

The New European Return Framework and Return Hubs in Third Countries: Between Migration Control and Fundamental Rights Protection

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Abstract:

Evolving beyond a mere migration-related phenomenon to become closely interconnected with transnational organized crime and the illicit networks that facilitate the movement and exploitation of migrants. Its continued growth and escalation, coupled with the diversification of its channels and its association with the trafficking of narcotic drugs, firearms, and other prohibited goods, have transformed irregular migration into one of the principal variables underlying emerging security threats at both the regional and international levels.

In this context, it has become imperative to develop the relevant legal mechanisms and adopt all measures necessary to address the risks arising from irregular migration, with a view to containing the phenomenon and mitigating its adverse consequences. This objective can only be achieved through the adoption of diversified procedural alternatives incorporating multiple economic and social dimensions.

Given the multiplicity of these alternatives and the varying degrees of their effectiveness, this article seeks to describe and analyze the range of mechanisms adopted by the European Union to address the various repercussions of irregular migration, with particular emphasis on security, political, social, and economic mechanisms.

Key words:

Irregular Migration, European union, Return Regulation, Human rights, Law.

Introduction:

The transformations that the world underwent following the end of the Cold War gave rise to new patterns of security threats, which were no longer necessarily military in nature. These included cross-border illicit drug trafficking, organized crime, the spread of international

terrorism, irregular migration, and other forms of transnational threats. This development rendered the traditional security paradigm increasingly incapable of effectively addressing such threats, particularly because their consequences are often neither immediately visible nor readily discernible. Moreover, military force, as an instrument of security policy, has proven insufficient to address such threats, as demonstrated by the massive displacement of the Syrian population fleeing the Syrian conflict in 2011. At the same time, national security policies have become incapable of addressing these challenges independently. Consequently, states have increasingly sought to activate security frameworks with regional or global dimensions in order to confront and contain these emerging threats.

As an integral component of the international system, the European Union has been, and continues to be, significantly affected by the various developments and transformations taking place at the global level. The structural transformations that have occurred in international politics have prompted the European Union to adopt a new pattern of security perceptions, approaches, and policies, particularly with regard to the concept and nature of security, the sources of threats, and the mechanisms for responding to and addressing them.

Union, challenging not only the effective management of its external borders but also the Union's capacity to reconcile migration governance with public security, fundamental rights, and the rule of law. In response to the growing scale and complexity of irregular migratory movements, the Union has progressively constructed a multifaceted framework of legal, institutional, and operational mechanisms designed to regulate migration flows, strengthen external-border management, and address the risks associated with irregular migration. This development was significantly influenced by the 2003 European Security Strategy, "A Secure Europe in a Better World," and subsequently evolved through successive legislative and policy initiatives in the fields of migration, asylum, and border management. The process ultimately led to the implementation of the Pact on Migration and Asylum, which entered into force on 12 June 2026 and constitutes a major step toward establishing a common and more integrated European framework for managing migration and asylum.

Accordingly, it has become necessary to examine this strategy and to identify its implementation and enforcement mechanisms, in order to elucidate the instruments and measures adopted by the European Union to address the phenomenon of irregular migration and mitigate its various repercussions. Against this background, the research problem underlying this study revolves around the need to examine these mechanisms and identify their various dimensions. Accordingly, the central research question may be formulated as follows:

What mechanisms has the European Union adopted, within the framework of its strategy, to address irregular migration, and to what extent have these mechanisms contributed to containing the phenomenon and mitigating its security, political, social, and economic repercussions?

1-The concept of irregular migration

1-1-Terminological Precision.

Unlike its linguistic definition, the technical definition of migration sparks debate regarding what the term actually conveys. In addition to the multiplicity and variance of definitions provided for migration depending on different researchers and their respective fields

of knowledge, the term lacks international consensus, as it varies according to the criteria adopted by each state.

The same applies to the definition of a migrant. Austria considers a migrant to be anyone who leaves the country and establishes a permanent residence abroad, or someone who travels abroad in search of work. Meanwhile, the United States, Canada¹, and France agree that a migrant is any person who leaves their country with the intent of permanent residence abroad². Finland, China, Poland, Italy, and Japan define a migrant as someone seeking employment abroad, whereas Switzerland considers relocation within the European states as migration only if it takes place outside of it³.

In demographics, migration is defined as "the movement whether individual or collective from one location to another in search of better social, economic, religious, or political conditions."⁴

In sociology, it denotes a shift in social status, such as a change in profession or social class, among others.

In political thought, when addressing the historical rooting of the phenomenon of migration, reference is usually made to the Magna Carta, which guaranteed the freedom to leave our kingdom and return safely and securely, by land or by sea.

Socrates emphasized that whoever does not love us or our city and wishes to migrate to a colony or any other city is permitted to go wherever he pleases while retaining his property⁵.

In the modern era, migration is considered a fundamental human right within the limits of legislation, in accordance with the principles of public and private international law, as well as domestic state law, which determines the rules governing the emigration of its citizens or the entry of foreigners into its territory. The Universal Declaration of Human Rights, issued in 1948, explicitly provided for this right: "Everyone has the right to leave any country, including his own, and to return to his country."⁶

1-2-Migration According to the Geographical Criterion

Migration is divided under this criterion into two main categories:

a- Internal Migration: Refers to human movement within the borders of a single country, such as migration from a village to a city or similar movements.

