

Pushing Boundaries

Externalisation of Asylum and a Broad-Based Reform Initiative

Huub Verbaten,
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Clingendael Report



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Netherlands Institute of International Relations



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1 Introduction

In the run-up to the Dutch general elections in the autumn of 2025, it was striking how many political parties from across the political spectrum sought to drastically reform asylum policy. The election winner, D66, the rapidly growing CDA and the stable VVD all advocated a fundamental reform of the asylum system, whereby (parts of) the asylum procedure would take place outside the European Union and refugees would (only) be able to come to the Netherlands through resettlement.

The debate is also ongoing within GroenLinks/PvdA, with a call for a ‘radically different refugee system’ published in the magazine S&D,¹ although these proposals did not make it into the election programme. The PVV, which narrowly lost the elections, advocates a complete halt to asylum and the refusal of all asylum seekers at the border, while the emerging JA21 promises to modernise ‘outdated’ international treaties, for which the Netherlands would have to organise an international summit. Although the motives for these proposals differ, they share an emphasis on increasing control over the influx of asylum seekers and on relocating (parts of) the asylum procedure outside the European Union. Where necessary, international treaties must be reformed to enable this so-called ‘externalisation of asylum’. Earlier in 2025, the House of Representatives had already adopted the Boomsma/Van Zanten and Ceder motions to this effect.²

This political commitment is also clearly stated in the coalition agreement between D66, CDA and VVD, which affirms that the Netherlands, together with other European countries, will take the lead in building support for the modernisation of international refugee law and that an asylum summit will be organised. The governing parties ultimately aim for asylum applications to be submitted and processed outside Europe, so the asylum procedures will no longer be carried out in the Netherlands.

1 Michiel Emmelkamp, “[Why we must opt for a radically different refugee system](#)”, S&D, 25 April 2025.

2 Motion by the MP Ceder on a conference on modernising the UN Refugee Convention, *House of Representatives*, [Parliamentary Document 26150-229](#), 11 September 2025; Amended motion by the MPs Van Zanten and Boomsma on an exploration of treaties that may need to be modernised or revised, *House of Representatives*, [Parliamentary Document 32317-961](#), 12 June 2025.

In academic literature, scholars from various disciplines are likewise pushing the boundaries. Theoretical foundations for alternatives are being developed for territorial asylum, for example by Hathaway and others with their ideas on ‘collectivised, solution-oriented protection’; by Betts and Collier with their ‘market-based model for refugee autonomy’; and by Koopmans with his ‘radical thought experiment’ to move from individual asylum rights to humanitarian resettlement quotas.³ Scholars note that the externalisation of asylum can serve either to expand or to restrict access to protection, but that in practice it currently functions primarily as a way to discourage asylum seekers from seeking territorial asylum.⁴

Meanwhile, legal scholarship is refining the contours of destination-state responsibility in cases of externalisation, while policy actors are exploring ways to give effect to the political ambitions of parliamentary majorities.⁵ Evaluations from a human rights perspective highlight significant protection risks and emphasise the need for precautionary measures, enforceable safeguards and transparency.⁶

