asylum seekers. *Reuters*. 25 September 2025. https://www.reuters.com/world/africa/netherlands-uganda-sign-letter-intent-return-hub-deal-rejected-asylum-seekers-2025-09-25/

223 See *POLITICO Europe, 23 October 2025*. https://www.politico.eu/article/eu-leaders-summit-ukraine-sanctions-migration-euco-live-updates/#id_1315878

European Convention on Human Rights at the Council of Europe[224].

During these developments, the Italian government has unduly interfered with the independence of the national judges dealing with the cases covering the arrangement with Albania declaring. The Italian Prime Minister, Georgia Meloni, has publicly declared that the framing of a country as 'safe' for the purpose of expelling asylum seekers should be an exclusively political decision and not up to judicial review[225]. The European Commission against Racism and Intolerance (ECRI) of the Council of Europe expressed concerns about the Italian government's 'undue criticism aiming at undermining the authority of individual judges deciding on migration cases', and called for 'respect, protect and promote the independence and impartiality of judges deciding on migration cases'[226]. Similarly, the European Commission's 2025 Rule of Law Report concluded that 'Some stakeholders reported on public statements by politicians being critical of the judiciary. These statements were reportedly made by Government officials and members of Parliament, and they related to ongoing inquiries and judicial decisions mostly regarding migration, also targeting individual judges and prosecutors'[227].

9.1.2. AUSTRALIA AND ITS 'PACIFIC ULTRA-SOLUTION'

Australia's offshore asylum processing regime has been in place since 2001 and stands as the longest-running and most institutionalised model of extraterritorial asylum processing globally. Established under the so-called Pacific Solution (or Pacific Plan), it relied on bilateral Memoranda of Understanding with Nauru and Papua New Guinea (PNG) for the forced transfer and detention of asylum seekers arrived to Australia by sea or intercepted before arriving to Australian territory. The stated aim was to deter irregular arrivals[228]. Australian officials unsuccessfully explored cooperation with other countries – including Fiji, where policymakers referred to Australia's plan as 'a shameful display of cheque book diplomacy' and as 'tantamount to offering a bribe'[229].

The bilateral MoUs with Nauru and PNG placed responsibility for the management and security of the centres and the asylum processing under the host governments, while in practice Australia retained financial and operational control[230]. The first iteration (2001-2008), limited to Nauru, involved the transfer of over 1 600 asylum seekers and resettlement to Australia for refugees. It was later acknowledged as a policy failure and dismantled by the Rudd Labor government in 2008. It was re-established in 2012 amid renewed political contestation over maritime arrivals, this time also including PNG and with the explicit provision that anyone arriving by boat after 19 July 2013 would never be resettled in Australia, regardless of their protection status[231]. The Australian initially planned to secure resettlement for these people in Cambodia, but – following the failure of this plan – refugees have remained in Nauru and PNG with no clear prospects of resettlement.

The second iteration of the Pacific Solution was accompanied by Operation Sovereign Borders (OSB), launched in September 2013 as a military-led border enforcement campaign. OSB authorised interceptions and 'turn-backs' of vessels outside Australian territorial waters and became a defining feature of Australia's deterrence architecture[232]. The goal of this mission has been to physically stop asylum-seekers from entering Australian waters and therefore avoid any obligations arising from the Refugee Convention – though human rights obligations may also arise vis-á-vis the action of national authorities outside of their territory. The government's policy was accompanied by a high degree of secrecy: operational details were withheld under national security justifications, and access to detention sites was heavily restricted, producing an opaque system largely shielded from external scrutiny[233].

224 Council of Europe, Council of Europe ministers to discuss migration and the European Convention on Human Rights. Newsroom. 25 November 2025. https://www.coe.int/en/web/portal/-/council-of-europe-ministers-to-discuss-migration-and-the-european-convention-on-human-rights-1

225 As reported by Politico, following the CJEU ruling in Joined Cases C-758/24 Alace and C-759/24 Canpelli, Italian Prime Minister Georgia Meloni declared that "'"'Once again, the judiciary, this time at the European level, claims spaces that do not belong to it, in the face of responsibilities that are political"'. Politico (2025), *Meloni fumes as EU top court makes it harder to reject asylum-seekers, 1 August 2025, available at* Meloni fumes as EU top court makes it harder to reject asylum-seekers – POLITICO

226 ECRI (2024), *ECRI Report on Italy, Strasbourg, paragraphs 58 and 59. Available at* 1680b205f5

227 European Commission (2025), Rule of Law Report, Country Chapter on the rule of law situation in Italy, SWD(2025) 912 final, 8.7.2025. Available at 9ccf6a60-8e2f-4193-868b-30a24c9e37e0_en

228 Carrera, S., et al. (2018), Offshore Processing of Asylum Seekers: The Search for Legitimacy and Accountability in EU External Migration Policy, CEPS; Gleeson, M. and Yacoub, N. (2021), Cruel, Costly and Ineffective: The Failure of Offshore Processing in Australia, Kaldor Centre for International Refugee Law, UNSW.

229 See Parliament of Australia, Chapter 10 - Pacific Solution: Negotiations and Agreements. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/maritimeincident/report/c10

230 Gleeson, M. and Yacoub, N. (2021), Cruel, Costly and Ineffective: The Failure of Offshore Processing in Australia, Kaldor Centre for International Refugee Law, UNSW.

231 McKay, F. (ed.), 'Forced Migration Review – Special Issue on Australia', Forced Migration Review, available at: https://www.fmreview.org/mckay/; See also EPRS (2015), Hotspots at EU External Borders, EPRS At a Glance, available at: https://www.europarl.europa.eu/RegData/etudes/ATAG/2015/569023/EPRS_ATA(2015)569023_EN.pdf

232 Carrera, S., et al. (2018), Offshore Processing of Asylum Seekers, CEPS.

233 Ibid.

In 2014, the Australian government also announced that it would no longer accept resettlement of refugees registered with UNHCR in Indonesia to avoid people travelling there to try and reach Australia[234]. The Australian policy faced legal challenges and judicial scrutiny. In April 2016, the Supreme Court of PNG ruled that the detention of asylum seekers on Manus Island violated the constitutional right to personal liberty, which led to the closure of the centre[235]. Despite this, the Australian government continued to transfer individuals to Nauru and to fund offshore detention. The arrangement relied on a complex web of contractual and jurisdictional delegation, which diffused accountability between the Australian government, the host states and private (sub-) contractors[236].

Human rights bodies, parliamentary inquiries, and civil society organisations have consistently documented grave abuses within the offshore centres, including arbitrary detention, inadequate medical care, violence, sexual assault and widespread mental health crises. Independent observers described the conditions as cruel, inhuman and degrading, especially for children and families, reporting extended period of family separation, mental health, self-harm and suicide, isolation/negative stereotyping, impacts of institutionalised living on parenting and family life, family breakdown, impacts of witnessing/experiencing violence, lack of access to appropriate education, impaired child development, statelessness of children born in Nauru, lack of access to livelihoods, and lack of access to healthcare and nutrition[237]. Reports by the UNHCR, Amnesty International and the Kaldor Centre found systemic violations of international law, including refoulement risks and the denial of effective remedies[238].

The Australian policy has been regularly criticised in the United Nations Universal Periodic Review (UPR). The UN Committee Committee on Economic, Social and Cultural Rights 'urged Australia to halt its policy of offshore processing of asylum claims, complete the closure of the regional processing centres, repatriate all concerned persons to Australia and process their asylum claims with all procedural safeguards'. Similar calls have been raised by UNHCR, and the UN Special Rapporteur on Migrants and several UN Treaty bodies[239]. In the 2025 Communication M.I. et al v Australia [240] the Human Rights Committee concluded that mandatory detention in the Nauru Regional Processing Centre for the sole reason of unauthorised entry in Australia constituted arbitrary detention contrary to Article 9 of the International Covenant on Civil and Political Rights (ICCPR). The HRC held the Australian authorities responsible to provide effective remedies and individual compensation to the applicants, and prevent similar violations to occur in the future through review/amending existing legislation (any bilateral offshoring arrangement)[241]. Moreover, in its previous Concluding Observations on Australia (2017)[242], the HRC had expressed concerns on the use of detention 'a general deterrent against unlawful entry rather than in response to an individual risk', and the continued application of mandatory detention in respect of children and unaccompanied minors.

The scale and systemic nature of t"e ab'ses In Nauru became widely known following the 2016 publication of The Nauru Files by The Guardian, a leak of more than 2 000 incident reports written by detention staff between 2013 and 2015[243]. These documents provided extensive evidence to date of violence, sexual assault, self-harm and psychological trauma within the Nauru RPC. Over half of all reports concerned children, who made up less than a fifth of the detainee population, revealing the disproportionate harm suffered by minors. The files described sexual violence by guards and contractors, widespread self-harm, including among children as

234 Australian Department of Home Affairs (2015), Freedom of Information Release – Offshore Processing Documents, available at: https://www.homeaffairs.gov.au/foi/files/2015/20151203_FA150200596-documents-released.pdf

235 Refer also to 2013 PNG Supreme Court of Justice, Namah v State of PNG Case No. 84, which held the unconstitutional forceful detention of asylum seekers in Manus Island as it ran against the guarantee of personal liberty. https://www.loc.gov/item/global-legal-monitor/2016-05-01/australiapapua-new-guinea-supreme-court-rules-asylum-seeker-detention-is-unconstitutional/

236 Tubakovic & Nethery (2025), Attenuated Governance in Australia's Offshore Immigration Detention Regime: How Financial Mismanagement Can Achieve Government Goals. *Journal of Immigrant & Refugee Studies 2025, Vol. 23, no. 1, 121–134.* https://doi.org/10.1080/15562948.2024.2382475

237 Button, L. and Evans, S. (2016), At What Cost: The human, economic and strategic cost of Australia's asylum seeker policies and the alternatives, Save the Children and UNICEF: p. 16.

238 Gleeson, M. and Yacoub, N. (2021), Cruel, Costly and Ineffective: The Failure of Offshore Processing in Australia, Kaldor Centre for International Refugee Law, UNSW; Button, L. and Evans, S. (2016), At What Cost: The human, economic and strategic cost of Australia's asylum seeker policies and the alternatives, Save the Children and UNICEF; ASRC, Save the Children and GetUp! (2019), At what cost? The human and economic cost of Australia's offshore detention policies 2019.

239 Report of the Office of the United Nations High Commissioner for Human Rights, Compilation on Australia, A/HRC/WG.6/37/AUS/2, 13 November 2020, paragraph 92.

240 Human Rights Committee, Communication 2749/2016, *M.I. et al v Australia, 23 January 2025. Paragraph 10.4. The HRC held that 'Detention in the course of proceedings for the control of immigration is not arbitrary per se, but detention must be justified as being reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time. The decision must consider relevant factors case by case, and not be based on a mandatory rule for a broad category; must take into account less invasive means of achieving the same ends, such as reporting obligations, sureties or other conditions to prevent absconding; and must be subject to periodic re-*evaluation and judicial review', paragraph 10.3

241 Paragraph 12 of the Communication states that "'The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this connection, *the State party should review and modify its migration legislation and policies and any bilateral offshore transfer arrangements for migrants as to their content, implementation and monitoring, to ensure their conformity with the requirements of the Covenant, including article 9"' (Emphasis added).*

242 HRC, Concluding Observations on Australia (2017), CCPR/C/AUS/CO/6, para. 37.

243 P. Farrell, N. Evershed and H. Davidson, The Nauru files: cache of 2,000 leaked reports reveal scale of abuse of children in Australian offshore detention. 10 August 2016. *The Guardian.* https://www.theguardian.com/australia-news/2016/aug/10/the-nauru-files-2000-leaked-reports-reveal-scale-of-abuse-of-children-in-australian-offshore-detention

young as ten, and degrading treatment such as denial of toilet access and exposure to unhygienic conditions.