¹ -Spencer, S., & Triandafyllidou, A. (2022). Irregular migration. In P. Scholten (Ed.), *Introduction to migration studies: An interactive guide to the literatures on migration and diversity* (pp. 191–204). Springer. https://doi.org/10.1007/978-3-030-92377-8_12

² -Schrover, M. (2023). Migrant illegalities since 1800. In M. J. Borges & M. Y. Hsu (Eds.), *The Cambridge history of global migrations* (Vol. 2, pp. 560–579). Cambridge University Press. <https://doi.org/10.1017/9781108767071.037>

³ -(Schrover, 2023)op cit,

⁴ - European Union Agency for Asylum. (2022). Asylum report 2022: Annual report on the situation of asylum in the European Union. Publications Office of the European Union. <https://doi.org/10.2847/265367>

⁵ - Plato, *Laws*, trans. Trevor J. Saunders, in John M. Cooper & D. S. Hutchinson (eds.), *Plato: Complete Works* (Indianapolis: Hackett Publishing Company, 1997), 1318, 1338–1339.

⁶ -United Nations General Assembly. (1948). Universal Declaration of Human Rights (A/RES/217(III) A). United Nations.

b- External Migration: This is one of the most prominent manifestations of collective and individual human movements in modern centuries, referring to human movement across international borders that results in a change of the country of usual residence.

1-3-Migration According to the Criterion of Permanence and Continuity

a- Permanent Migration:

This type of migration typically occurs when an individual or group decides to leave their geographical location or places of residence for another region permanently meaning they do not plan to return to their previous location in the future, at least not in the initial period. This migration may also take place within the same country.

b- Temporary Migration:

This type of migration is often for the purpose of working during specific seasons, which is why some refer to this type of migration as seasonal migration. Temporary migration may take place either within the state's territory or outside it⁷.

1-4-Migration According to the Legal Criterion

When addressing migration according to the legal criterion (i.e., migration based on its legality), we are simultaneously dealing with a type of migration previously discussed, namely external migration. This criterion the legal criterion is inapplicable to internal migration, as the latter does not require holding any type of travel documents⁸.

a- Regular Migration

Legal migration takes place in countries whose legal systems permit the reception of foreigners, and it is accomplished by entering through designated points, whether by land, air, or sea, into the territory of the state⁹.

States condition the entry into or exit from their territories upon the presentation of a valid passport issued by the competent authorities, or a travel document serving in lieu of a passport, while respecting the principle of reciprocity regarding visas.

The preamble of the International Labour Organization highlighted the necessity of taking into account the interests of workers and employees in countries other than their own. International and regional agreements emerged to regulate legal migration operations, states developed their national legislation concerning migration, and finally, the legal systems governing migration progressed to a more advanced stage. International law now legislates and regulates migration for the purpose of employment, supervised by international organizations such as the United Nations and its specialized agencies or related organizations.

b- Irregular Migration

Irregular migration is considered the most prominent and important type of migration according to the legal criterion. According to the United Nations Convention against Transnational Organized Crime, irregular migration means crossing borders without complying with the necessary requirements for lawful entry into the receiving States.

7 - International Organization for Migration (IOM), International Migration Law: Glossary on Migration, No 21, 2011).

8 - UN Human Rights Committee, General Comment No 27: Article 12 (Freedom of Movement), UN Doc CCPR/C/21/Rev.1/Add.9 (2 November 1999)

9 - International Organization for Migration (IOM), International Migration Law: Glossary on Migration (No 34, 2019).

Meanwhile, the International Organization for Migration referred to the irregular migrant as "a person who, by infringing the conditions governing entry into, stay or work in a State, is not authorized to do so." This includes:

Individuals who lack legal documents to enter the State (receiving State) but managed to enter clandestinely. (According to the United Nations Convention against Transnational Organized Crime, this entry occurs via one of the following methods: by land, by sea, or by air)¹⁰

A person who managed to enter the country using fraudulent means, deceit, and forgery of the documents in their possession. Forgery primarily targets the travel document or identity, along with migrants in irregular situations.

It is clear from the preceding list of categories that can fall under the term "migrant" that there is a linguistic and consequently conceptual debate regarding what the terms "migrant" and "irregular migrant" mean. This has led many researchers to acknowledge the lack of success in formulating the theoretical dimensions of migration, including Tapinos' conclusion: "There have never been theories of migration"; Heisel's statement that "there is no single theoretical definition regarding international migration, whether legal or illegal, or a conceptual framework that has gained consensus"; and finally Wood's statement: "We are still far from finding the appropriate conceptual framework for studying population movement."¹¹

However, despite the controversy clouding the definition of the terms "migration" and "migrant," and subsequently the disagreement over determining who an irregular migrant is and what illegal entry (illegal border crossing) entails, a substantial degree of agreement has been achieved among migration studies scholars regarding the categorical classification of irregular migrants presented by Tapinos. The latter outlined four basic categories that can be designated as an "irregular migrant":¹²

Case One: Legal entry, legal residence, illegal employment.

Case Two: Legal entry, illegal residence, illegal employment.

Case Three: Illegal entry, legal residence, legal employment.

Case Four: Illegal entry, illegal residence, illegal employment.

It should be noted that there is currently no consensus in Europe on a specific meaning for the word "migrant." The broad definition proposed by European Union officials is a third-country national who is a non-EU citizen. However, the European Union Agency for Fundamental Rights pointed out in its first annual report for 2008 that there is no official definition of migrants and ethnic minorities within the European Union¹³.

And the term generally refers to a social group that may be exposed to instances of racism, xenophobia, and racial/ethnic discrimination. The most common usage of the term covers first-

10 - Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, adopted 15 November 2000, 2241 UNTS 507.

11 - Georges Tapinos, *L'immigration étrangère en France, 1945–1973* (Presses Universitaires de France 1975).

12 - Wahlberg, A., C. Källestål, A. Lundgren, and B. Essén. 2014. Causes of death among undocumented migrants in Sweden, 1997–2010. *Global Health Action* 7 (1):24464. doi: 10.3402/gha.v7.24464.