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- 3 James C. Hathaway and R. Alexander Neve, [“Making International Refugee Law Relevant Again: A Proposal for Collectivised and Solution-Oriented Protection”](#), *Harvard Human Rights Journal*, 1997, 10, pp. 115–211; Thomas Gammeltoft-Hansen and James C. Hathaway, [“Non-Refoulement in a World of Cooperative Deterrence”](#), *Columbia Journal of Transnational Law*, 2015, 53(2), pp. 235–284; Alexander Betts and Paul Collier, [Refuge: Transforming a Broken Refugee System](#), Penguin Books, 2017; Ruud Koopmans, [The Asylum Lottery: European Refugee Policy from 2015 to the Ukraine War and How It Can Be Improved](#), Prometheus, May 2023.
 - 4 Pauline Endres de Oliveira and Nikolas Feith Tan, [“External Processing: A Tool to Expand Protection or Further Restrict Territorial Asylum?”](#), Migration Policy Institute, February 2023; K.P. Norman and A. Martin Gil, [“Opening doors, hardening borders: Inside Biden’s strategy on mixed migration and the lessons learned for Europe”](#), Mixed Migration Centre, 10 October 2025; Nikolas Feith Tan, [“Transnational Asylum: Toward a Principled Framework”](#), Routledge, 19 March 2025.
 - 5 David Cantor et al., [“Externalisation, Access to Territorial Asylum, and International Law”](#), *International Journal of Refugee Law*, Volume 34, Issue 1, 28 June 2022, pp. 120–156; Andreina De Leo and Eleonora Celoria, [“The Italy–Albania Protocol: A New Model of Border-Shifting within the EU and Its Compatibility with Union Law”](#), *Maastricht Journal of European and Comparative Law*, Volume 31, Issue 5, 12 January 2025, pp. 595–618; Annick Pijnenburg and Kris van der Pas, [“Litigating Externalisation Policies: The Added Value of a Multi-Level Legal Order?”](#), *Refugee Survey Quarterly*, Volume 44, Issue 3, September 2025, pp. 345–369.
 - 6 Sandra Lavenex, [“The Cat and Mouse Game of Refugee Externalisation Policies”](#), in: A. Dastyari, A. Nethery and A. Hirsch (eds.), [Refugee Externalisation Policies: Responsibility, Legitimacy and Accountability](#), Routledge, 22 July 2022; Violeta Moreno-Lax and Martin Lemberg-Pedersen, [“Border-induced displacement: The ethical and legal implications of distance-creation through externalisation”](#), *Questions of International Law*, Volume 56, 28 February 2019, pp. 5–33; Piotr

Outside of the law, scholars conceptualise the externalisation of asylum within the context of global migration governance, with an emphasis on control through international agreements and the containment of asylum processes outside a state's own territory.⁷

Against this background, the Dutch Ministry of Asylum and Migration requested a policy exploration, resulting in a public paper that addresses the following main question:

What would be required for initiatives aimed at accommodating more asylum seekers outside the EU and/or processing more asylum applications outside EU territory?

To answer this main question, the following sub-questions have been formulated:

- What is the significance of the international legal framework on refugee protection for possible forms of externalisation of (parts of) the asylum procedure?
- What types of externalisation can be distinguished?
- What are the potential bottlenecks for these types of externalisation?
- What possibilities exist for implementing these types of externalisation within the current EU frameworks and treaties in the field of asylum and migration?
- What points should be considered if a decision is made to focus on adapting EU frameworks and treaties?

Sadowski, "[The EU's approach to the extraterritorial processing of asylum claims and its Compliance with international law](#)", *Revista General de Derecho Europeo*, No. 53, 2021, pp. 28–78; Evangelia Tsourdi, Andrea Ott and Zvezda Vankova, "[The EU's Shifting Borders Reconsidered: Externalisation, Constitutionalisation, and Administrative Integration](#)", *European Papers*, Volume 7, No. 1, 2022, pp. 87-108.

- 7 David Scott FitzGerald, "[Remote Control of Migration: Theorising Territoriality, Shared Coercion, and Deterrence](#)", *Journal of Ethnic and Migration Studies*, 17 October 2020, 46(1), pp. 4–22; Lena Laube, "[Diplomatic Side-Effects of the EU's Externalisation of Border Control and the Emerging Role of 'Transit States' in Migration Diplomacy](#)", *Historical Social Research*, November 2021, 46(3), pp. 78–105; Alice Mesnard et al., "[The Effects of Externalisation Policies on Refugees and on the Migrants](#)", *Sciences Po CERJ*, 13 September 2024; Inka Stock, Ayşen Üstübcü and Susanne U. Schultz, "[Externalisation at work: responses to migration policies from the Global South](#)", *Comparative Migration Studies*, 17 December 2019, 7(48), pp. 1–9.