Subsequent investigations showed that many of these incidents were consistently minimised or concealed. The Guardian found that Wilson Security, the company subcontracted to manage security on Nauru, had systematically downgraded the severity of assault and self-harm reports and failed to disclose at least 16 serious allegations of child abuse and sexual violence to an Australian Senate inquiry[244]. Staff members described pressure to reclassify 'critical' incidents as 'minor' to avoid contractual penalties. The leaked reports, corroborated by testimonies from former medical and child-protection workers, exposed a culture of abuse and cover-up that contradicted official government assurances of safety and care.

Despite being framed as a deterrence and 'border protection' measure aimed at 'stopping the boats', independent reviews have found no evidence of a sustained deterrent effect[245]. Scholars have defined Australia's policy as a case of attenuated governance: a system intentionally designed to obscure responsibility for the foreseeable harms caused by offshoring[246]. By relocating asylum processing beyond its jurisdiction and delegating implementation to foreign governments and private contractors, Australia created legal and moral distance from the consequences of its actions[247]. The government's repeated invocation of deterrence, humanitarian concern and border protection was used to legitimise practices that, in substance, amount to indefinite extraterritorial detention and widespread human rights violations. Despite repeated findings of illegality and systemic cruelty, the policy remains formally in place, with Nauru designated as an 'enduring' RPC[248].

9.1.3. COSTS OF SELECTED OFFSHORING/ EXTERNALISATION EXPERIENCES

9.1.3.1. Italy-Albania Protocol

In Law n. 14 of 21 February 2024 ratifying the Italy-Albania Protocol[249], the costs foreseen by the Italian government were the following:

- Construction: EUR 31.2m to the Ministry of the Interior and EUR 8m to the Ministry of Justice – EUR 39.2m total;
- Equipment: EUR 7.3m (Ministry of the Interior) and EUR 1.18m (Ministry of Justice) – EUR 8.48m total;
- Expenses related to online hearings and/or exceptional lawyer travel to Albania: EUR 3.24m in 2024 and EUR 6.48m annually from 2025 to 2028;
- Cover for costs covered by Albanian authorities: EUR 28m in 2024 and EUR 16.5m annually from 2025 to 2028;
- Cover for Italian authorities' stay in Albania: EUR 29m in 2024 and EUR 57.8m annually from 2025 to 2028;
- Employment of additional staff (asylum staff, detention officials, judicial officials, judges, health officers): Between 7.1m and 9m from 2024 to 2028

The overall public expenditure was estimated at EUR 115m in 2024 and between EUR 89m and 90m annually in following years – that is, a total of EUR 474m for the first five years – and at least EUR 7.3m annually from 2029 onwards. In the event of the Protocol's five-year renewal, additional expenditure would be determined through a separate legislative measure. For these expenses, different dedicated funds were created to cover operating and implementation costs (Articles 4 and 5 of the Protocol): EUR 89.11m in 2024 and EUR 118.56m annually from 2025 to 2028 were allocated to the Ministry of the Interior. The expenditure was set to be financed

244 P. Farrell and H. Davidson, Nauru files reveal cases of alleged sexual violence and child abuse not disclosed to parliament. 10 August 2016. *The Guardian*. https://www.theguardian.com/australia-news/2016/aug/11/nauru-files-reveal-cases-of-alleged-sexual-violence-and-child-abuse-not-disclosed-to-parliament

245 Carrera, S., et al. (2018), Offshore Processing of Asylum Seekers, CEPS; Gleeson, M. and Yacoub, N. (2021), Cruel, Costly and Ineffective: The Failure of Offshore Processing in Australia, Kaldor Centre for International Refugee Law, UNSW

246 Tubakovic & Nethery (2025), Attenuated Governance in Australia's Offshore Immigration Detention Regime: How Financial Mismanagement Can Achieve Government Goals

247 George, Twyford & Tanima (2024), Authoritarian Neoliberalism and Asylum Seekers: the Silencing of Accounting and Accountability in Offshore Detention Centres

248 Gleeson, M. and Yacoub, N. (2021), Cruel, Costly and Ineffective: The Failure of Offshore Processing in Australia, Kaldor Centre for International Refugee Law, UNSW ; see also S. Taylor (2021), Multibillion-dollar strategy with no end in sight: Australia's 'enduring' offshore processing deal with Nauru. *The Conversation*. https://theconversation.com/multibillion-dollar-strategy-with-no-end-in-sight-australias-enduring-offshore-processing-deal-with-nauru-168941 and Memorandum of Understanding between the Republic of Nauru and Australia on the Enduring Regional Processing Capability in Republic of Nauru. https://www.unsw.edu.au/content/dam/pdfs/law/kaldor/research-reports/2024-05/2021-10-mou_nauru_enduring_regional_processing_capability.pdf

249 LEGGE 21 febbraio 2024, n. 14. Ratifica ed esecuzione del Protocollo tra il Governo della Repubblica italiana e il Consiglio dei ministri della Repubblica di Albania per il rafforzamento della collaborazione in materia migratoria, fatto a Roma il 6 novembre 2023, nonchè norme di coordinamento con l'ordinamento interno. (24G00028) https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2024-02-21;14

through reductions and reallocations of appropriations from various ministerial budget lines. With six following legislative acts[250], specific provisions of the original law were amended. These changes included:

- A new role for the Ministry of Defence – through its military engineering corps – to design, execute, and procure the facilities listed in Annex 1, previously managed by the Ministries of the Interior and Justice, with a budget increase of EUR 25.8m for the construction of the facilities (from EUR 39.2m to EUR 65m)[251];

- An increase for the operational costs of EUR 1.27m for 2024 (from EUR 29m to 30.27m), which matches the creation of a new fund of EUR 1.27m under the Ministry of Defence for 2024.

The amendments resulted in an estimated total increase of approximately EUR 27m, bringing the overall five-year cost from EUR 474m to EUR 501m.

To cover the EUR 169.6m allocated for the construction of the centres and operating costs for 2024, EUR 41.9m were taken from existing funds on emergencies and natural disasters (EUR 17m), structural interventions of economic policy (EUR 14.8m) and for the construction of CPRs on Italian territory (EUR 10m). Some EUR 127.68m were reallocated from the 2024 budgets under other fifteen Ministries – with some additional EUR 120m taken from their 2025 budgets (See Table 1 below).

According to research conducted by the University of Bari and ActionAid through the project 'Trattenuti', in 2024, the total expenditure for the construction of the Gjadër CPR amounted to more than EUR 74m – or EUR 76.57 per person per day, i.e., more than double the average cost for the same measures in Italy[252]. The contract for the management of the centre was awarded to the cooperative Medihospes through a negotiated procedure without a public tender. Medihospes became the sole bidder and

Table 1: Reallocations from other Ministries' budgets for 2024 and 2025 (authors' calculation)

Ministry	2024	2025
Agriculture, Food Sovereignty and Forests	EUR 9.78 m	EUR 15.59 m
Culture	EUR 3.97 m	EUR 0.82 m
Defence	EUR 9.44 m	EUR 8.15 m
Economy and Finance	EUR 28.54 m	EUR 18.81 m
Education and Merit	EUR 6.18 m	EUR 1.79 m
Labour and Social Policies	EUR 8.43 m	EUR 8.22 m
Enterprises and Made in Italy	EUR 0.24 m	EUR 9.25 m
Environment and Energy Security	EUR 5.32 m	EUR 0.02 m
Foreign Affairs and International Cooperation	EUR 17.06 m	EUR 17.74 m
Health	EUR 3.35 m	EUR 0.42 m
Infrastructure and Transport	EUR 9.95 m	EUR 11.69 m
Interior	EUR 1.70 m	EUR 5.90 m
Justice	EUR 3.90 m	EUR 3.50 m
Tourism	EUR 6.61 m	EUR 7.22 m
Universities and Research	EUR 13.21 m	EUR 10.88 m
Total	EUR 127.68 m	EUR 120.00 m

250 DECRETO-LEGGE 2 marzo 2024, n. 19 (in G.U. 02/03/2024, n.52), LEGGE 29 aprile 2024, n. 56 (in SO n.19, relativo alla G.U. 30/04/2024, n.100), DECRETO-LEGGE 11 ottobre 2024, n. 145 (in G.U. 11/10/2024, n.239), LEGGE 9 dicembre 2024, n. 187 (in G.U. 10/12/2024, n.289), DECRETO-LEGGE 28 marzo 2025, n. 37 (in G.U. 28/03/2025, n.73), LEGGE 23 maggio 2025, n. 75 (in G.U. 23/05/2025, n.118). These included Decree-Law n.19 of 2 March 2024 on the implementation of Italy's national Recovery and Resilience Plan, but no EU funds seems to have been allocated for this.

251 Under Italian law, procurement by the Ministry of Defence is governed by a special regime that allows exemptions from ordinary tendering procedures on grounds of national security (Legislative Decree No. 208/2011 transposing Directive 2009/81/EC; Article 346 TFEU). This framework permits negotiated or direct awards and reduced transparency obligations when disclosure of information is deemed contrary to the essential interests of the State. In practice, these exemptions are often justified by reference to 'operational urgency' (urgenza operativa) or the protection of sensitive information. In the context of the Italy-Albania Protocol, the reliance on this defence and security exception has enabled the award of contracts for the construction and management of facilities in Shëngjin and Gjadër outside the ordinary public procurement rules. This raises concerns that migration-related infrastructures have been procured under a legal regime designed for military purposes, thereby limiting public oversight, competitive procedures, and accountability.

252 See ActionAid, https://www.actionaid.it/press-area/cpr-albania-italia/

obtained a contract worth over EUR 133 million. No formal contract has been signed, but the operations have continued under prolonged 'esecuzionenticipatea' (early execution) arrangements. The cooperative has a documented history of sanctions and concentration of market share in Rome, raising risks of institutional capture. ActionAid has formally reported the irregularities to ANAC[253].

Beyond direct construction and management costs, the Trattenuti report identifies at least EUR 2.6 million in additional expenditures for the Ministry of Defence (missions, transfers, naval operations) and over EUR 1.1 million in expenses for the Ministry of the Interior related to transfers, equipment, and accommodation for police personnel. EUR 528,080 were paid for five days of actual operational presence of Italian forces in Albania. Compared to full-year costs of similar structures in Italian territory (e.g., EUR 2.1 million in Macomer and EUR 1.36 million in Palazzo San Gervasio), the cost-per-day in Albania is exponentially higher.

A recent Trattenuti report also confirms all the detentions of asylum seekers in Albania were not convalidated, leading to their transfer back to Italy and rendering the centres operational for only five days in 2024[254]. They note that a significant expense of public money was committed to a mechanism that courts consistently considered incompatible with EU law and Italian constitutional guarantees. The pro-capite pro-die cost in Gjadër reached EUR 76.57 in the CTRA section and EUR 108.04 in the CPR section, far exceeding both the Italian average and the costs recorded in comparable centres in Modica and Porto Empedocle. The report highlights that more than EUR 61.2 million were already invoiced by March 2025, despite only minimal operational activity, resulting in a de facto set-up cost of over EUR 153 000 per place when calculated against the actual number of usable places in 2024 – that is +1,021% compared to the Italian benchmark.

The choice to build offshore detention capacity is further undermined by the utilisation levels of existing facilities in Italy. As the Trattenuti data show, 33% of all detention places in Italy were unused at the end of 2024, including 132 empty places in the CPR network alone, and 260 unused places across the system. Additional costs also arise from the March 2025 repurposing of the centres from asylum processing centres to repatriation centres. On 9 May 2025, Italy carried out its first direct deportation operation from Albanian territory[255]. Five Egyptian nationals held in Gjadër were boarded onto a chartered flight departed from Rome, with a stopover in Tirana and directed to Cairo. It was reported that the stopover cost EUR 31 779, or EUR 6 300 per individual[256].