13 - European Union Agency for Fundamental Rights. (2008). Report on racism and xenophobia in the Member States of the EU. European Union Agency for Fundamental Rights, See : <https://fra.europa.eu/en/publication/2010/annual-report-2008>

generation immigrants and refugees, in addition to individuals from subsequent generations whose origins trace back to immigrants¹⁴. The "Migrant Health Network" project, which specializes in migrant health issues, adds the following to the aforementioned list: undocumented migrants, clandestine migrants, and refugees.

2- Factors Driving the European Union to Adopt Mechanisms to Counter Irregular Migration

The factors driving the EU to adopt its strategy for addressing new security threats within which mechanisms to counter the phenomenon of irregular migration fall can be grouped into three main points:

2-1- Factors Related to Regional Construction

The Mediterranean region has long formed a true demarcation line between North and South. The end of the Cold War clearly revealed this reality; a fact noted by a group of sociologists including Edgar Morin and Régis Debray, who recorded that with the end of the Cold War, the Mediterranean transformed into a confrontation line just as the threat of the East vanished. Thus, the dividing line between North and South in the global system, according to the prevailing perception, runs through the Mediterranean basin. Yet the matter is not merely a dividing boundary; it is, in reality, a "fault line" between a northern shore composed of southern European countries that see their future within the framework of the European Union, and a southern shore composed mostly of divided, fragmented Arab countries experiencing a state of chaotic decline, high demographic growth, traditional social structures, acute conflicts, internal fractures, and containing all the elements of ignition or rather explosion: demographic explosion, Islamic fundamentalism, terrorism, and the Arab-Zionist conflict.

Such a degree of instability in a semi-enclosed sea fuels anxiety and fears on both shores, particularly for the more advanced northern shore. This led François Bayrou to state that the ancient Latin sea the cradle of our two civilizations is in reality an arena of religious, social, and regional contradictions, and a long-standing epicenter of unresolved conflicts¹⁵.

2-2- Factors Related to European Construction

The formulation of a European strategy to confront new security threats constitutes a "complementation" of the developments achieved in European integration since the signing of the Maastricht Treaty, which represents the most significant institutional transformation in post-Cold War European construction. As a legal and institutional translation of comprehensive structural transformation at the continental level, the Maastricht Treaty prominently expanded communitarian competences on both internal and external levels and focused on four core points:

- Unifying positions in the diplomatic-strategic field (CFSP).
- Economic and monetary union and the creation of a single currency.

14-Vaughan-Williams, N. 2015. Europe's border crisis: Biopolitical security and beyond. Oxford, UK: Oxford University

Press. [https://books.google.com/books?hl=en&lr=&id=vfiJCgAAQBAJ&oi=fnd&pg=PP1&dq=Vaughan-Williams,+N.+\(2015\).+Europe%E2%80%99s+border+crisis:+Biopolitical+security+and+beyond.+Oxford+University+Press.&ots=DHSRgku9rq&sig=rJvtXB-odPxa-bEpOEjgkkgUEpk](https://books.google.com/books?hl=en&lr=&id=vfiJCgAAQBAJ&oi=fnd&pg=PP1&dq=Vaughan-Williams,+N.+(2015).+Europe%E2%80%99s+border+crisis:+Biopolitical+security+and+beyond.+Oxford+University+Press.&ots=DHSRgku9rq&sig=rJvtXB-odPxa-bEpOEjgkkgUEpk) (open in a new window).

¹⁵ -Topak, Ö. E. 2014. The biopolitical border in practice: Surveillance and death at the Greece-Turkey border zones. *Environment and Planning D: Society and Space* 32 (5):815-33. doi: 10.1068/d13031p.

- Strengthening EU institutions with broader powers for Parliament (the principle of subsidiarity).
- Coordination to address security and migration problems.

2-3- The Events of September 11, 2001

The events of September 11, attributed to the al-Qaeda organization, contributed to unleashing a wave of racist sentiments, hatred, and hostility toward Muslims among a large segment of European public opinion. The electoral contests witnessed by several European countries during 2002 served as an official reveal of the impacts left by the New York and Washington bombings on European public opinion, as well as the social and legal frameworks established by political and media elites to manage these impacts. These frameworks generally leaned toward imposing further monitoring and restrictions on the presence of Islam¹⁶. The events provided an opportune moment for right-wing parties to field electoral programs led by curbing migration and asylum from which Muslims are the most prominent beneficiaries and imposing further legal and political restrictions on the activities of organizations affiliated with Muslim minorities.

In France, a poll conducted by the CSA institute just prior to the second round of parliamentary elections held on June 16, 2002, proved that "the security factor was the primary determinant of French voters' orientations." The security factor refers to the anxieties that gripped the French public following the September 11 bombings, with Muslims serving as the primary source of these concerns for at least two reasons: first, explicit American accusations that hardline Islamists were behind these bombings; and second, the existence of precedents involving hardline Islamist organizations in France. During the early 1990s, major French cities witnessed a wave of bloody violence targeting innocent civilians, most notably bombings that occurred in stations and metro cars in the capital, Paris.¹⁷

Right-wing candidates in the French elections including presidential candidate Jacques Chirac directed scathing criticisms at the leftist government led by Lionel Jospin, accusing the Socialist Party's policy of complacency in dealing with hardline Islamist groups, particularly those active among the Muslim communities residing in France, and thereby compromising the security of French citizens¹⁸.

The electoral discourse in Germany did not differ much from that prevailing during the French elections. Christian Democratic right-wing candidate Edmund Stoiber ran the chancellorship election held on September 22, 2002, under the slogan "Less migration, greater integration." This sparked profound concern among foreign minorities, particularly the Muslim minority, which accounts for no more than 2% of the population and which German authorities have accused since September 11 of supporting so-called "Islamic terrorism." Observers of German affairs point out that the post-September 11, 2001 atmosphere profoundly influenced the orientations of German public opinion during 2002, specifically voter tendencies.