The concept of ‘externalisation’ is broad and encompasses various forms of cooperation and the outsourcing of asylum management. The definition used by the European Parliament is: ‘*Under externalisation practices, countries may opt to transfer part or all of the management of irregular arrivals outside their territory*’.⁸ In this report, we focus on initiatives to entirely or partially outsource the asylum procedure, as well as measures to facilitate the return of rejected asylum seekers.

Why would the Netherlands wish to ‘externalise’ asylum? After all, the country has signed the Refugee Convention and agreed to EU legislation thereon, including the reforms under the Asylum and Migration Pact, so why, then, is the Netherlands unable or unwilling to fulfil the associated obligations? The term ‘externalisation’ also quickly evokes an association with shifting responsibility – an accusation frequently made by critics of this approach towards those who are working on so-called ‘innovative partnerships’ with a view to externalisation.⁹

However, there are several arguments in favour of externalisation. Firstly, a large proportion of people arriving in Europe lodge unfounded asylum claims, which puts the asylum system under considerable pressure. Moreover, returning this group to their country of origin remains a major challenge – according to the European Commission, Member States only manage to enforce around 20 to 30% of return decisions each year.¹⁰

Secondly, large groups of migrants – those with justified and unjustified asylum claims, often referred to as *mixed flows* – reach Europe from distant shores via dangerous routes: across the Mediterranean Sea, or at times literally over the walls of Fortress Europe, rather than through resettlement channels¹¹ or legal migration pathways. Human traffickers have turned this into a profitable business model.

8 Gabija Leclerc and Maria Margarita Mentzelopoulou, “[Extraterritorial processing of asylum claims](#)”, *European Parliament Research Service*, July 2025.

9 Amnesty International, “[EU: New ‘safe third country’ proposals cynical attempt to downgrade rights and offload asylum responsibilities](#)”, 20 May 2025.

10 European Commission, [New European Common System on Returns](#), 11 March 2025. [Eurostat, Returns of irregular migrants - quarterly statistics](#), December 2025.

11 In 2024, UNHCR identified 2.4 million refugees for resettlement. In 2024, less than 5% (116,500 refugees) were actually resettled. The Netherlands resettled approximately 750 refugees that year (350 of whom were resettled under the EU-Turkey Statement). See: Ministry of Asylum and Migration, “[The State of Migration 2025](#),” July 2025.

Thirdly, the system currently favours those who can pay human traffickers, while many of the most vulnerable have little access to protection. Externalisation could be a solution to this, because it could remove the (migration) incentive to seek asylum specifically in Europe.¹²

Fourthly, the system is expensive. A great deal of money is spent on asylum procedures for a relatively small group of people who manage to reach Europe, while far greater funding needs to exist in order to support the much larger group of refugees accommodated in neighbouring countries affected by conflict.¹³

Despite these arguments in favour of considering externalisation, it is very important not to take such measures in isolation, as this would perpetuate the image of 'passing the buck'. In Europe, too little account is often taken of the fact that countries outside Europe, which take in the largest numbers of refugees, also face major problems.¹⁴ Therefore, any measures should always be embedded within a broader reform strategy that not only benefits Europe but also strengthens the global refugee protection system as a whole. This is not only a moral consideration but also a matter of self-interest. After all, it seems unlikely that the models discussed below can function sustainably without being part of such a broader approach. In that respect, it is time to shift the boundaries of participation in the policy debate, from a Eurocentric discussion to a global dialogue aimed at a broadly supported reform initiative.

In Chapter Two of this report, we address the question of which international and EU frameworks are relevant to aspirations to externalise (parts of) the asylum

12 Over the past ten years, approximately two-thirds of first-time asylum seekers in the EU were men, mostly between the ages of 18 and 34. The pattern is similar in the Netherlands. See EUAA, [‘Data Analysis of Asylum Applications by Sex and Age in 2024’](#), August 2025; CBS, [‘Asylum and integration’](#), 2025, p. 28 ff.