Overall, it is not straightforward to calculate the total cost of the implementation of the Protocol. From the very beginning, different figures have been reported by official sources, opposition parties and the media. On 5 June 2024, the Italian government reported that the total funds allocated to the Italy-Albania Protocol amounted to EUR 670m for 5 years (EUR 134m/year), or 7.5% of the total budget allocated for the reception of 'migrants' in Italy[257]. The government presented it as a way of saving public money as this would serve as a deterrence for future 'illegal migration' (sic), which – based on an alleged 60% drop in disembarkation – was estimated to amount to EUR 136m in savings[258]. In October 2024, the main opposition party, Partito Democratico, suggested that the actual costs of the Protocol amounted to almost EUR 1 billion[259].

ActionAid highlighted that the data to come up with a clear and comprehensive overview is dispersed across different public bodies and no consolidated reporting is available, showing the lack of clear central oversight over public expenditure[260]. Based on the data collected in Trattenuti, the Italian newspaper il Corriere della Sera reports that the total costs for the implementation of the Protocol until 2028 would amount to a total of EUR 671.7m[261]. The implementation of the Italy-Albania Protocol has been challenged before the Italian Court of Auditors in separate instances by opposition parties[262] and

253 L. Rondi, L. Figoni, K. Millona, Italy-Albania migrant deal: Millions spent, few results. *EUObserver*. 14 October 2025. https://euobserver.com/eu-and-the-world/ar124e4323 ; L. Rondi, Inchiesta su Medihospes, regina dei centri per i migranti. Dall'Italia all'Albania. 21 June 2024. *Altreconomia.* https://altreconomia.it/inchiesta-su-medihospes-regina-dei-centri-per-i-migranti-dallitalia-allalbania/; *Reuters, Italy's Albanian migrant hub cost seven times more than home facility, report says.* 24 July 2025. https://www.reuters.com/world/italys-albanian-migrant-hub-cost-seven-times-more-than-home-facility-report-says-2025-07-24/

254 ActionAid, Il costo dell'eccezione. I centri in Albania. Trattenuti Focus N. 01. https://trattenuti.actionaid.it/wp-content/uploads/2025/12/Trattenuti-focus-01.pdf

255 L Rondi and K Millona, 'La prima operazione di rimpatrio del governo italiano direttamente dall'Albania', *Altreconomia* (23 June 2025) https://altreconomia.it/la-prima-operazione-di-rimpatrio-del-governo-italiano-dallalbania/

256 Heinrich Boll Foundation (2025), From fast-track asylum to return hubs: The Italy-Albania deal on trial. https://gr.boell.org/en/2025/09/10/fast-track-asylum-return-hubs-italy-albania-deal-trial

257 Presidenza del Consiglio dei Ministri, Visita in Albania, introduzione del Presidente Meloni delle dichiarazioni con il Primo Ministro Rama. 5 June 2024. https://www.governo.it/it/articolo/visita-albania-introduzione-del-presidente-meloni-nelle-dichiarazione-con-il-primo-ministro

258 Ibid.

259 Partito Democratico, In Albania Meloni butta quasi un miliardo per deportare migrant. 15 October 2024. https://partitodemocratico.it/in-albania-meloni-butta-quasi-un-miliardo-per-deportare-migranti/

260 ActionAid, Il costo dell'eccezione. I centri in Albania. Trattenuti Focus N. 01. https://trattenuti.actionaid.it/wp-content/uploads/2025/12/Trattenuti-focus-01.pdf

261 M. Gabanelli and S. Ravizza, I centri per i migranti in Albania sono un flop: da dove arrivano i soldi per pagarli? Ecco il «conto», voce per voce. 3 November 2025. *Il Corriere della Sera.* https://www.corriere.it/dataroom-milena-gabanelli/albania-flop-dei-centri-chi-sta-pagando-il-conto/6a70e50d-9e1b-448a-8491-f4182afc9xlk.shtml?refresh_ce

262 A. Peretti, Italian government resumes migrant transfers to Albania amid rift with judiciary. 4 November 2024. *Euractiv.* https://www.euractiv.com/news/italian-government-resumes-migrant-transfers-to-albania-amid-rift-with-judiciary/

private citizens[263]. ActionAid has also filed a complaint to the Court of Auditors[264].

9.1.3.2. Australia's Offshoring[265]

Recent estimates set the first iteration of the Plan (2001-2008) to around AUD 1 billion (EUR 562 million)[266]. The budget for its second iteration (2012-2024) was increased to AUD 12 billion (EUR 6.74 billion), with 4194 people detained in these centres[267]. For 2026-2027, the government allocated AUD 1.5 billion (EUR 843 million), despite only 60 people being detained at the time of budgeting and only 54 in March 2024[268]. The centres were managed by Australian and multinational private companies, with intricated sub-contracting chains blurring the government's responsibility, weakening accountability and transparency and funnelling billions to actors seeking profits[269].

The 2016 and 2019 reports 'At What Cost?' – the first authored by Save the Children and UNICEF and the second by the Asylum Seeker Resource Centre (ASRC), Save the Children and GetUp![270] – estimated that the overall cost of the Australian plan between 2013 and 2016 was AUD 9.6 billion (EUR 5.39 billion). The 2016 report forecasted additional AUD 4 billion (EUR 2.25 billion) for 2016-2020. However, the 2019 report estimated that the actual cost for the same period was AUD 9 billion (EUR 5.06 billion). With 535

Table 2: (Partial) cost of offshore processing according to Australian government figures (from Kaldor Centre 2023; based on Portfolio Additional Estimates Statements, Department of Home Affairs, Reports – Budgets)

Financial year	Department of Home Affairs' annual budget statements (AUD)	Department of Home Affairs' answer to Senate questions (AUD)
2012-13		359m (EUR 201m)
2013-14		1 307m (EUR 735m)
2014-15	1 033m (EUR 581m)	1 313m (EUR 738m)
2015-16	1 129m (EUR 634m)	1 139 (EUR 640m)
2016-17	1 084 (EUR 609m)	990m (EUR 557m)
2017-18	1 492m (EUR 839m)	1 037 m (EUR 583m)
2018-19	1 061m (EUR 596m)	939m (EUR 527m)
2019-20	961m (EUR 541m)	815m (EUR 458m)
2020-21	819m (EUR 460m)	404m (EUR 227m)

263 Treviso Today, Centri migranti in Albania: da Treviso un esposto alla Corte dei Conti. 30 March 2025. https://www.trevisotoday.it/politica/albania-centri-migranti-esposto-corte-conti-treviso-30-marzo-2025.html

264 M. Gabanelli and S. Ravizza, I centri per i migranti in Albania sono un flop: da dove arrivano i soldi per pagarli? Ecco il «conto», voce per voce

265 For AUD/EUR conversion in this section, the Study takes the European Central Bank's exchange rate as of 1 October 2025, i.e., 1 EUR = 1.7786 AUD; 1 AUD = 0.5622 EUR. *See* https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-aud.en.html

266 Tamara Tubakovic & Amy Nethery (2025), Attenuated Governance in Australia's Offshore Immigration Detention Regime: How Financial Mismanagement Can Achieve Government Goals, Journal of Immigrant & Refugee Studies, 23:1, 121-134.

267 Ibid.

268 Ibid.

269 Ibid.; Sendirella et al. (2024), Authoritarian Neoliberalism and Asylum Seekers: the Silencing of Accounting and Accountability in Offshore Detention Centres. Journal of Business Ethics (2024) 194:861–88. https://doi.org/10.1007/s10551-024-05770-4

270 Lisa Button and Shane Evans (2016), At What Cost: The human, economic and strategic cost of Australia's asylum seeker policies and the alternatives. Save the Children and UNICEF. https://resourcecentre.savethechildren.net/pdf/at-what-cost-report-final.pdf ; ASRC, Save the Children and GetUp! (2019), At what cost? The human and economic cost of Australia's offshore detention policies 2019. https://www.asrc.org.au/wp-content/uploads/2013/04/1912-At-What-Cost-report.pdf

people detained in 2019, the cost of offshore processing and detention were estimated to be higher than AUD 573 000 (EUR 322 000) per person, per year – compared to an onshore cost of AUD 346 000 (EUR 194 000). Multiple scholars and organisations highlighted the purposeful lack of consistent and complete official data over the real costs of the Plan[271]. In Table 2 below, partial costs based on government official figures are available, as collected by The Kaldor Centre for International Refugee Law.

The Kaldor Centre Policy Brief also highlighted that – while already extremely high – these figures did not fully include elements such as aid and development assistance to Nauru and PNG to secure offshore processing agreements, charter flights and escorts between Australia, Nauru and PNG, costs of detaining and supporting over 1 100 people temporarily transferred back to Australia for medical or other reasons, reviews and inquiries by Senate committees and other government bodies, responses to UN and International Criminal Court concerns about offshore processing, legal defence and settlements in Australian, Nauruan and PNG courts, repatriation of asylum seekers and refugees, Australia-Cambodia agreement for the resettlement of seven refugees (up to AUD 55 million), agreements with Taiwan and other States to receive asylum seekers and refugees for medical treatment to avoid return to Australia[272]. Extreme discrepancies were also identified between government projections and actual costs for the Plan, showing the magnitude of fixed costs independent from the centres' occupancy, costs for healthcare (including both physical and mental health) and continued legal challenges (see Table 3).

Table 3: Forward projections and actual (partial) cost of offshore processing (from Kaldor Centre 2021)

Financial year	Forward estimate cost (AUD)				Actual cost (AUD)
	4 yrs prior	3 yrs prior	2 yrs prior	1 yr prior	
2015-16				811m (EUR 456m)	1 129m (EUR 634m)
2016-17				881m (EUR 495m)	1 084m (EUR 609m)
2017-18			357m (EUR 201m)	714m (EUR 401m)	1 492m (EUR 839m)
2018-19		381m (EUR 214m)	439m (EUR 246m)	760m (EUR 427m)	1 061m (EUR 596m)
2019-20	370m (EUR 208m)	427m (EUR 240m)	378m (EUR 212m)	526m (EUR 296m)	962m (EUR 541m)
2020-21	435m (EUR 244m)	386m (EUR 217m)	405m (EUR 228m)	1 186m (EUR 667m)	819m (EUR 460m)
2021-22	395m (EUR 222m)	411m (EUR 231m)	308m (EUR 173m)	812m (EUR 456m)	

271 Sendirella et al. (2024); Madeline Gleeson and Natasha Yacoub (2021), Cruel, costly and ineffective: The failure of offshore processing in Australia. Policy Brief 11. https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy_Brief_11_Offshore_Processing.pdf

272 Ibid.

Table 4 below reports the budget expenses and forward estimates for Program 2.4.: IMA Offshore Management in the yearly Portfolio Budget Statements by the Department of Home Affairs for the years 2021-2023 to 2025-2026. It is important to note that other expenses related to the RPCs might also be included under Program 2.3: Refugee, Humanitarian Settlement and Migrant Services – which is not included below.

Table 4: Budgeted expenses and forward estimated by Department of Home Affairs for Program 2.4.: IMA Offshore Management

Budget year	2020-2021	2021-2022	2022-2023	2023-2024	2024-2025	2025-2026	2026-2027
2021-2022[273]	AUD 819m (EUR 460m)	AUD 812m (EUR 456m)	AUD 309m (EUR 174m)	AUD 304m (EUR 171m)	AUD 310m (EUR 174m)	---	---
2022-2023[274]	---	AUD 958m (EUR 539m)	AUD 483m (EUR 272m)	AUD 371m (EUR 209m)	AUD 361m (EUR 203m)	AUD 323m (EUR 181m)	---
2023-2024[275]	---	---	AUD 611m (EUR 343m)	AUD 486m (EUR 273m)	AUD 375m (EUR 211m)	AUD 339m (EUR 191m)	AUD 346m (EUR 195m)
2024-2025[276]	---	---	---	AUD 428m (EUR 241m)	AUD 604m (EUR 340m)	AUD 342m (EUR 192m)	AUD 348m (EUR 196m)
2025-2026[277]	---	---	---	---	AUD 575m (EUR 324m)	AUD 581m (EUR 327m)	AUD 322m (EUR 181m)

Note: The rows represent the Portfolio Budget Statements published each year, while the columns indicate the relevant financial year's estimated actual expenditure, budget allocation, or forward estimates. Cells highlighted in green correspond to estimated actual costs for the year just ended; those in yellow indicate the current budget allocation; and those in blue represent forward estimates for future years, where provided.