¹⁶ -Allen, C., & Nielsen, J. S. (2002). Summary report on Islamophobia in the EU after 11 September 2001. European Monitoring Centre on Racism and Xenophobia (EUMC).

¹⁷- Buvet, L, The tragedy of the French left, Article published on Open Democracy magazine, Press <https://www.opendemocracy.net/en/article-393jsp/>

¹⁸ - See *taz*, "Union startet Rettungskampagne," 17 September 2002; *taz*, "Beckstein bleibt sich treu," September 2002; Ines Kurschat, "Das Beste zum Schluss," *woxx*, 20 September 2002.

A large segment of German public opinion demonstrated skepticism regarding the Socialist government's ability to assuage fears surrounding the sudden security file. It appeared that the year 2002 was, in France, Germany, and several other EU member states, a year of harsh measures against Muslim migrants and refugees whether legally or illegally resident by "reducing or controlling immigration flows, particularly asylum applications and irregular migration." through halting its tributary factors, such as asylum applications and irregular migration.¹⁹

A number of German politicians, including former chancellor candidate Edmund Stoiber, spoke with considerable frankness about the necessity of tightening migration laws, the country's lack of need even for brilliant minds, and the German people's lack of need to be multicultural.

These were the aggregate factors driving the European Union to adopt its strategy toward security threats that were described as new, dynamic, diverse, less clear, and less tangibly countered, with irregular migration topping the list due to its linkage with two phenomena of paramount importance in official European discourse: international terrorism and transnational organized crime.

The Challenges Faced by States Between the Obligation to Protect Human Rights and the Combating of Irregular Migration:

As previously noted, states face a complex challenge in balancing and addressing the issues of irregular migration and humanitarian asylum. These challenges are divided into legal challenges pertaining to the application of national and international laws and humanitarian challenges pertaining to the protection of the rights of migrants and refugees and the guarantee of decent living conditions for them.

3- Legal Challenges

3-1- States encounter several legal challenges, notably:

The Conflict between National Laws and International Obligations: States attempt to impose stringent measures against irregular migration, such as deportation. Conversely, international law specifically the 1951 Refugee Convention prohibits the refoulement of refugees to countries where they may face persecution or danger. Furthermore, the European Convention on Human Rights (ECHR) prohibits this under Article 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment,"²⁰ thereby barring the removal of individuals to states where they face a risk of torture or ill-treatment.

European law is grounded in a body of legislation and conventions governing migration and asylum. These include the Dublin Regulation and the Schengen Agreement, which governs freedom of movement within the Schengen Area while simultaneously imposing restrictions on irregular migration through enhanced external border controls. It established the Eurodac system, a biometric database at the European Union level containing the fingerprints of asylum seekers and third-country nationals.

Additionally, the Common European Asylum System (CEAS) was established as a framework of common standards and rules among EU member states to regulate asylum procedures and prevent irregular migration through the harmonization of procedures. A

¹⁹ -see <https://www.refworld.org/reference/annualreport/hrw/2002/en/24694>

²⁰ - Article 3 of the European Convention on Human Rights, Rome 1950.

comprehensive reform of this system was adopted in 2024, with implementation scheduled for 2026.

Moreover, the European Commission for Migration and Home Affairs formulates joint policies for border management, processing asylum applications, and combating irregular migration, alongside the European Union Agency for Asylum (EUAA).

Nevertheless, certain states adopt rigorous and exceptional measures, such as border closures or stringent restrictions on the granting of asylum, which may conflict with their international legal obligations. Among these states is France. France is considered one of the European countries with relatively strict laws regarding irregular migration; yet, simultaneously, it remains bound by international standards for the protection of refugees. To demonstrate its good faith in this regard, it continues to enact national legislation concerning asylum and migration, notably:

The Asylum and Immigration Act of 2018 in France (Loi Asile et Immigration): This legislation reduced the processing time for asylum applications from 11 months to 6 months, expanded the scope of subsidiary protection for those meeting full asylum criteria, and reinforced border monitoring to prevent the entry of irregular migrants.²¹

The Act to Control Immigration and Improve Integration (2024): This law focused on tightening deportation procedures for individuals whose applications were rejected or who constitute a threat to public order, reforming the asylum court system by establishing regional chambers, reducing the appeal period from 7 to 15 days, and prohibiting the detention of minors in administrative detention centers.²²

Several procedures govern the submission of an asylum application. First, the application is submitted through the initial reception offices (SPADA), followed by application to the French Office for the Protection of Refugees and Stateless Persons (OFPRA), which is the competent authority responsible for examining asylum applications and granting refugee status or subsidiary protection. Applicants whose claims are rejected may appeal before the National Court of Asylum (CNDA).

Recognized refugees are granted 10-year residence permits, whereas beneficiaries of subsidiary protection receive renewable 4-year residence permits.

Consequently, laws pertaining to irregular migration in France are exceptionally strict. Unauthorized entry is classified as an offense, and irregular migrants may be deported pursuant to Obligation to Leave French Territory (OQTF - Obligation de quitter le territoire français) orders. Furthermore, penalties for migrant smuggling entail up to 5 years of imprisonment and a fine of 30,000 Euros. The French police and relevant authorities play a critical role in combating irregular migration. Specifically, the Border Police (Police aux Frontières - PAF) is responsible

21 - République française. (2018). Loi n° 2018-778 du 10 septembre 2018 pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie. Journal officiel de la République française, n° 0209, 11 September 2018.

22 - The implementing Decree No. 2024-800 establishes territorial chambers in Bordeaux, Lyon, Nancy and Toulouse, with Lyon having two chambers.

for monitoring borders, preventing the entry of irregular migrants, and reinforcing enforcement measures.²³

3-2- Return regulation 2026 Return Policies and the Human Rights Dimension.