13 To illustrate this: Germany has budgeted €17.6 billion for asylum in 2026 (the total amount minus the approach to the root causes of migration), while the UNHCR’s total budget for the same year is \$8.5 billion (approx. €7.25 billion); Deutscher Bundestag, [‘Finanzplan des Bundes 2024 bis 2028’](#), 30 August 2024; UNHCR, [‘Overview of budget and expenditure’](#), consulted in January 2026. See also Loes Mulder, *Reflection. The reality of asylum policy*, article for the State Commission on Demographic Developments 2050, 16 October 2023.

14 See Jesse Marks, [‘Syrian Refugees in Jordan: A Crisis of Dwindling Humanitarian Aid’](#), *Carnegie Endowment*, 9 January 2024. See also Amnesty International, [‘Pakistan: ‘Treat us like human beings’: Afghans in Pakistan at risk of unlawful deportation’](#), 4 April 2025.

procedure, and we discuss the debates surrounding the interpretation of these frameworks and the need for their updating.

Chapter Three analyses the types of externalisation that are currently the focus of debate, providing practical examples and an overview of the risks associated with these models, as well as the bottlenecks they create in relation to the existing legal framework.

The chapter concludes with perspectives for action concerning these bottlenecks and with consideration being given to the countries that would need to host and/or implement the relocated (parts of) the asylum procedure. The conclusion summarises the answers to the research questions and locates them within the context of a call for a broader reform initiative. A first, rapid step in this direction could be the formation of an international and inclusive *like-minded* group of scholars and practitioners. Such a group could explore the contours of a new global system, intended to inspire and complement multilateral reform processes through the United Nations and the UNHCR.

2 International agreements at a glance

Dutch asylum policy is part of a broad system of international agreements on refugee protection, laid down in various treaties and EU regulations to which the Netherlands is a party. These international agreements and EU law are discussed below in general terms, partly in light of their relevance to potential forms of the externalisation of (parts of) the asylum procedure and the return of migrants residing unlawfully. First, the Refugee Convention is discussed, followed by other relevant international treaties and, in particular, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and finally EU law.

2.1 The Refugee Convention

The 1951 Refugee Convention and the accompanying 1967 Protocol¹⁵ form the core of international refugee law. The Refugee Convention was adopted after the Second World War and at the outset of the Cold War, with the underlying aim of offering protection in another state to individuals persecuted by their own government (for example, by communist regimes). The Additional Protocol was added in 1967 to remove the geographical limitations of the 1951 UN Refugee Convention (it no longer only applies to refugees from Europe) and its temporal restrictions (it no longer only applies to events occurring before 1951). The Protocol thus gave the Convention global and permanent effect.

However, several countries in Asia, the Middle East and Africa have not signed the Protocol because they considered that it did not adequately reflect the reality of large-scale displacement in their regions, where states were receiving significant numbers of people fleeing violence and disorder.¹⁶

15 UNHCR, '[The 1951 Refugee Convention and 1967 Protocol relating to the Status of Refugees](#)'.

16 Including Iraq, Jordan, Lebanon, the Gulf States, Eritrea, Libya, Bangladesh, India, Indonesia and Pakistan. See: Alexander Betts and Paul Collier, [Refuge: Transforming a Broken Refugee System](#), Penguin Books, 2017, p. 5.

The Refugee Convention defines a refugee as someone who has a well-founded fear of persecution because of their race, religion, nationality, membership of a particular social group or political opinion. This distinction is essential: persons who flee solely from the violence of war, without falling under any of these grounds, do not qualify as refugees under the Convention. Because this group also requires protection, the European Union introduced the status of *subsidiary protection* in the Qualification Directive. However, these individuals do not fall within the scope of the Refugee Convention. This is a large group, including a significant proportion of Syrian and Afghan asylum seekers. Ukrainian displaced persons have also been granted a separate status under the EU's Temporary Protection Directive in the EU. In addition, the Refugee Convention excludes persons who have committed serious crimes.