273 https://www.homeaffairs.gov.au/reports-and-pubs/budgets/2021-22-home-affairs-pbs.pdf
274 https://www.homeaffairs.gov.au/reports-and-pubs/budgets/2022-23-home-affairs-pbs-full.pdf
275 https://www.homeaffairs.gov.au/reports-and-pubs/Budgets/2023-24-home-affairs-portfolio-pbs-full.pdf
276 https://www.homeaffairs.gov.au/reports-and-pubs/Budgets/2024-25-home-affairs-pbs-full-version.pdf
277 https://www.homeaffairs.gov.au/reports-and-pubs/Budgets/2025-26-home-affairs-pbs-full-version.pdf

Expected Impacts:

- Entrenchment of an externalisation model based on extraterritorial detention centres, with a high risk of arbitrary detention.
- Increasing litigation before national and European courts regarding the legality of third-country arrangements and their implementation.
- Challenges to independence of judges and the role of effective judicial protection by national governments.
- Systematic shifting and blurring of responsibilities between EU Member States, third countries and private contractors, undermining legal certainty, access to EU standards and effective judicial protection.
- Heightened risks of refoulement, chain deportations and other serious fundamental rights violations in contexts where monitoring is structurally weak and opaque.
- Deep accountability and transparency gaps due to complex jurisdictional arrangements that obscure who is responsible for rights violations, deaths, ill-treatment and unlawful detention.
- Very high and opaque public expenditure, with per-capita costs far exceeding onshore alternatives, diversion of funds from other public policies and underuse of existing reception/detention capacity on EU territory.
- Non-existent evidence of deterrent effects, contrasted with severe human rights violations, reputational damage and diplomatic friction with partner countries and international and regional human rights bodies.
- Structural incompatibility with international and regional human rights standards, as well as EU fundamental rights obligations, national constitutions and the rule of law.

9.2. READMISSION

The Return Regulation Proposal incorporates for the first time international cooperation instruments on readmission in a legislative proposal covering EU's internal return policy. It embeds readmission as an 'integral part of the return procedures'[278]. The Proposal sets up a common procedure for submitting readmission requests[279] in Article 36. It includes the obligation by national authorities to initiate the readmission procedure systematically and without any further delay after having issued an enforceable return decision. By doing so the Proposal aims at ensuring a 'systematic follow up of return decisions with readmission requests' to relevant non-EU countries' authorities in cases where the nationality of the TCNs is in doubt or contested, or where travel documents are needed. The Commission stipulates that 'communication with non-recognised third country entities for carrying out the readmission procedure does not amount to recognition'[280]. The general objective of the Proposal is to ensure a 'coordinated approach to readmission' among EU Member States, and a 'coherent Union approach when negotiating with third countries'[281].

The Proposal uses a broad understanding of what constitutes a 'readmission instrument'. Article 4.12 provides that such instruments include 'a legally binding or non-binding instrument, containing provisions on the cooperation between a Member State or the Union and a third country on the readmission procedure, such as readmission or other international agreements and arrangements'. The EU has concluded 18 EU Readmission Agreements with the following countries: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Cape Verde, Georgia, Hong Kong, Macao, Moldova, Montenegro, North Macedonia, Pakistan, Russia, Serbia, Sri Lanka, Turkey and Ukraine. It has also

278 Page 12 of the Return Regulation Proposal.
279 According to Article 4.1 of the Proposal a readmission procedure 'means all steps conducted by a competent authority or, where relevant, by the European Border and Coast Guard Agency ('Frontex'), in relation to the confirmation of nationality of a third-country national, the issuance of a travel document for the third-country national and the organisation of a return operation'.
280 Page 13 and Article 37 of the Return Regulation Proposal.
281 Recitals 37 and 38 of the Preamble.

adopted non-legally binding readmission arrangements with the following 6 countries: Afghanistan, Bangladesh, Guinea, Côte d'Ivoire, Ethiopia and The Gambia. Readmission and visa policy are tightly linked by EU policy. Article 25a of the Visa Code[282] envisages a conditionality mechanism linking EU visa policy with cooperation on readmission by non-EU countries. Additionally, the so-called 2023 Samoa Agreement[283], which constitutes a new Partnership Agreement with the Organisation of African, Caribbean and Pacific States (ACP), includes obligations for participating states to readmit their own nationals (readmission clause) in Article 74[284].

The Return Proposal states in Recital 36 the obligation of any State to readmit its own nationals represents a fundamental principle of state sovereignty and international cooperation. The duty of States to readmit their own nationals is considered a principle of customary international law. This is a rather controversial statement. The extent to which such an obligation exists is largely contested in international law, and that's exactly why readmission agreements and arrangements are concluded. There isn't an obligation of the state to readmitting persons holding its nationality against her/his will. There is instead a human right to leave and return to one's own country voluntarily. The literature has concluded that this right means a 'right not to return'[285]. Therefore, contrary to the 2025 Return Regulation Proposal statement, there is no consensus on the scope and actual existence of such an obligation under international law.

The Return Regulation Proposal's objectives to facilitate a 'coherent and coordinated EU approach' to readmission is challenged by the very nature characterising this policy area in the Union legal system. This is a field intersecting between EU and EU Member States shared competences, and where both may adopt legal acts and policy instruments in this domain[286]. It is also one firmly embedded in foreign affairs policies where EU Member States keep a big deal of exclusive competences in Union law. Over the last decades EU Member States have concluded hundreds of bilateral readmission agreements and deals with third countries which haven't been automatically invalidated by the subsequent adoption of an EURA or readmission arrangements[287]. They remain operational unless they are directly incompatible with the clauses foreseen in EURA. In fact, the extent to which the EU has, since the entry into force of the Lisbon Treaty, exclusive competence to conclude any new readmission agreements remains unsettled[288]. The Return Regulation Proposal doesn't overcome the differentiation characterising EU readmission policy, which in turn challenges its general policy objective in ensuring coherence when negotiating with third countries.

A coherent approach is also challenged by the increasing informalisation paradigm in EU policy which has translated into the use of non-legally binding and extra-EU Treaty policy arrangements with third countries authorities. These 'arrangements' are now expressly envisaged in both the 2025 Return Regulation and STC Proposals. They have adopted the form of Memorandum of Understanding (MoUs), Joint Declarations, Standard Operating Procedures (SOPs), Common Agendas on Migration and Mobility (CAMM), and more recently Talent Partnerships., and they have fallen within the scope of a so-called EU Migration Partnership Framework. These arrangements have been characterised by high levels of secrecy and a concerning lack of transparency, with their actual texts and/or annexes remaining confidential and not publicly available.

By design, readmission arrangements limit judicial control and democratic oversight. The European Parliament has become increasingly aware and concerned about the Commission's expansive use of EU readmission arrangements, instead of international agreements which require its consent, and the consequent hijacking of democratic

282 Regulation 810/2009 establishing a Community Code on Visas (Visa Code) of 13 July 2009.
283 Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part, ST/8372/2023/REV/1.
284 Article 74.2 states that 'Each OACPS Member shall accept the return and the readmission of any of its nationals who is illegally present on the territory of a Member State of the European Union, at that Member State's request without further formalities than the verification provided for in paragraph 3 for those persons who do not hold a valid travel document'. Article 74.3 highlights that 'The Member States of the European Union and the OACPS Members shall respond swiftly to readmission requests of each other. They shall carry out verification processes using the most appropriate and most efficient identification procedures with a view to ascertaining the nationality of the person concerned and to issue appropriate travel documents for return purposes, as set out in Annex I. Nothing in that Annex shall prevent the return of a person under formal or informal arrangements between the State to which a readmission request is submitted and the State submitting a readmission request'.
285 Refer to Rejected asylum seekers: the problem of return, Gregor Noll | UNHCR.
286 Article 4.2j TFEU. Article 79.3 TFEU stipulates that 'The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States'.
287 For an inventory of bilateral readmission agreements and deals refer to Inventory of the bilateral agreements linked to readmission. https://www.jeanpierrecassarino.com/datasets/ra/ (Harvard Dataverse, https://doi.org/10.7910/DVN/VKBCBR).
288 T. Molnár (2022), EU readmission policy: a (shapeshifter): technical toolkit or challenge to rights compliance?, in E. Tsourdi and P. De Bruycker (eds), Research Handbook on EU Migration and Asylum Law, Elgar Publishing, pp. 495-498; K. Eisele (2019), The EU's readmission policy: of agreements and arrangements, in S. Carrera, J. Santos Vara and T. Strik (eds), Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis: Legality, Rule of Law and Fundamental Rights Reconsidered, Elgar Publishing, pp. 135-155.

accountability and transparency[289]. This concern was even reflected in VDL II 2024-2029 Political Guidelines[290], where the Commission's President committed to 'ensure increased transparency towards the European Parliament on such agreements'. The express inclusion and normalisation of the use of return and readmission 'arrangements' in the 2025 Proposals constitutes a contradiction with this political commitment.

And while readmission arrangements prioritise fastening and easing deportations at the expense of legality and upholding the rule of law, research has shown that they haven't really increased the actual number of enforced removals of irregularised TCNs from the EU[291]. As Cassarino has eloquently argued[292], the existence of either readmission agreements or arrangements doesn't get away with their implementation challenges which are often dependent on a wider set of interactions and interests between the states parties which go well beyond mere migration management agendas and cover other foreign affairs policy areas. This is confirmed by the many operational challenges, including cases of clear lack of cooperation by relevant third countries, in the implementation of these instruments[293]. Previous research has shown that readmission instruments face substantial barriers during their implementation due to inter-states disagreements over the identification or nationality determination of individuals and over the question of 'who is a national of which country'[294].

Additionally, the EU's insistence, or rather obsession, on readmission in foreign affairs weakens its standing and credibility in international relations. EU readmission policies weaken EU's international standing as they make the Union, and its Member States highly dependent, and structurally vulnerable, on the political willingness of third country governments and authorities to cooperate or not in volatile and often fragile domestic and regional contexts. Furthermore, as highlighted in previous European Parliament studies, 'The increased focus on strengthening the external borders and migration management at the expense of asylum seeker'' rights can be perceived as a signal that the EU is backsliding in the sphere of human rights. The EU has significant influence internationally and such a backsliding in the protection space can have a ripple or chilling effects around other world regions'[295].

Article 21 TFEU enshrines an obligation for the Unio''s action in the international scene to be guided by 'the rule of law, the universality and indivisibility of human rights and fundamental freedoms'. In addition, Article 21.3 TFEU stipulates that 'The Union shall ensure consistency between the different areas of its external action and between these and its other policies'. EU readmission policy, combined with the envisaged revisions of unsafe country notions in the 2025 Proposals, makes the EU's legal obligation to ensure and safeguard coherent human rights action a daunting task. The UN Special Rapporteur on the Human Rights of Migrants has expressed serious concerns regarding the increasing use of externalisation and readmission instruments and how many governments are allocating significant resources 'shifting responsibility for migration and asylum management to third States… without adequate safeguards', and placing migrants and refugee' rights at serious peril'[296].