Union's migration policy in recent decades. Its adoption has generated considerable legal and political controversy, particularly in relation to the possibility for EU Member States to establish return centres outside the territorial boundaries of the Union, pursuant to agreements concluded with third countries. While such arrangements are presented primarily as instruments for enhancing the effectiveness of return procedures and strengthening the management of irregular migration, they inevitably raise fundamental questions concerning the compatibility of migration-control measures with the European Union's broader commitment to the protection of fundamental rights and human dignity.²⁴

The establishment of return centres in third countries may serve different purposes. Such centres may function as transit facilities, where individuals remain temporarily pending their return to their countries of origin, or as locations in which migrants are accommodated for considerably longer periods. The latter possibility is particularly sensitive from a legal and humanitarian perspective where the applicable framework does not establish a clear maximum period of stay or provide adequate guarantees concerning the eventual implementation of the return decision. Consequently, the effectiveness of return procedures cannot be assessed solely in terms of the number of persons returned; it must also be examined in light of the legal safeguards governing detention, judicial review, and access to legal assistance, family unity, and protection against arbitrary or disproportionate measures.

The issue of removing migrants from the territory of the European Union becomes particularly complex when it concerns children and families. Although unaccompanied minors may be excluded from certain return arrangements, the possibility of transferring families with children to such centres raises serious concerns regarding the protection and safeguarding of the best interests of the child, particularly in light of the violations and risks to which they may be exposed.

A child affected by an immigration procedure must not be regarded merely as an accessory to the immigration status of his or her parents, after the POPOV case in France 2012²⁵. Rather,

23 - Article L. 823-1 CESEDA: facilitating or attempting to facilitate, directly or indirectly, the irregular entry, circulation or stay of a foreign national in France is punishable by five years' imprisonment and a €30,000 fine, subject to statutory exemptions.

24 - European Parliament. (2026, June 17). New EU system for the return of illegally staying third-country nationals.

25 - The case raises a fundamental issue regarding the threshold of severity required for treatment to fall within the scope of Article 3 of the Convention. The majority considered that the particular vulnerability of the minor applicants, having regard to their young age, the prolonged period spent in accommodation unsuitable for their specific needs, and the conditions under which they were detained, was sufficient to establish a violation of Article 3. By contrast, the same conclusion was not extended to their parents. This distinction nevertheless gives rise to a broader question concerning the indirect suffering experienced by parents when they are compelled to witness the degrading or inhuman treatment of their children without having the capacity to prevent it. Such circumstances may, depending on their intensity and the overall context, attain the level of severity required under Article 3. In the circumstances of the present case, the parents' exposure to their children's suffering, viewed in conjunction with the

the child possesses an autonomous set of fundamental rights that must be duly taken into consideration throughout all stages of the return procedure. Accordingly, any measure affecting children should be assessed not only in light of its objectives of migration control and enforcement, but also with regard to its compliance with the requirements of necessity and proportionality, as well as its compatibility with the principle of the best interests of the child, which constitutes a legally protected interest under applicable domestic and international laws and treaties²⁶.

From the perspective of international human rights law, the central issue is therefore not whether states possess the sovereign authority to control their borders and regulate the entry and residence of non-nationals they undoubtedly retain such authority but how that authority is exercised and what legal limits must govern it. The exercise of migration-control powers remains subject to fundamental principles of human rights protection. Irregular migration status does not deprive an individual of his or her inherent human dignity, nor does it extinguish the fundamental rights recognised under international and regional human rights instruments.

These concerns acquire particular legal significance in the context of removal and return procedures, given that the enforcement of a return decision may expose individuals to serious and potentially irreversible violations of their fundamental rights. The principle of non-refoulement therefore constitutes a cornerstone of the legal safeguards governing removal, precluding the transfer of an individual to a state where there are substantial grounds for believing that he or she would face a real risk of persecution, torture, inhuman or degrading treatment, or other serious breaches of fundamental rights²⁷. Accordingly, the externalisation of return procedures cannot be regarded as creating a legal space beyond the reach of European obligations. The transfer of migration-control or return functions to third countries does not, in itself, absolve European states of their responsibility to ensure compliance with the applicable standards of European and international human rights law.

The creation of return centers outside the European Union also raises questions concerning accountability and effective judicial protection. The geographical relocation of migration-control functions must not result in the geographical relocation of legal responsibility. Where European authorities participate in, finance, organise, or otherwise exercise effective control over return arrangements implemented in third countries, the existence of an external location should not automatically deprive affected individuals of effective remedies or meaningful legal protection²⁸. The availability of independent judicial review, access to legal representation, and effective mechanisms for challenging detention or removal decisions therefore remains essential.

conditions in which the family as a whole was detained, may reasonably be regarded as having caused suffering sufficiently serious to engage the protection afforded by Article 3 of the Convention.

²⁶ - Directive 2008/115/EC, 2008; European Union, 2012; FRA, 2025.

²⁷ - Refugee Convention 1951, Article 33 United Nations. (1951). Convention relating to the Status of Refugees, Article 33. United Nations Treaty Series, 189, 137.

²⁸ - See European Union Agency for Fundamental Rights, Planned Return Hubs in Third Countries: EU Fundamental Rights Law Issues, FRA Position Paper 1/2025 (6 February 2025), especially paras. 3, 5–9, 50–51 and 124–126; Charter of Fundamental Rights of the European Union, arts. 4, 18, 19 and 47; Directive 2008/115/EC, art. 13.

Furthermore, the principle of proportionality should constitute a central criterion for assessing the legality of return measures. The objective of combating irregular migration and ensuring the effectiveness of immigration policies may constitute legitimate public interests; however, the measures adopted to achieve these objectives must remain necessary and proportionate to the legitimate aim pursued. Administrative efficiency cannot, by itself, justify measures that impose excessive or unnecessary restrictions upon fundamental rights.

