

EU Leaders should Uphold Right to Asylum in Europe

10 steps for the EU to ensure sustainable and rights-based asylum systems

In light of recent policies aimed at preventing the arrival in the EU of individuals seeking international protection and safety, 50 humanitarian and human rights organizations working to protect the rights of refugees, asylum seekers and migrants, call on EU member states and the European Commission to respect EU and international human rights legal frameworks and safeguard the global refugee protection system.

At a [summit focused on migration on 17 October 2024](#), EU leaders doubled down on plans to prevent people from arriving on EU soil, to speed up forced returns and deepen cooperation with third countries to externalize asylum and migration management. This direction was reiterated at the [confirmation hearings of the Commissioners-designate](#) for the Mediterranean and for Internal Affairs and Migration on 5 November, where they expressed an openness to different offshoring schemes. Many of these proposals run contrary to current EU legal frameworks, including the EU Charter of Fundamental Rights and the recently adopted major overhaul of migration and asylum policy, the [EU Pact on Migration and Asylum](#). Before they pursue ill-conceived attempts to shift or offshore their responsibilities to third countries, EU member states and the European Commission should take a close look at their legal obligations and place emphasis on ensuring a successful and human rights compliant implementation of the reform of the asylum and migration policy they have worked on for years.

An increasing move towards containment and evasion of responsibilities

The EU's migration policy has built on a strategy of containment of refugees and migrants, including efforts to reduce arrivals at the EU's external borders, to boost returns, and to rely on inequitable outsourcing of responsibility to countries with less capacity to provide effective protection.

The reformed Common European Asylum System (the legal and policy framework developed to guarantee harmonized and uniform standards for people seeking international protection in the EU) maintains and confirms the fundamental right to seek asylum and does not provide for the externalization or 'offshoring' of asylum processing (the relocation of the *procedure* for examining asylum applications to the territory of a third country). However, it introduces an abundance of concepts and measures that risk posing practical barriers to the effective access to asylum, including the fiction of 'non-entry', mandatory border procedures, increased use of admissibility procedures, and a range of possible derogations in situations of 'crisis' or 'instrumentalization'.

[Political pressure is increasing](#) for so-called '[innovative strategies](#)' to either process asylum applications outside EU territory, to refuse asylum applications entirely and shift asylum processing and eventual protection responsibilities to countries outside the EU, or to externalize return procedures to centers outside of the EU, so-called 'return hubs'. These schemes are not foreseen by the legislative reform under the Pact and they often involve a rehashing of previously [discarded](#) or tried-and-failed proposals. A global body of [research](#) shows that every time such schemes have been attempted, they have resulted in arbitrary detention, *refoulement*, avoidable loss of life and other rights violations, both in the returning member state and in the country to which people are transferred, all at a high financial cost for taxpayers.

Ten steps to meet EU human rights obligations and safeguard access to asylum in Europe

The undersigned organizations call on the European Commission, the European Parliament, the Council, and member states at national level to uphold their obligations under EU and international law and to firmly reject any attempts to weaken protection for asylum seekers at and within EU borders as well as in cooperation with third countries on asylum and migration. This includes opposing proposals for any revisions or watering down of the criteria for safety under the ‘safe third country’ concept in the Asylum Procedures Regulation; abandoning any plans to outsource refugee protection where these raise further barriers to accessing asylum; and rejecting harmful initiatives such as the Italy-Albania arrangement before the human rights consequences become ever more severe.

As an alternative approach, our organizations call on the EU and its member states to invest in sustainable, humane and well-functioning asylum systems, including through the ten steps outlined below.

Address and reverse impediments to the right to seek asylum and access to protection in Europe in the implementation of EU law and the Pact on Migration and Asylum

The right to seek asylum is guaranteed by law, including in the EU Charter of Fundamental Rights. However, impediments to seek and obtain international protection in the EU are prevalent in the Pact on Migration and Asylum. EU member states view reduced arrivals and accelerated asylum procedures and returns of rejected asylum seekers as [fundamental to securing a ‘stable EU asylum and migration system’](#). This approach carries very real consequences for people seeking protection and undermines respect for international human rights and refugee law.