Furthermore, the Return Regulation Proposal envisages the possibility for EU Member States to engage in data transfers with third countries in the scope of cooperation in readmission in Articles 39. This provision raises incompatibility issues with EU data protection and privacy standards, and Article 8 CHFR, chiefly the extent to which these non-EU countries can be expected to fully guarantee an 'adequate' level of data protection which is equivalent to the one required in EU law[297]. In addition, data transfers to third countries poses enormous fundamental rights and protection risks inherent to the potential misuse of TCNs personal data by third

289 For a critical account of EU readmission arrangements refer to S. Carrera (2019), On Policy Ghosts: EU Readmission Agreements as Intersecting Policy Universes, in S. Carrera, J. Santos Vara and T. Strik (eds), Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis: Legality, Rule of Law and Fundamental Rights Reconsidered, Elgar Publishing, pp. 21-59.

290 European Commission (2024), *Political Guidelines 2024-2029: Europe's Choice, 18 July 2024 which stated that 'We will put forward a new common approach on returns, with a new legislative framework to speed up and simplify the process, ensure that returns take place in a dignified manner, digitalise case management and ensure that return decisions are mutually recognised across Europe. We will also further reflect on new ways to counter irregular migration, while respecting international law and ensuring sustainable and fair solutions for the migrants themselves', pages 16-17 (Emphasis added).*

291 Stutz, P. (2024), *Unpacking EU Return Migration Policy: A Set-theoretic Analysis of EU Readmission and Return Policy with Third Countries, Palgrave Macmillan; see also S. Carrera, S. (2016), Implementation of EU Readmission Agreements: Identity Determination Dilemmas and the Blurring of Rights, Springer Briefs in Law, Springer International Publishers.*

292 J.P. Cassarino (2023), Multi-layered Cooperation on Readmission in the Euro-Mediterranean and Euro-African Areas, in J.P. Cassarino, L. Gabrielli and D. Perrin (ed), Cooperation on Readmission in the Euro-Mediterranean Area and Beyond: Lessons Learned and Unlearned, Euromesco Policy Study No. 28, pp. 21-39.

293 See for instance European Commission, Letter by Monique Pariat to the European Parliament LIBE Committee, EU readmission cooperation with partner countries - state of play, Ref. Ares(2022)656813 - 28/01 /2022.

294 S. Carrera (2016).

295 S. Carrera (2024), Proposal for a regulation addressing situations of instrumentalisation in the field of migration and asylum: Substitute impact assessment, European Parliament Research Service (EPRS): Brussels, pp. 101-103.

296 UN Special Rapporteur on the Human Rights of Migrants (2025), Report on 'Externalisation of migration governance and its effect on the human rights of migrants', A/80/302, 4 August 2025, available at Document Viewer

297 Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, of 27 April 2016, L 119/1, 4.5.2016 (GDPR). Refer to Case C-362/14 *Schrems v. Data Protection Commissioner, EU:C:2015:650 (Schrems I).*

country authorities (including law enforcement) in committing unlawful or even criminal acts against the readmitted persons, which may exponentially increase the risk of refoulement as well as further criminalisation[298]. In this respect the transfer of data on criminal convictions envisaged in Article 40 of the Proposal is particularly sensitive. That notwithstanding, the Return Regulation Proposal offers no solid guarantees and independent monitoring that this won't be the situation faced by those irregularised TCNs who are readmitted[299].

The European Data Protection Supervisor (EDPS) Opinion 9/2025 on the Return Regulation Proposal[300] has recommended to include further safeguards for the transfer of criminal convictions data to third countries[301], and further specifying the conditions for transferring health data[302] as well as children's personal data which should be also transferred after a thorough assessment that it is in their best interest and not posing any danger to their wellbeing. The EDPS also underlined that in the absence of an adequacy decision for the data transfers under Article 45 GDPR, transfers could take place on the basis of other legal grounds[303]. That notwithstanding, these administrative arrangements should be subject to authorisation by the competent national (data protection) supervisory authority or the EDPS[304].

9.3. UNSAFE COUNTRIES

The European Commission's prioritisation to increasing the number of enforced expulsions also covers so-called 'rejected' asylum seekers and refugees. As introduced by Section 2 of this Study, both the SCO and STC legislative proposals aim at granting a wider room of possibilities so that EU Member States can expel asylum seekers more easily to third countries labelled as 'safe'. The EU Pact on Migration and Asylum had already introduced far-reaching changes in favor of Member States' discretion on an expanded use of STC and SCO provisions under the Asylum Procedure Regulation 2024/1348 (APR)[305].

9.3.1. UNSAFE THIRD COUNTRIES

Crucially, when it comes to the STC concept, the APR kept the so-called 'connection link' and the suspensive effect of appeals[306]. Article 77 APR envisaged an evaluation clause for the STC principle according to which: 'By 12 June 2025, the Commission shall review the concept of safe third country and shall, where appropriate, propose any targeted amendments'. Interviews carried out for this Study

Expected Impacts:

- Continued and normalised differentiation and informalisation through the use of both EU and bilateral readmission arrangements and agreements..
- Persistent inter-state disputes over nationality determination, responsibility for accepting returns and transfer of non-nationals.
- Increased use of 'arrangements', rather than international agreements, with reduced democratic oversight by national and European parliaments, limiting judicial control by national and European courts and public scrutiny and accountability by civil society.
- Introducing new risks and negative impacts on the right to privacy and data protection.

298 The EP Draft Report on the Return Regulation Proposal states that 'data sharing and protection are also important for the readmission procedure and contact with the third countries, where it is part of a *trusted relationship. Without data sharing it is impossible to start a procedure. Extra attention is given to data sharing relating criminal offences since it must not lead to handing down or executing a death penalty or any form of cruel and inhuman treatment'. (Emphasis added). EP Draft Report on the Return Regulation Proposal, page 104.*

299 While Article 39.4 states that 'Where a transfer is made pursuant to paragraph 1 or 2, such a transfer shall be documented and the documentation shall, on request, be made available to the competent supervisory authority established in accordance with Article 51(1) of Regulation (EU) 2016/679', it is by and large unclear how this will ensure the adequate level of protection required in EU data protection law, and that the data subject may have access to effective remedies *before the transfer takes actually place.*

300 European Data Protection Supervisor (EDPS) (2025), Opinion 9/2025 on the Proposal for a Regulation establishing a common system for the return of third-country nationals staying illegally in the Union,

301 Ibid. Paragraph 25 of the Opinion stated that according to Article 10 GDPR 'processing of personal data relating to criminal convictions and offences must be carried out 'only under the control of official authority or when the processing is authorised by Union or Member State law providing for appropriate safeguards for the rights and freedoms of data subjects'.

302 As envisaged in Article 41 of the Proposal.

303 These include 'such as 'legally binding and enforceable instrument between public authorities or bodies, or provisions to be inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights', paragraph 23 EDPS Opinion 9/2025.

304 Ibid.

305 Regulation (EU) 2024/1348 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 14 May 2024 (APR).

306 It is currently envisaged by the Pact on Migration and Asylum, and the APR which states in Recital 48 that 'A Member State should be able to apply the concept of safe third country only where there is a connection between the applicant and the third country on the basis of which it would be reasonable for the applicant to go to that country. The connection between the applicant and the safe third country could be considered established in particular where members of the applicant's family are present in that country or where the applicant has settled or stayed in that country'.

have confirmed that this constituted a key political compromise with the Italian government during the Council negotiations[307]. This means that the Commission went into reviewing the concept without having any evidence as to the performance of the new APR's framework as revised by the EU Pact, and the actual need of a targeted legislative reform based on evidence.

Interviews conducted in the scope of this Study underlined that 'we should rather focus on the implementation of the Pact rather than being distracted by these proposals'[308]. Indeed, the resulting picture is one where EU Member State are now required to transpose into the national legislation the APR, which includes the connection criterion, but they will have to change this once more right afterwards would the revised STC Regulation Proposal. This subsequent amendment may lead to confusion at Member States' levels as regards the exact scope of the applicable standards.

The so-called 'connection criterion' is being dismantled by the STC Regulation Proposal. The Proposal considers that the mere transit via a non-EU country constitutes a 'sufficient link' between the applicant for asylum and the third country at issue[309]. In 2020 the Luxembourg Court held that a mere transit by an applicant did not suffice to constitute a sufficient connection between the asylum seeker and a third country[310]. Moreover, in cases where there is not such an 'connection', the revised STC concept could be still applied by EU Member States when there is 'an agreement or arrangement' with the relevant non-EU country[311].

The EP Draft Report on the STC concept supports the Commission's proposal to dismantle the connection criterion under EU law and backs up the idea to 'to make this element optional, thereby granting Member States the flexibility to determine whether and how to apply it'[312]. According to the EP Rapporteur, 'This change does not weaken fundamental rights or lower protection standards. On the contrary, it reflects the reality that 'connection' has often become an administrative obstacle rather than a safeguard', and constitutes 'an affirmation of Europe's capacity to combine principle with practicality' (Emphasis added)[313]. According to ECRE[314], the EP Draft Reports preserves all the problematic elements of the Commission's proposals and in some cases, they even take them further and take them closer to some EU Member States governments' expectations and agendas. Problematically, for instance, the EP Draft Report proposes to extend the STC concept to unaccompanied minors who are considered posing a 'security risk'.

The constitutional and legal impacts of dismantling the connection criterion under EU law cannot be taken for so easily granted. UNHCR underlined that 'Although not required under international law,… a meaningful connection is the most sustainable and reasonable basis for transferring asylum-seekers to safe third countries – a position which the Commission took note of in the proposal. This helps ensure that asylum-seekers are transferred to countries where they have better prospects to stay – and reduce the likelihood of further onward movements'. (Emphasis added)[315] The extent to which international refugee law envisages such a 'connection criterion' remains contested in academic literature, however. Scholars have argued that removing the connection criterion could indirectly entail penalisation of irregularised refugees based purely on their unauthorised entry in the Schengen area, which is expressly prohibited by Article 31 Geneva Convention[316].

Furthermore, and crucially, the Proposal backslides or does dismantle currently existing EU legal standards, as the connection criterion is indeed now a constitutive part of EU secondary legislation and therefore directly informs the fundamental right to

307 Interview No. 02 with EU Council representative.
308 Interview No. 01 with EU agency.
309 Furthermore, according to Article 4.3 of the Return Proposal a 'country of return' is understood to include a non-EU country of origin, as well as a third country of habitual residence, a 'third country of transit on the way to the EU in accordance with EU and Member States readmission agreements and arrangements'. It includes within this concept a 'safe third country' in accordance with Article 59.8 APR, as well as a 'first country of asylum' having rejected as inadmissible the asylum application.
310 CJEU (2020), *LH v Bevándorlási és Menekültügyi Hivatal,* C-564/18, para 44 et seq. https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62018CJ0564.
311 Article 1 of the Proposal amends Article 59.5 APR which would read as follows: 'The concept of safe third country may only be applied provided that: '(b) one of the following conditions is met: i) there is a connection between the applicant and the third country concerned, on the basis of which it would be reasonable for him or her to go to that country; ii) the applicant has transited through the third country concerned; iii) there is an agreement or an arrangement with the third country concerned requiring the examination of the merits of the requests for effective protection made by applicants subject to that agreement or arrangement'.
312 Page 13 of the EP Draft Report.
313 Ibid. The Rapporteur concludes that 'This is not a lowering of standards but an affirmation of Europe's capacity to combine principle with practicality. A functioning and credible asylum system is indispensable to maintain public confidence and solidarity among Member States. The safe third country reform represents a concrete step towards that goal and a clear signal that the European Union is able to protect its borders, uphold its values, and deliver results'.
314 ECRE (2025), European Parliament Draft Reports on Amendments to the Asylum Procedure Regulation on Safe Country Concepts, 27 November 2025, available at European Parliament Draft Reports on Amendments to the Asylum Procedure Regulation on Safe Country Concepts | European Council on Refugees and Exiles (ECRE)
315 UNHCR (2025b), UNHCR calls for stronger safeguards in EU proposal on asylum transfers to third countries, 12 June 2025, available at UNHCR calls for stronger safeguards in EU proposal on asylum transfers to third countries | UNHCR Europe
316 C. Costello (2017), 'Article 31 of the 1951 Convention Relating to the Status of Refugees', Discussion Paper for UNHCR Roundtable at the Refugee Studies Centre, 15 March 2017; See also G. Noll (2024), 'Article 31', in A. Zimmermann, T. Einarsen and F. M. Herrmann (eds.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. A Commentary, 2nd edition OUP, Chapter 52; C. Costello and Y. Ioffe (2021), Non-penalisation and non-criminalisation, in C. Costello, M. Foster and J. McAdam (eds), The Oxford Handbook of International Refugee Law.*

asylum envisaged in the CHFR. Therefore, while authors like Thym reach the state-centric conclusion that 'the right to asylum does not contradict safe third country provisions'[317], the devil is in the detail. Safe third country provisions may indirectly contradict the right to asylum under EU law and the CHFR. Governments aren't completely free at times of using safe country options when–- either in their design or effects–- they may directly or indirectly violate EU constitutional principles and rights envisaged by the CHFR. Furthermore, all previous national experiences working under safe country arrangements lacking a connecting link criterion (See Sections 9.1.1. and 9.1.2. above) have led to well-documented unsafety and structurally dysfunctional asylum systems in the receiving countries concerned, including well-proven cases of arbitrary detention and inhumane and degrading treatment[318]. This results in unsafety as the ripple effect, which the 2025 STC Proposal can be expected to deepen[319]. And unsafety is directly incompatible with the fundamental right of asylum.