The debate surrounding return centres consequently reflects a broader transformation in European migration governance: the gradual movement from conventional border control towards the externalisation of migration management. Although externalisation may enable the European Union and its Member States to strengthen cooperation with countries of origin and transit, it also creates a risk that responsibilities for the protection of migrants will become fragmented between multiple jurisdictions. Such fragmentation may make it more difficult for individuals to identify the authority responsible for violations and to obtain an effective remedy.

Ultimately, the legitimacy of the European Union's return policy should not be measured exclusively by its capacity to prevent irregular migration or increase the effectiveness of removal procedures. Its legitimacy must also be assessed according to its ability to reconcile border control, public security, state sovereignty, and the protection of fundamental rights²⁹. The real legal challenge is therefore not to choose between security and humanity, but to construct a regulatory framework in which security measures remain subject to the rule of law and in which migration control does not become a justification for diminishing the fundamental rights of persons in vulnerable situations.

In this regard, the treatment of migrants constitutes a significant test of the European Union's commitment to the fundamental values upon which its legal order is founded. A person does not lose his or her inherent human dignity by virtue of being in an irregular migratory situation. Accordingly, the lawful enforcement of immigration legislation cannot legitimately be dissociated from the requirements and safeguards arising from international human rights law. The effectiveness of European migration policy should therefore be accompanied by effective legal safeguards ensuring that return procedures remain grounded in the principles of legality, necessity and proportionality, and are implemented with due respect for human dignity and in accordance with the obligations arising under the relevant international human rights instruments.

The "Return Regulation" represents a significant tightening of the European Union's approach to irregular migration and constitutes one of the most restrictive developments in European migration policy in recent decades. This approach has generated considerable legal and political debate, particularly with regard to the possibility of establishing return centres outside the territory of the European Union pursuant to agreements concluded with third countries, as has occurred in relation to certain African countries. Although such arrangements are primarily justified on the grounds of enhancing the effectiveness of return procedures, preventing irregular migration, and strengthening cooperation with countries of origin and transit, their

29 - European Union Agency for Fundamental Rights. (2025). Planned return hubs in third countries: EU fundamental rights law issues (FRA Position Paper 1/2025). Publications Office of the European Union.

implementation raises fundamental questions concerning the extent to which migration-control objectives can be reconciled with the Union's obligations under European and international human rights law. It also raises the broader question of whether migration-control policies may legitimately be designed in a manner that simultaneously addresses the prevention of irregular migration, facilitates the lawful mobility and integration of highly skilled migrants, and ensures full compliance with fundamental rights and human dignity.

From a legal perspective, the establishment of return centres outside the European Union cannot be examined exclusively through the lens of border management and migration control. It must also be assessed in light of the fundamental principles governing the treatment of persons subject to return procedures. The geographical relocation of a return procedure does not, in itself, eliminate the legal obligations arising from fundamental rights. Rather, the externalisation of migration control requires particularly effective safeguards to ensure that individuals do not find themselves in a legal or institutional environment where access to judicial protection is weakened or where responsibility for potential violations becomes difficult to determine.

3-3- Proportionality and Judicial Review of Return Measures:

Return centres may operate as temporary transit facilities, where individuals remain pending their return to their countries of origin, or as accommodation facilities in which migrants may remain for substantially longer periods. The latter possibility raises serious concerns where the applicable legal framework fails to establish sufficiently clear limits on the duration of such accommodation or detention, or where it does not provide effective guarantees concerning the subsequent implementation of the return decision³⁰. Consequently, the legality of such measures should not be assessed solely according to their administrative effectiveness, but also according to the principles of necessity, proportionality, legal certainty, and effective judicial protection.

Particular attention must be given to the situation of children and families. Although unaccompanied minors may be excluded from certain return arrangements, the possibility of transferring families with children to return centres raises complex questions concerning the protection of family life and, above all, the best interests of the child. In this context, children cannot be treated merely as secondary elements within an immigration procedure concerning their parents. They are independent rights-holders whose interests must be given primary consideration whenever a decision directly or indirectly affects their well-being, development, family relationships, and living conditions.³¹

3-4- The Principle of Non-Refoulement as a Limitation on Return Policies

The human rights dimension assumes even greater significance when return procedures concern persons whose particular circumstances place them in a situation of heightened vulnerability. Irregular migration status does not deprive an individual of his or her fundamental rights. Accordingly, the enforcement of immigration legislation must remain subject to the principle that human dignity is inherent in every human being, irrespective of nationality or

30 - European Union Agency for Fundamental Rights. (2025, February 6). Planned return hubs in third countries: EU fundamental rights law issues (FRA Position Paper 1/2025). Publications Office of the European Union.

31 - European Union Agency for Fundamental Rights. (2025, February 6). Planned return hubs in third countries: EU fundamental rights law issues (FRA Position Paper 1/2025). Publications Office of the European Union.

immigration status³². This, in turn, requires due care and caution in implementing arrangements relating to the return of irregular migrants.

Consequently, the legitimate objective of combating and controlling irregular migration cannot, under any circumstances, justify measures that expose individuals to arbitrary detention, inhuman or degrading treatment, collective expulsion, or removal to circumstances in which their fundamental rights are seriously endangered, particularly where such removal entails their return to their countries of origin.

In this regard, the principle of non-refoulement constitutes one of the essential legal safeguards governing return procedures. A person should not be transferred to a state where there are substantial grounds for believing that he or she would face persecution, torture, inhuman or degrading treatment, or other serious violations of fundamental rights. The externalisation of return procedures must therefore not become a means of circumventing the international and regional obligations binding upon European states.

Furthermore, the principle of proportionality provides an essential legal criterion for assessing the legitimacy of restrictive migration measures. The prevention of irregular migration and the effective enforcement of return decisions may constitute legitimate objectives of public policy. Nevertheless, the means employed to achieve those objectives must remain appropriate, necessary, and proportionate. In other words, administrative efficiency cannot automatically prevail over fundamental rights, particularly where less restrictive measures are reasonably available.