We call on the EU and its member states to:

1. ***Focus on compliance with EU law and implementation of the Pact in line with human rights and in close cooperation with civil society.*** States should take steps to implement the Pact comprehensively, ensuring people with protection needs are identified in a fair and efficient way and given swift access to the asylum procedure. They should take steps to prevent the reform’s worst likely consequences, including widespread detention at borders, lowered asylum standards, and an abuse of ‘crisis’ or ‘instrumentalization’ measures, leading to restricted access to asylum at and within their borders. States should refrain from practices leading to undue restrictions on freedom of movement, such as residence requirements or other measures amounting in practice to a deprivation of liberty. In line with the requirements of the Pact, EU member states need to take steps to ensure sufficient funding and preparedness of their migration, asylum and reception systems for possible increases in arrivals to prevent avoidable crises. The Pact implementation should also provide an opportunity to address longstanding gaps in national asylum systems, including inadequate and insufficient reception capacity, and addressing practices and policies that breach international law, such as the unlawful denial of access to asylum or to a state’s territory, or ongoing cases of border violence or failure to provide assistance at sea. The right to seek asylum should be upheld no matter where people come from or how they entered the territory or came within the jurisdiction or control of EU authorities.
2. ***Refrain from arbitrarily detaining refugees, asylum seekers and migrants and imposing other restrictions on people’s freedom of movement during asylum and return procedures.***

States must take every step to avoid arbitrary detention at borders. They should generally refrain from detaining asylum seekers and migrants, and at a minimum, they should ensure detention is used as an exception, for the shortest possible time and subject to review. People with specific needs and vulnerabilities – including pregnant people, survivors of torture and of trafficking, people with physical or mental disabilities, serious physical or mental medical conditions, older persons, children, and families with children should not be detained. NGOs and rights monitoring bodies should have unhindered access to border facilities and free quality legal assistance should be provided.

3. ***Enable effective monitoring and accountability for rights violations and pushbacks at European borders***, including through [addressing the shortcomings](#) raised by civil society concerning the independent border monitoring mechanism to be established by all member states as part of the Pact. To ensure that the mechanism foreseen in the [Screening Regulation](#) and the [Asylum Procedures Regulation](#) is credible and effective it should be expanded in scope, made truly independent, and coupled with strengthened accountability for violations and sanctions for non-compliance.
4. ***Expand avenues to alternative residence permits for people with protection and other human rights-related needs but not eligible for asylum and ensure the broad range of existing opportunities for legal stay are accessible in practice***, including existing permits regulated under national or [EU law](#) for [humanitarian reasons](#), [medical grounds](#), for victims of [human trafficking](#), for [children, young people and families](#) and [stateless people](#).

Commit to genuine and equitable responsibility sharing in support of a functioning rights-based asylum system

Proposals to offshore and externalize asylum processing have surfaced time and again. They have been consistently rejected as unlawful and unfeasible, including by the [European Commission](#), and have proven to be inhumane in places where such processing has been implemented, including by [Australia](#) in [Nauru](#) and Manus Island, and in [Papua New Guinea](#). The externalization of asylum or return procedures involves severe human rights risks. Every such initiative that has been put in place has led to human rights violations, including with regards to refoulement, arbitrary detention, denial of the right to asylum and legal aid, lack of identification of vulnerabilities, falling short of the legal and reception standards clearly in place in EU law. These schemes, moreover, have had a ruinous impact on the administration and cost of asylum systems, and on the international refugee protection system, and pose significant risks to the EU's autonomy and credibility in its external action.

The EU should invest in models to manage forced displacement and irregular movements humanely. Instead of pursuing objectives of shifting responsibilities for refugee protection to other countries, these models need to have at their core the achievement of better protection for those in need and the fulfilment of EU and international human rights obligations.

We call on the EU and its member states to:

5. ***Uphold EU and international law obligations to ensure access to territorial asylum in the EU and to respect the principle of non-refoulement; providing regular pathways to migration can never replace access to territorial asylum.*** In accordance with the principle of *non-*

refoulement in refugee and human rights law, states may not return people to places where they would be at significant risk of serious human rights violations. Initiatives and efforts to provide alternative pathways and 'safe routes' should never be used as a pretext for justifying the curtailment of the right to seek asylum at the border or imposing admissibility restrictions including impeding or delaying access to territory.