The STC Proposal removes the suspensive decision appeals against inadmissibility decisions[320]. This constitutes a substantial amendment of Article 68(1) and (2) APR which mandatorily prescribe that 'the effects of a return decision shall be automatically suspended' until the time limit to exercise their right to an effective remedy has expired. If they have made use of their right to appeal, their return will be suspended pending the outcome of the remedy[321]. UNHCR has expressed deep concerns about the possibility of removing the suspensive effect of appeals while it is pending. It stated that 'If this change is adopted, asylum seekers could be removed before their cases are fully reviewed, including as regards the safety of the third country in their individual circumstances – a move that risks violating the principle of non-refoulement, which prohibits returning individuals to any country where they may face serious risks to their life or freedom'[322]. As underlined by Statewatch, the issue of suspensive effect of appeals is crucial 'as the new 'safe third country' system the EU is pursuing could see a person's application rejected on the grounds of having come from a 'safe' country, rather than looking at whether or how the person may be in danger if sent back there'[323].

9.3.2. UNSAFE COUNTRY OF ORIGIN

The European Commission's 2025 SCO Regulation Proposals aims at establishing a common EU list of safe countries. The Commission concludes that Bangladesh, Colombia, Egypt, India, Kosovo, Morocco and Tunisia, as well as all EU candidate countries[324], can be considered as 'safe' for asylum seekers and refugees[325]. The Proposal states that the Commission reached this conclusion 'With the assistance of the European Union Agency for Asylum (EUAA), and in consultation with the European External Action Service'. It explains that the Commission had requested the EUAA to develop a methodology for identifying non-EU countries that could possibly be designated by the Commission's services as 'safe'. The Proposal states that 'Based on this methodology, the Commission services requested the Agency to prepare the Country of Origin Information to support the Commission's assessment'.

The Pact's APR also revised the notion of SCO under EU asylum law. It over-stretched the EU concept of 'safety' to include non-EU countries which aren't parties to the 1951 Geneva Convention and its 1967 Protocol, but which instead provide what the APR calls 'effective protection'[326]. The concept of 'effective protection' is deeply problematic, legally vague[327] and contradicts the Union's obligation to fully upholding and consistently promoting international refugee law standards (crucially, yet not exclusively, the 1951 Geneva Convention and its 1967 Protocol)

317 D. Thym (2024), Expert Opinion on Legal Requirements for Safe Third Countries in Asylum Law and Practical Implementation Options, 3 April 2024.
318 Carrera, S., et al. (2018), Offshoring Asylum and Migration in Australia, Spain, Tunisia and Spain: Lessons Learned and Feasibility for the EU, Open Society European Policy Institute (OSEPI), Brussels.
319 S. Als, S. Carrera, N. Feith Tan and J. Vedsted-Hansen (2022), Externalisation and the UN Global Compact on Refugees: Unsafety as Ripple Effect, European University Institute (EUI), Policy Paper, Florence. Available at: content
320 Recital 8 states that 'To enhance procedural efficiency, the applicant should not have an automatic right to remain on the territory of a Member State for the purpose of an appeal against inadmissibility decisions taken on the basis of the safe third country concept. Nonetheless, the enforcement of the corresponding return decision is to be suspended during the time limit within which the person concerned can exercise his or her right to an effective remedy before a court of first instance and when such appeal is lodged where there is a risk of breach of the principle of non-refoulement'.
321 However, Article 68(3) does not allow for a right to remain if a competent authority, for instance, has rejected an application as unfounded or manifestly unfounded, referred the applicant to the border procedure or an accelerated procedure.
322 UNHCR (2025b).
323 Statewatch (2025), EU wants to deport people to countries with which they have no connection, 22 September 2025, available at Statewatch | EU wants to deport people to countries with which they have no connection
324 Article 1.1 of the Proposal stipulates three circumstances upon which the safety presumption of candidate countries will not hold: first, if there is 'a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict'; second, the adoption by the EU of restrictive measures; and third, when the positive recognition rate of asylum applicants is above 20%.
325 The Proposal states that it is 'without prejudice to the possible future designation of other third countries as safe countries of origin, in line with the requirements of the Asylum Procedure Regulation'.
326 Effective protection is defined by Article 57(2) APR as including: 'the right to remain pending the examination of the application for protection; adequate standard of living corresponding to the overall situation in the country; access to healthcare and education under the same terms as for nationals; and effective protection until the finding of a durable solution'.
327 According to Vedsted-Hansen, "very definition of 'safe third country' is highly problematic, in particular due to novel criteria defining the term 'effective protection' that is even entitled a 'notion' … which in itself suggests legal vagueness.", J. Vedsted-Hansen (2025), European governance of deterrence and containment. A legal perspective on novelties in European and Danish asylum policy, Journal of Ethnic and Migration Studies, 51:8, page 2029.

in all its internal and external policies. The APR also envisaged the possibility for EU Member States to designate a third country as 'safe' considering exceptions covering specific parts of its territory or for clearly identifiable categories of people[328].

This last novelty constitutes a significant change in comparison to the – still currently applicable – APD. The CJEU found that the EU concept of 'safety' in relation to country of origin accepts no such geographical scope exceptions by national authorities[329]. In Case CV v Czech Republic[330], the Court held that the SCO concept should be interpreted strictly because it constitutes an exception to the ordinary process of assessing asylum applications[331]. Regarding effective judicial review of SCO designations, the Luxembourg Court confirmed that courts must have a strong role in reviewing asylum decisions and the use of CSO, even on their own motion in cases where asylum applicants don't raise any concern. The CJEU confirmed that the ways in which effective remedies are outlined in EU secondary legislation, and in this case the APD, must be compatible with the EU principle of effective judicial protection and Article 47 CHFR[332]. The Court referred expressly to the APR under the Pact in this ruling, which according to Peers (2024) 'suggests that while the EU legislature has a discretion to choose between prioritising speedy or thorough consideration of applications, that choice must comply with the Charter and the Refugee Convention….[and] the Court's assessment of whether EU asylum law indeed complies with the Charter and the Refugee Convention is likely to be of increasing importance in the future'[333].

Moreover, the APR already grants the Commission the power to designating safe countries of origin at EU level in Article 62[334]. Crucially, the SCO is among the grounds for applying mandatory (accelerated) asylum border procedures, and the inadmissibility of an asylum application, under the Pact's APR[335].

Interviews have questioned the value added of the 2025 SCO Regulation Proposal in light of the new ground introduced by the Pact for applying accelerated procedures where the country of origin presents a positive recognition rate below 20%[336]. While the EUAA provided the country analysis in the form of 'Factsheets' which aren't made public, the actual political decision to designate these countries as 'safe' remains at present in the Commission's hands[337]. The current methodology utilised by the Commission lacks any kind of scientific rigor and, perhaps most problematically, independence. Despite its major implications and impacts for the nationals from these non-EU countries, and their respective governments, it cannot be considered as an independent legal analysis devoid of politicised considerations and interests which aren't protection or asylum but rather migration management driven.

Interviews conducted in the scope of this Study underlined the difficulty to understand how the Commission reached the conclusion of 'safety' as regards all the relevant countries in light of the overwhelming evidence showing that the opposite is true[338]. This coincided with the serious concerns raised by ECRE about this same conclusion 'despite well-documented human rights risks for several groups of their nationals'[339]. Furthermore, according to ECRE, 'Candidate status as a threshold for safety is both low and of limited legal relevance to asylum law', which requires a systematic analysis of legal standards of relevance to protection[340]. Furthermore, the entire procedure whereby non-EU countries are unilaterally designated as 'safe' isn't aligned with the required transparency requirements, which include the need to publicise and make available the results as mandated by the CJEU caselaw.

ECRE has underlined that 'However, none of the original assessments conducted by the EUAA have been made publicly available, nor has the Commission

328 Recital 46 and Article 59(2) APR.
329 Paragraph 69 of the ruling states that 'the use of the words 'generally and consistently' tends to indicate that, in the absence of any reference to a part of the territory of the third country concerned in Annex I to Directive 2013/32 or in Article 37 of that directive, the conditions set out in that annex must be met throughout the territory of the third country concerned in order for that country to be designated as a safe country of origin'.
330 CJEU, Case C406/22, *CV v Czech Republic, 4 October 2024.*
331 Ibid., paragraph 71.
332 Refer to paragraphs 86 and 87 of the ruling. In paragraph 87 the Court has held that 'From that perspective, as regards the scope of the right to an effective remedy, as defined in Article46(3) of that directive, the Court has held that the words 'shall ensure that an effective remedy provides for a full and *ex nunc examination of both facts and points of law' must be interpreted as meaning that the Member States are required, by virtue of that provision, to order their national law in such a way that the processing of the actions referred to includes an examination, by the court or tribunal, of all the facts and points of law necessary in order to make an up-to-date assessment of the case at hand'.*
333 S. Peers (2024), 'Safe countries of origin' in asylum law: the CJEU first interprets the concept, EU Law Analysis, 14 October 2024, available at EU Law Analysis: 'Safe countries of origin' in asylum law: the CJEU first interprets the concept
334 The Commission had formally proposed an EU list of SCO back in 2015, which consisted of Turkey and the Western Balkans. However, it didn't find sufficient political support and was finally withdrawn. Refer to European Commission (2015), Proposal for a Regulation establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU on common procedures for granting and withdrawing international protection, COM/2015/0452 final - 2015/0211 (COD).
335 Refer to Article 38.1.a and Article 43 APR.
336 Interview No. 05 with EU agency.
337 Pages 4 to 13 of the Proposal provide the political country-by-country analysis concluding that they are 'safe' according to the Commission.
338 Interview No. 05 with EU agency.
339 ECRE (2025), Creating more 'safe' countries and frontloading the Pact: ECRE's Analysis of the Proposed Amendments to the Asylum Procedures Regulation, Policy Paper 15, July 2025. ECRE highlights that while the Commission identifies key issues of concern for particular groups in regions within the countries labelled as 'safe, 'it it does not propose any exceptions for these groups or areas'., page 5.
340 Idid., page 4.

provided any information on the criteria used to determine which countries should be included in the list'[341]. ECRE therefore questioned 'value of amending the APR to designate countries as safe without applying the criteria set out in Article 61. The APR was adopted in 2024 and there is no reason to claim – and none is set out – that developments since then render it irrelevant. Finally, setting different standards for designation as safe for national lists and for the EU common list is inconsistent and confusing'[342].