The externalisation of migration control also raises an important question concerning accountability. When return-related activities are transferred beyond European territory, legal responsibility should not become equally externalised. The involvement of European institutions or Member States in the establishment, financing, supervision, or implementation of return arrangements may require corresponding mechanisms of accountability and judicial oversight. Otherwise, the geographical separation between the European authorities and the persons subject to return could create a significant protection gap, particularly where violations occur outside the direct territorial jurisdiction of European courts³³.

Accordingly, the European Union faces a difficult legal and political challenge: how can it ensure effective control of its external borders and enforce return decisions while maintaining its commitment to human rights and the rule of law? The answer cannot lie exclusively in strengthening coercive mechanisms or expanding the geographical scope of migration control. Rather, it requires the development of a comprehensive legal framework in which security considerations are balanced against the protection of fundamental rights³⁴.

32 - European Union Agency for Fundamental Rights. (2025). Planned return hubs in third countries: EU fundamental rights law issues (FRA Position Paper). Publications Office of the European Union. <https://doi.org/10.2811/9073933>.

33 - Molnár, T. (2023). EU Member States' responsibility under international law for breaching human rights when cooperating with third countries on migration: Grey zones of law in selected scenarios. *European Papers*, 8(2), 1013–1035.

34 - European Parliament and Council of the European Union. (2008). Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. *Official Journal of the European Union*, L 348, 98–107.

Ultimately, the legitimacy of European return policy should not be measured solely by the number of persons prevented from entering the Union or returned to their countries of origin. Its legitimacy must also be evaluated according to the quality of the legal safeguards accompanying those measures. A genuinely effective migration policy is not necessarily one that produces the highest number of returns, but one capable of achieving legitimate migration-management objectives without compromising the fundamental principles of human dignity, proportionality, non-refoulement, family unity, the best interests of the child, and effective judicial protection.

Thus, the question of return centres goes beyond a conventional debate between security and migration. It raises a more fundamental question concerning the relationship between state sovereignty and human dignity. States unquestionably possess the sovereign authority to regulate their borders and determine the conditions governing the entry and residence of foreign nationals. Yet that authority is exercised within a legal order in which sovereignty is not absolute and in which the protection of human rights constitutes an essential limitation on the exercise of public power³⁵. From this perspective, the treatment of irregular migrants represents not merely a test of the effectiveness of European migration policy, but also a test of the European Union's commitment to the rule of law and the universality of human rights.

4- The Principal Objectives of the New Return Regulation

At the heart of the new legal framework lies a relatively clear objective: to make return procedures more effective and to increase the likelihood that final return decisions will actually be implemented. The issue is not new. For years, European migration policy has faced a persistent discrepancy between the number of return decisions issued by national authorities and the considerably smaller number of persons who are ultimately returned. This discrepancy has weakened the practical effectiveness of the common European migration policy and has encouraged the Union to search for stronger mechanisms of cooperation and enforcement³⁶.

The new framework consequently places greater emphasis on the obligations of persons subject to return decisions. Cooperation with the competent authorities becomes an important element of the return process, particularly with regard to establishing identity, providing the necessary information and facilitating the practical arrangements required for removal. At the same time, the framework contemplates consequences where an individual deliberately obstructs the return procedure. Such measures, however, cannot be understood as unlimited coercive powers; their implementation remains subject to the legal safeguards governing fundamental rights and the principle of proportionality³⁷.

Another important objective is to strengthen cooperation and mutual recognition between Member States. The European Return Order is intended to address situations in which a person against whom a return decision has been issued moves to another Member State in an attempt to avoid its implementation. The objective is therefore not simply administrative convenience. It is also to preserve the effectiveness and credibility of return decisions throughout the Schengen

³⁵ - Goodwin-Gill, G. S., & Mc Adam, J. (2021). *The refugee in international law* (4th Ed.). Oxford University Press.

³⁶ - European Commission (2025), SWD(2025) 250 final, see <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52025SC0250>

³⁷ - Directive 2008/115/EC, See <https://eur-lex.europa.eu/legal-content/FR/ALL/?uri=celex:32008L0115>

area and to prevent differences between national systems from creating opportunities for avoiding the enforcement of legally binding decisions.

Perhaps the most controversial aspect of the new framework, however, concerns the possibility of establishing “return hubs” in third countries. Under the new arrangements, persons subject to return may, under specified conditions, be transferred to a third country rather than being returned directly to their country of origin. Such centres represent a significant development in the way the European Union approaches migration management because they extend the practical implementation of return policies beyond the Union’s territorial boundaries³⁸.

The introduction of return hubs must nevertheless be distinguished from the simple outsourcing of European migration responsibilities. Their legitimacy depends upon the existence of adequate legal guarantees in the receiving country and, in particular, respect for international human rights law and the principle of non-refoulement. The exclusion of unaccompanied minors from such arrangements reflects the particular protection afforded to children within European and international law. Nevertheless, the possibility of transferring families accompanied by children raises more complex questions concerning family unity, living conditions and the best interests of the child.

The development of return hubs is therefore part of a wider process commonly described as the externalisation of migration control. European migration policy is increasingly extending beyond the physical borders of the Union through cooperation agreements, partnerships and arrangements with countries of origin and transit. From an institutional perspective, this approach may strengthen the capacity of European authorities to manage migration flows. From a legal perspective, however, it raises a more difficult question: to what extent can migration-control responsibilities be exercised outside EU territory without weakening the guarantees attached to fundamental rights?

This question is particularly significant because transferring the physical location of a return procedure does not necessarily resolve questions of legal responsibility. A person who is transferred outside European territory does not thereby cease to be protected by the applicable rules of international human rights law. Consequently, the externalisation of return procedures must be accompanied by effective mechanisms capable of preventing arbitrary treatment and ensuring access to appropriate legal remedies.