6. ***Ensure adequate Search and Rescue (SAR) capacity and safe and timely disembarkation at the closest port of safety.*** Rescue at sea is a duty of maritime law. The EU and its member states should end the hinderance [and criminalization of SAR operations](#) by civil society organizations and deploy and sustain adequate SAR capacity. Any vessel engaging in the rescue of refugees and migrants in distress should be promptly granted a place of safety where survivors can disembark in a timely manner, prioritizing the safety and welfare of rescued people, and their swift access to asylum procedures. Nobody should be subject to any form of unlawful or arbitrary detention upon disembarkation. Any cooperation with [third countries that cannot be considered places of safety](#) should be limited to cases where their intervention is essential to prevent imminent loss of life and be conditional on guarantees that their intervention would not result in the disembarkation taking place in an unsafe port.
7. ***Expand protection and assistance for refugees and migrants along migratory routes through partnerships with third countries without containment objectives.*** Establishing safe pathways, supporting asylum capacity, and expanding protection for refugees and migrants along migratory routes as part of a [route-based approach](#) is important as a way of improving global asylum governance and migration management in a rights-respecting way. However, when investments in asylum capacity in third countries are driven by an underlying objective of stemming and reducing arrivals to European shores, increasing evidence, including [research commissioned by the EU](#), suggests that this creates disincentives for EU's neighbors to progress on building national asylum systems and expand protection for refugees as they know that this will lead to the EU containing migrants and refugee populations on their territory.
8. ***Recognize the need for significant upscaling of safe and regular pathways in the pursuit of improved management of global mobility.*** Initiatives to expand safe and regular pathways are commendable and should inspire further efforts. [Lessons learned from the Safe Mobility Offices](#) in Latin America demonstrate, however, that to be successful, safe pathways need to be accessible at scale, match the needs of those moving irregularly and reach those most in need. The existence of regular pathways should not be used as a pretext or rationale for disqualifying eligibility to lodge asylum claims for people who enter without authorization. Resettlement through the UN's resettlement system should be strengthened, and the Union Resettlement Framework offers an opportunity for the EU to do so. Moreover, additional safe and regular avenues for protection should be developed, such as the possibility for applying for asylum at embassies and consulates, humanitarian visas and easier access to family reunification. Taking a less restrictive approach to family reunification for refugees is an important alternative pathway to protection in Europe, as experience shows that many refugees and asylum seekers enter via irregular and dangerous routes to seek protection and be reunited with family members. Dignified mobility opportunities such as labor or education-based pathways should also be greatly expanded. Safe and regular pathways should be seen as complementary, rather than a substitute, to the right to asylum.

9. **Prioritize and conduct human rights impact assessments in advance of collaboration with or support to third countries on asylum and migration and suspend funding when human rights are violated.** A [human rights approach and timely human rights impact assessment should guide interventions](#) to ensure that asylum and migration cooperation with non-EU countries is conditional on guaranteeing protection for refugees and migrants. The EU must ensure that any funding for border control and migration management includes human rights safeguards, follows rigorous human rights risk assessments, and develops concrete benchmarks to this end. No support should be channeled to entities responsible for human rights abuses. Transparent and independent monitoring and accountability mechanisms should be in place, with public reporting of their findings and outcomes. Where abuses are reported, they should be swiftly investigated, and cooperation should be suspended until the abuses are rectified, safeguards are in place, and steps are taken to ensure that such cooperation does not facilitate further rights violations.
10. **Strengthen parliamentary and public scrutiny over ongoing agreements.** This should include ensuring public availability of monitoring reports and respect for the principle of freedom of information. Evidence of the negative human rights effects of extraterritorial migration cooperation by actors working with refugees, migrants and host communities needs to be acknowledged, and timely and appropriate corrective action taken in program and policy interventions by the EU and member states. Likewise, systematic inclusion of civil society and of those affected by the policy in the monitoring should be ensured. Where this is not possible, consultations and/or access for civil society to share data and evidence with relevant EU institutions should be established.

Signatories

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Danish Refugee Council

Danish United Nations Association / FN-forbundet

Dutch Council for Refugees

Ellebæk Kontaktnetværk / Ellekbaek Contactnetwork
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Europe Cares e.V.
European Network on Statelessness
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Finnish Refugee Advice Centre
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Foundation for the Promotion of Rights in Algeria
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