The proposed use of safe country notions by the EU can be expected to lead to negative impacts over the right to asylum internationally and across other world regions. The research findings of the EU-funded project ASILE have shown that the EU safe country concepts play a negative role in incentivising non-EU countries to build their asylum capacities and developing well-functioning asylum systems in line with international and regional refugee standards[343]. The EU's STC and SCO concepts are perceived and understood by third country authorities as key components of a wider containment agenda aimed at fastening and facilitating accelerated deportations of irregularised asylum seekers and refugees to these countries and, therefore, shifting responsibilities over to them in contradiction with commitments under the United Nations Global Compact on Refugees (GCR), which calls for fair and equal responsibility sharing among states[344].

Expected Impacts:

- Increased unsafety and serious human rights violations due to the removal of the connection criterion from EU law.
- Prioritisation of the removal of asylum seekers and refugees, and their detention, to non-EU countries.
- Higher risks of refoulement and chain refoulement to unsafe third countries.
- Penalisation of asylum seekers for unauthorised travel and entry to Article 31 1951 Geneva Convention.
- Serious interference with the essence of the CHFR's fundamental rights to effective remedies and asylum by removing the suspensive effect of appeals .
- Increased number of cases and appeals before national and European courts.
- Disincentives for third countries to strengthen or build well-functioning asylum systems, in order to avoid being designated as 'safe' in the scope of readmission agreements.

341 Ibid., page 5.
342 Ibid., page 6.
343 B. Ayouba Tinni et al. (2023), ASILE European Policy Brief, Shortcomings in EU Cooperation for Externalisation of Asylum: Lessons from Niger, Serbia, Tunisia and Türkiye, Available at ASILE-POLICY-BRIEF-WP5_MODIF-1.pdf Refer also to G. Ovacik and T. Spijkerboer (2024), *Asylum for containment: The contradictions of European external asylum policy, Special Issue, European Journal of Migration and Law, Vol. 26, Issue 2.*
344 Carrera, S., E. Karageorgiou, G. Ovacik, and N. Feith Tan (2024), Global Asylum Governance and the European Union's Role: Rights and Responsibility in the Implementation of the United Nations Global Compact on Refugees, Springer, International Migration Series.

10

ALTERNATIVES TO RETURNS

Several EU Member States apply a narrow understanding of 'alternative' where temporary documentation/regimes and in some cases quasi-statuses are granted to irregularised TNCs as a constitutive part of still pending return procedures[345]. This Study advances an expansive understanding of the term 'alternative' to returns. An expansive conceptualisation of 'alternative' gives priority to facilitating the transition of status[346] as well as regularisation policies for irregularised individuals as equally effective and legitimate policy options.

The Return Proposal states in Article 28 (Suspensive Effect) that 'The enforcement of the return decision shall be suspended where there is a risk to breach the principle of non-refoulement'. [347] However, there are additional cases where suspending removal may be required on fundamental rights grounds which extent beyond non-refoulement, and which include family life considerations, best interests of the child and the person's state of health. As a way of illustration, medical or health-related reasons are widely accepted as grounds for suspending removals and tend to be classified under the category of humanitarian grounds[348]. The Court of Justice of the EU (CJEU) confirmed in Case C69/21, X v. Staatssecretaris van Justitie en Veiligheid[349], that competent national authorities may adopt a return decision, or enforce a removal order, 'only if it has taken into account that person's state of health'[350]. The Court also confirmed that medical treatment of an irregularised TCN forms part of her/his private life under Article 7 CHFR[351].

Furthermore, as previously argued by Majcher (2020), some of the grounds for non-removal which are classified as 'optional' – including those qualified as 'technical'–- may entail or lead to a legal obligation for national authorities not to issue a Return Decision, or not to expel the person concerned. This leads to unclarity regarding the exact situations where postponement or prohibition of expulsion should be consistently applied by all EU Member States[352], which has been identified as a key shortcoming of the Directive[353]. It is uncertain how the European Commission considers these 'alternatives' through the lens of the notion of effectiveness portrayed in the Return Regulation Proposal. The UN Office of the High Commissioner for Human Rights (OHCHR) has expressed concerns about 'the absence of a more favourable conditions clause carries the risk of lowering existing standards at national level also for aspects not regulated, or not fully regulated, by the reform – and in particular decisions not to return but to grant a right to legal stay for human rights, compassionate, humanitarian or other reasons, based on existing national laws'[354].

Article 14.6 of the Proposal highlights that EU Member States shall take into account the following safeguards and rights 'during periods for which the removal has been postponed': first, 'basic needs'; second, family unit with members who are present in the relevant EU Member State's territory; third, 'emergency healthcare and essential treatment of illness'; fourth, minors' access to basic education

345 Carrera, S., J. Pozce and O. Jubany (2025), A Point of No Return: A Comparative Analysis of Policy and Legal Responses to Irregularised Non-Removable Third Country Nationals in Selected EU Member States, Open Research Europe (ORE), 5:201.

346 S. Carrera and A. Shabbir (2024), Humanising EU migration policy: The transitioning of statuses in the EU regular and labour migration law, Report, CEPS: Brussels. According to the United Nations Global Compact for Safe, Orderly and Regular Migration (GCM), Morocco, 10 and 11 December 2018, UN Resolution 73/195, governments are committing to ensure under Objective 7.h 'to '[d]evelop accessible and expedient procedures that facilitate transitions from one status to another…so as to prevent migrants from falling into an irregular status'.

347 Article 12.3 (Enforcing Removal) states that 'the competent authorities shall assess compliance with the principle of non-refoulement by reference to the country of return. They may rely on an existing thorough assessment of all relevant circumstances in previous stages of the procedure. Changes in circumstances and new elements evidencing a risk shall be duly examined. The third country national concerned shall bring forward as soon as possible any relevant elements concerning his or her own personal circumstances'

348 European Migration Network [EMN] (2021), *Responses to long-term irregularly staying migrants: practices and challenges in the EU and Norway* [EMN 2021 General Report], p. 4. Available at: https://home-affairs.ec.europa.eu/document/download/07f553f0-0dfa-4152-aad8-2e18db0556a6_en?filename=00_eu_long_term_irregular_staying_migrants_study_en.pdf.

349 CJEU (2022), X v. Staatssecretaris van Justitie en Veiligheid, supra footnote 16.

350 Ibid., paragraph 95.

351 In paragraph 94 of the same judgment the Court concluded that 'the physical and mental integrity of a person contributes to his or her personal development and, consequently, to the effective enjoyment of his or her right to respect for private life, which also encompasses, to a certain extent, the right of the individual to establish and develop relationships with other human beings'. However, in paragraph 96 the Court held that 'it should be recalled that the right to respect for private life, enshrined in Article 7 of the Charter, is not an absolute right, but must be considered in relation to its function in society. Indeed, as can be seen from Article 52(1) of the Charter, that provision allows limitations to be placed on the exercise of those rights, provided that those limitations are provided for by law, that they respect the essence of those rights and that, in compliance with the principle of proportionality, they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others'.

352 Maes, M. (2011), supra footnote 17, page 107.

353 Majcher, I. (2020), 'The European Union's Return Directive and its Compatibility with International Human Rights Law: Analysis of Return Decision, Entry Ban, Detention and Removal', *Immigration and Asylum Law and Policy in Europe,* Vol. 45, Brill Nijhoff, pp. 683 and 684.

354 OHCHR (2025), UN Human Rights (OHCHR) observations on the European Commission proposal for the reform of the EU returns framework – Internal Working Document, Europe Regional Office, Brussels, July 2025.

during the duration of their stay; and fifth, 'special needs of vulnerable persons'. The newly proposed wording according to which these safeguards 'shall be taken into account' contrasts with the current wording of Article 14 in the 2008 Return Directive which instead calls 'Member States shall ensure that the following principles are taken into account as far as possible during voluntary departure and postponement of return' (Emphasis added). In this manner the Proposal could be interpreted to dilute EU Member States' obligation to uphold these safeguards. In relation to the reference to 'basic needs' and 'basic conditions of subsistence', and as underlined in Section 9 of this Study above, it isn't clear what this concept of 'basic' entails, and how a consistent and uniform interpretation will be ensured across all EU Member States. The label of 'basic' should be replaced by 'adequate' needs in line with international and regional socio-economic human rights standards.

Article 14 covers the conditions for postponing removal which combine current Articles 9 and 14 of the 2008 Return Directive. Paragraph 4 states that 'a written confirmation setting out the period of postponement and their rights during that period'. On the 'written confirmation', research has showed that there is quite an array of discrepancy across national administrative approaches[355].Under the Return Regulation Proposal the written confirmation would also include 'the set of rights', which is a welcomed contribution by the new Proposal.

Article 7.9 of the 2025 Return Regulation Proposal, which deals with the issuance of a return decision, stipulates that EU Member States remain free to grant an 'autonomous residence permit, long-stay visa or other authorisation offering a right to stay for compassionate, humanitarian or other reasons' offering a 'right to stay' to an irregularised TCN. The CJEU has held that EU Member States remain competent to recognise – by virtue of their national law–- a 'right to stay' on humanitarian grounds to irregularised TCNs 'who are in a state of extreme material poverty in its territory'[356]. As regards irregularised TCNs whose removal has been postponed, the Court found that no provision of Return Directive 2008/115 (chiefly Article 6.4) can be interpreted as obliging a Member State to grant a residence permit (on compelling humanitarian reasons) to an irregularised TCN 'irrespective of the duration of that national's stay in that territory'. However, the CJEU held that according to Article 14.1.b and d of the same Directive, EU Member States must 'ensure that, as far as possible, as long as the removal of the TCN is postponed, emergency health care and essential treatment of illness are provided and the special needs of vulnerable persons are taken into account'[357]. Crucially, the Court added, EU Member States must also actively ensure that the TCN concerned doesn't falls into a situation contradicting the prohibition of inhuman or degrading treatment under Article 4 CHFR in its own territory. On this point, the Luxembourg Court reiterated its previous case law and held that Article 4 CHFR would be violated

> …where the indifference of the authorities of a Member State would result in a person wholly dependent on State support finding him or herself, irrespective of his or her wishes and his or her personal choices, in a situation of extreme material poverty that does not allow him to meet his most basic needs, such as, inter alia, food, personal hygiene and a place to live, and that undermines his physical or mental health or puts him in a state of degradation incompatible with human dignity[358]. (Emphasis added)

The CJEU concluded that 'As long as he or she has not been removed, that national may, however, rely on the rights guaranteed to him or her by both the Charter and Article 14(1) of that directive', with no further requirements needed. Crucially, the Court followed international and regional human rights standards which place human dignity at the centre of analysis at times of assessing the lawfulness of EU Member States policies covering non-expellable TCNs. That notwithstanding, the Meijers Committee has identified negative impacts inherent to the application of mutual recognition regime in this domain. It has argued that

> …the mutual recognition mechanism could raise proportionality concerns by spreading restrictive return policies across the EU without harmonizing protection statuses. While the EC promotes efficiency in returns, it does not apply the same principle to asylum or protection statuses, which highlights an inconsistency in EU migration policy that might backfire. Furthermore, EU Member States have differing grounds for legal stay, which results in a situation where a person might be irregular in one state but eligible for residence in another. While the

355 Carrera, S., J. Pozce and O. Jubany (2025), A Point of No Return: A Comparative Analysis of Policy and Legal Responses to Irregularised Non-Removable Third Country Nationals in Selected EU Member States, Open Research Europe (ORE), 5:201.
356 CJEU, *Changu*, C-352/23, 12 September 2024, EU :C :2024 : 748, paragraph 48.
357 Ibid., paragraph 73.
358 Ibid., paragraph 75. Refer also to CJEU, *Jawo, C163/17, 19 March 2019, EU:C:2019:218, paragraph 92; CJEU, Addis, C517/17, 16 July 2020, EU:C:2020:579, paragraph 51.*

proposal seeks harmonization, states retain discretion to issue residence permits on humanitarian or other grounds, which could lead to potential conflicts[359].