3. The Human Rights Dimension of the New Return Framework

The effectiveness of return procedures constitutes a legitimate objective of European migration policy, but it cannot be pursued independently of the fundamental-rights obligations binding upon the European Union and its Member States. The new framework must therefore be situated within a legal order in which migration control operates alongside the protection of human dignity, personal liberty, family life and effective judicial protection.

This becomes particularly evident in relation to the principle of non-refoulement. The removal of an individual cannot lawfully be implemented where there are substantial grounds for believing that the person would face a real risk of persecution, torture or inhuman or degrading

³⁸ -Council of the European Union. (2026, June 1). *Return policy: Council and European Parliament reach provisional agreement on a new common European system for returns*. Council of the European Union.

treatment in the receiving State. The same concern arises where the person is transferred to a third country that could subsequently return him or her to another State in which such risks exist. Consequently, the use of third-country return arrangements cannot be treated as a legal mechanism for circumventing European or international human rights obligations³⁹.

The question of detention presents another significant challenge. Strengthening return procedures may lead to greater reliance on detention where authorities consider that an individual may abscond or obstruct removal. Yet detention remains a particularly serious interference with personal liberty and must therefore satisfy the requirements of legality, necessity and proportionality. It should not become an automatic consequence of irregular migration status. Effective judicial oversight is consequently indispensable, particularly where detention is prolonged or concerns vulnerable persons.

The position of children and families deserves particular attention. European migration law cannot treat children merely as components of their parents' immigration status. Where a return decision affects a child, the authorities must take into account the child's individual circumstances and welfare. The principle of the best interests of the child, together with the protection of family life, therefore constitutes an important legal constraint upon the implementation of return measures.

The same reasoning applies to the right to an effective remedy. A return decision may have profound consequences for the individual concerned, including removal from the territory, separation from family members and, in some circumstances, exposure to serious risks in the receiving country. For this reason, the availability of an effective procedure for challenging the legality of a return decision is not merely a procedural formality. It represents a fundamental safeguard against arbitrary or disproportionate state action.

Accordingly, the new Return Regulation should be understood as an attempt to reconcile two dimensions of European migration governance that may, in practice, come into tension. On the one hand, the Union seeks to strengthen the effectiveness and credibility of its return policy. On the other, it remains bound by a legal framework in which fundamental rights impose substantive and procedural limits on the exercise of public authority. The success of the new system will therefore depend not only on its ability to increase the number of effective returns, but also on whether it can do so without weakening the legal safeguards afforded to those subject to return procedures.

Concluding Assessment

Ultimately, in our view, the recently agreed European return framework should not be regarded merely as a technical instrument designed to accelerate the implementation of removal procedures. Rather, it should be understood as a significant development in the European Union's broader approach to irregular migration and migration governance, particularly in light of the evolving labour-market and operational needs of the Member States. Its emphasis on harmonising return procedures, strengthening cooperation among Member States on the basis of

³⁹ - EU Charter – Article 19: Protection in the event of removal, expulsion or extradition, see: https://fra.europa.eu/en/eu-charter/charter/article/19-protection-event-removal-expulsion-or-extradition?utm_source=chatgpt.com

a shared digital infrastructure, reinforcing the mechanisms for enforcing return decisions, and developing return arrangements with third countries provided that such countries comply with applicable human-rights standards; reflects a legitimate institutional objective: to ensure the effective implementation of return decisions while progressively narrowing the persistent gap between the number of decisions issued and the number of returns actually carried out.

Nevertheless, the effectiveness of return policy under this new approach cannot, from a legal perspective, be treated as an autonomous or overriding objective capable of displacing the fundamental-rights obligations owed to migrants by the European Union and its Member States. The exercise of migration-control powers must remain firmly anchored in the rule of law and governed by the principles of legality, necessity and proportionality, together with respect for human dignity and personal liberty, the principle of non-refoulement, the protection of family life, the best interests of the child, and the right to an effective remedy. These principles should not be regarded as secondary considerations to be invoked only where difficulties arise; rather, they constitute essential legal parameters within which the entire return process must operate.

This issue assumes particular importance in relation to return hubs established in third countries. The geographical externalisation of migration-control functions must not lead to a corresponding externalisation of legal responsibility. The transfer of individuals beyond the territory of the European Union cannot create a legal vacuum in which European or international human-rights obligations cease to have effect. Nor should cooperation with third countries become a means of circumventing the safeguards designed to protect individuals against refoulement, arbitrary detention, inhuman or degrading treatment, or disproportionate interference with family life. The physical relocation of a return procedure, therefore, cannot by itself alter the legal nature of the obligations arising from the protection of fundamental rights.

Accordingly, the legitimacy of the new return framework should not ultimately be measured solely by its capacity to strengthen border governance or increase the number of persons effectively returned. Its legitimacy must also be assessed by its ability to reconcile the legitimate sovereign interests of migration management with the universal and indivisible nature of fundamental rights. The central legal challenge is therefore not whether the European Union is entitled to enforce its migration and return policies, but rather how far it may legitimately exercise those powers and which legal safeguards must remain effective when their implementation directly affects the liberty, dignity and fundamental rights of individuals.

From this perspective, the recently agreed European return framework represents a significant test of the European legal order itself. Its long-term legitimacy will depend on whether it can demonstrate that stronger enforcement of migration rules, enhanced border governance and more effective return procedures can coexist with the fundamental principles of human dignity, proportionality, non-refoulement, family unity, the best interests of the child and effective judicial protection. The pursuit of more efficient migration management should not therefore be measured merely by the number of individuals removed from European territory. The true measure of an effective and legitimate European return policy lies in its capacity to achieve lawful migration-management objectives while preserving the fundamental values and legal guarantees upon which the European legal order is founded.