EU funded research has found that regularisations should be normalised and considered as an intrinsic part of the policy toolkit to effectively address irregularised stay, residence and work, and that TCNs live in protracted irregularised status in an EU country. Despite the predominant official framing of regularisations as undesirable or ineffective policy options in this domain, Kraler and Cyrus (2025) have shown that regularisations have been successfully used by several EU government to prevent that the stock number of irregularised residents increase continuously. Furthermore, they highlight how 'the function of regularisation is not to deter future irregular migration but to offer an exit out of irregularity. Regularisation is very effective and successful in this regard'[360]. Moreover, regularisations and the transitioning of administrative status have been found to constitute effective policy in themselves, even at the expense of or as real alternatives from policies which are still captured by a deportation-driven paradigm[361]. These alternative policies shift the focus of attention to addressing the structural conditions and rules which co-create or lead TCNs into irregularity, and upholding the human dignity of every person in the EU.

Expected Impacts:

- Persistent lack of harmonisation and consistency across EU Member States in protection and humanitarian statuses, including for non-expellable irregularised TCNs
- Sidelining regularisation, policies allowing for status transition and other alternatives to return, despite evidence of their higher effectiveness, sustainability and effectiveness.

359 Meijers Committee (2025), page 3.
360 N. Cyrus and A. Kraler (2025), Are Objections Against Regularisation Justified? An Ethical, Political and Pragmatic Appraisal of Regularisation, Policy Brief No. 4, November 2025; refer also to J. Ahrens et al. (eds), Handbook on Regularisation Policies: Practices, Debates and Outcomes, MIrreM Project, Krems: University of Krems Press.
361 Carrera, S., Pozce, J. and Jubany, O. (2025), A Point of No Return: A Comparative Analysis of Policy and Legal Responses to Irregularised Non-Removable Third Country Nationals in Selected EU Member States, Open Research Europe (ORE), 5:201.

11 CONCLUSIONS

This Study shows that the 2025 Return Regulation Proposal and the Proposals on Safe Countries of Origin and Safe Third Countries raise serious structural issues relating to the respect of fundamental rights, necessity and proportionality, and the rule of law in the EU constitutional framework.

As discussed in Section 2, the proposals are not supported by an ex ante, evidence-based Impact Assessments required under the 2016 Interinstitutional Agreement on Better Law-Making and the EU Better Regulation Guidelines. The Commission has failed to demonstrate that new legislation – rather than the consistent and lawful implementation of the existing acquis – is the appropriate policy response to the challenges identified. This reflects the predominantly political nature of the reforms and the extent to which the Commission's agenda has been shaped by Member States' pressures and political priorities, rather than an objective, evidence-led assessment of real needs. Section 3 categorises the three Proposals as examples of 'worst regulation' or 'policy-based evidence-making' (as opposed to 'evidence-based policy-making'), due to their lack of ex ante evaluation, absence of demonstrated necessity or proportionality, and reliance on political urgency and some EU Member States' agendas, rather than actual evidence. As the European Ombudsman has found, invoking 'urgency' to bypass an Impact Assessment goes against the standards of good administration (Article 41 CHFR).

Across the three Proposals, the notion of effectiveness is reduced to a narrow, quantitative exercise focused on raising the percentage of enforced return decisions. This approach disregards the legal obligations that require non-removal in a wide range of circumstances, the situations in which national authorities are bound to uphold fundamental rights, and the broader legal criteria set by EU law, including necessity and proportionality, non-discrimination and consistency with Treaty objectives. EU return policy is framed as a zero-sum game, where deportation is the only and most effective option – despite other alternative policy options not having been even considered or promoted. Such a narrow reading of policy effectiveness risks legitimising a misleading approach to return rates, overlooking situations where removal is legally impossible, and promoting enforcement practices clashing with obligations under the CHFR. The proposals reflect the misleading official narrative of a possible 'balance' between enforcement and fundamental rights, as if EU Charter obligations could be offset or traded against operational preferences and migration enforcement priorities. This 'balancing metaphor' is legally unsound and incompatible with the absolute nature of certain Charter rights and with the primacy of effective judicial protection and dignity of every person irrespective of migration status.

The stated objective of establishing a 'common, coherent and harmonised' EU return system is undermined by the flexibility, the large number of exemptions and open-ended drafting found across the three Proposals. While they take the form of Regulations, they can be considered as 'strange legal hybrids' because their formulation would enable national authorities to apply ample derogations to the fall-back procedures and standards envisaged in the Proposals, thereby reinforcing existing fragmentation and differentiation rather than reducing it. As examined in Sections 3.1 and 3.2, this reflects an intergovernmental dynamic in which EU Member State preferences which aren't aligned with current EU legal standards are key drivers in the shaping the content of EU legislation and the Commission appears to accommodate these pressures rather than act in its autonomous role as guardian of the EU legal order. The outcome is a legal framework that allows for unilateral and ad hoc national approaches, sidelines the enforcement of current EU legal standards, sits uneasily with the aim of enhancing convergence across Member States, and risks weakening the overall internal and external coherence of EU policy.

The shift from 'voluntary departure' to 'forced removal' represents one of the key changes introduced by the Return Regulation Proposal. As Section 4 shows, this inversion of the hierarchy established by EU law disincentivises voluntary return, which has historically produced more sustainable and humane outcomes, and instead strengthens a coercion-

centred model with limited evidence of its added value. The mutual recognition principle of return decisions and the European Return Order (ERO) are based on a dubious presumption of blind 'mutual trust' model among EU Member States' compliance with fundamental rights and the rule of law in their migration and asylum systems. It risks spreading restrictive return policies across the EU and to result in lengthy procedures fraught with cross border problems among EU Member States. The expanded grounds for detention and a permissive approach to detaining children and their families reflect a punitive logic that contradicts the principle that detention must be 'a measure of last resort' and exclusively driven by 'the best interest of the child'. It contradicts international and regional commitments to abolish the disproportionate use of detention of children in the context of migration enforcement. These provisions risk further normalising detention as a routine or 'measure of first resort' component in return procedures, despite its high financial costs, documented ineffectiveness in increasing removal rates and well-established human rights impacts (see Section 5).

As Section 6 shows, the Return Regulation Proposal's 'obligation to cooperate' significantly expands the scope for penalising individuals for circumstances often beyond their control or responsibility. The provisions in Articles 21 and 22 frame 'cooperation' with national authorities in broad and legally uncertain terms, enabling extensive sanctions – from the reduction of essential socio-economic rights to the withdrawal of work permits, to the extension of detention – based on behaviours that may arise from legal barriers or vulnerabilities rather than wilful non-compliance. The criteria for determining 'non-cooperation' or 'risk of absconding' are formulated in vague and expansive ways, granting disproportionate discretion to national authorities, undermining legal certainty and equality before the law and furthering the hyper-precarity and structural vulnerability of irregularilised TCNs in the EU. This punitive framing shifts the blame for non-removal onto the individual, even where removal is legally impossible or contingent on factors outside their control. These measures risk arbitrary or discriminatory application, may incentivise onward movement within the EU in search of safety and dignity, and are likely to deepen the structural hyper-precarity affecting irregularised TCNs.

At the procedural level, the Proposals significantly weaken access to justice and effective remedies enshrined in EU primary law (Sections 6, 7 and 8 of the Study). Reduced appeal deadlines limited suspensive effect and heightened obligations on individuals to 'cooperate' with their own removal blur the line between administrative procedures and penalisation. The procedural safeguards envisaged are insufficient to ensure effective judicial protection under the CHFR, particularly where remedies before courts become excessively rapid, risk automaticity or are inaccessible in practice. Section 8 further expands the punitive consequences of procedural decisions through broader and longer entry bans, often applied without an individualised assessment and in ways that may amount to a second penalty following removal. These measures risk creating avenues for sanctions where people may have little or no ability to comply, and risk limiting individuals' access to meaningful and independent review under Article 47 CHFR. These concerns are particularly significant in national contexts where judicial independence cannot be taken for granted and where accelerated procedures risk turning appeals into formalities.

The externalisation instruments introduced or reinforced by the proposals, chiefly the concept of so-called Return Hubs, constitute one of the most far-reaching and legally uncertain elements of the legislative package (see Section 9). They can be best understood as extraterritorial detention centres. Their open-ended legal design, the absence of enforceable safeguards, and the reliance not only on legal agreements with third countries but also non-binding 'arrangements', raise serious concerns regarding accountability, ineffective judicial protection, chain refoulement, arbitrary detention and the shifting of EU and Member States' responsibilities to third countries with inadequate or inexistent human-rights compliant and asylum systems. These non-models or 'worst practices'[362] can be expected to replicate the structural weaknesses, financial shortcomings and operational failures observed in unilateral and intergovernmental initiatives constituting a direct challenge to Europeanisation' and areas falling under EU competence in migration and asylum matters.

By intensifying the use of coercive and criminalisation measures, lowering fundamental rights safeguards and broadening the scope for national discretion, they deepen legal uncertainty and increase the likelihood of fundamental rights violations, while imposing substantial additional administrative and financial burdens on Member States. As Section 10 highlights, a credible and sustainable EU approach

362 S. Carrera, G. Campesi and D. Colombi (2023), The 2023 Italy-Albania protocol on extraterritorial migration management: A worst practice in migration and asylum policies, CEPS Papers on Liberty and Security, Brussels.

would instead require a shift towards evidence-based, proportionate and rights-respecting alternatives: strengthening voluntary departure, investing in community-based case management and alternatives to return, and addressing the structural factors that hinder lawful and sustainable outcomes in return procedures. Failing to invest in alternatives to return would contribute to producing further irregularity and non-resolution and would undermine durable outcomes for both affected individuals and national authorities.

In conclusion, the 2025 proposals exacerbate, rather than resolve, the structural challenges of EU return systems. In their current form, the proposals do not offer a coherent or legally sound path towards an effective European return policy. They reflect an artificial political urgency that has overshadowed legal obligations, operational realities and longstanding evidence on what doesn't work in this policy domain. The proposals can be seen as 'ultra-solutions'[363], and not what some EU Member States refer to as so-called 'innovative solutions': They are neither 'innovative', as they have been tried unsuccessfully before; nor can they be considered as 'solutions' as they can be expected to further worsen the very phenomenon and identified challenges that they are seeking to address, running contrary to their stated public policy objectives. A genuine European approach would require re-centring the EU's constitutional and fundamental rights framework, grounding future reforms in rigorous evaluation and democratic accountability, and prioritising the protection of human dignity as the organising principle of EU migration and asylum legislation and policy.

363 P. Watzlawick (1980), *Ultra-Solutions: How to Fail Most Successfully, W W Norton & Co. According to Watzlawick, 'there exists a certain type of solution ...which may be called an ultra-solution. Such a solution not only does away with the problem, but also with just about everything else, somewhat in the vein of the old medical joke – operation successful, patient dead – which we are all familiar', page 9.*

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ANNEX I: INTERVIEW LIST

Interview Number	Date	Stakeholder / Actor
01	23 October 2025	EU Agency
02	28 October 2025	EU Council Representative
03	28 October 2025	Academic
04	30 October 2025	EU Agency
05	14 November 2025	EU Agency
06	14 November 2025	European Commission Representative
07	19 November 2025	Civil Society Actor
08	24 November 2025	Civil Society Actor
09	1 December 2025	Academic

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