Central to the Refugee Convention is the principle of *non-refoulement*. This prohibits states from returning a refugee to an area or place where their life or freedom would be threatened on one of the grounds specified in the Convention. This means that every asylum application must be assessed individually, and that a person with a valid asylum claim may not be returned to an unsafe area. However, the Convention does not prescribe in which country protection must be provided. It is therefore consistent with the Convention for the Netherlands to transfer a refugee to another country, provided that that country is willing to accept the individual and grant them the rights afforded under the Convention.¹⁷

However, if a person is not recognised as a refugee, they fall outside the scope of the Refugee Convention. The Convention therefore contains no provisions on the treatment of persons whose asylum applications have been rejected.

The Refugee Convention is relatively concise and does not, in itself, constitute an obstacle to the externalisation of (parts of) the asylum procedure. The core of the Convention – its most important obligation – is the principle of *non-refoulement*. Because this principle is now regarded as customary international law,¹⁸ even the possible termination of the Convention would not automatically invalidate this obligation.

17 James C. Hathaway, [“The Rights of Refugees under International Law”](#), Cambridge University Press, 2021.

18 Ministerial Meeting of States Parties, [“Declaration of States Parties to the 1951 Convention and its 1967 Protocol relating to the Status of Refugees”](#), 16 January 2002.

Finally, it is relevant to note that, precisely because of its concise nature, the Convention not only leaves considerable scope to individual states regarding how it is implemented, but also leaves open the question of how international cooperation in the field of refugee protection should be organised. The drafters of the Convention already recognised this in 1951, as evidenced by the preamble to the Convention: *‘considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation, ... expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States’*.¹⁹

The international cooperation called for by the signatories as early as 1951 has not yet been sufficiently achieved to meet current challenges. In 2018, the UNHCR attempted to strengthen this cooperation through the *Global Compact on Refugees*,²⁰ but this instrument is non-binding and has, in practice, been implemented to a limited extent.²¹ A similar situation applies to the *Global Compact for Migration*, adopted in the same year.²² This document is considered to be inadequate by many European countries, and some EU Member States abstained or voted against it in the UN. In the Netherlands, too, it led to considerable political controversy.²³ Like the Refugee Compact, the Migration Compact is non-binding, and its implementation remains incomplete.

There is therefore every reason to examine the extent to which more intensive international cooperation could contribute to a more effective approach to today’s refugee and migration challenges. The intention to cooperate internationally, as articulated in the 1951 Refugee Convention, has so far been realised only to a limited degree and still awaits effective and sustainable implementation. This is explored in more detail in the concluding chapter.

19 UNHCR, [“The 1951 Refugee Convention and 1967 Protocol relating to the Status of Refugees”](#), p.13.

20 United Nations, [“Global Compact on Refugees”](#), 2018.

21 UNHCR, [“Global Compact on Refugees Indicator Report 2025”](#), 2025.

22 United Nations General Assembly, [“Global Compact for Safe, Orderly and Regular Migration”](#), 11 January 2019.

23 Carla Joosten, [“How ‘Marrakesh’ never made it onto the agenda”](#), *EW Magazine*, 9 November 2018.

2.2 Other relevant international conventions

Within the nine UN human rights treaties, which together form the foundation of the international human rights framework,²⁴ three treaties ratified by the Netherlands are particularly relevant to the protection of refugees. First is the *International Covenant on Civil and Political Rights*,²⁵ which contains provisions on, among other things, torture and the expulsion of foreigners. Secondly, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which explicitly stipulates that no State Party may expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture.²⁶ The third relevant source is the *Convention on the Rights of the Child*, which centres on the principle of *the best interests of the child*.²⁷ This has direct implications for the treatment of refugee and migrant children, including in relation detention, family reunification and deportation.

These treaty obligations also have implications for the possibilities of externalising the asylum procedure, because individual risk assessment and the involvement of human rights and children's rights remain necessary.²⁸

24 OHCHR, [‘The Core International Human Rights Instruments and their monitoring bodies’](#).

25 United Nations General Assembly, [“International Covenant on Civil and Political Rights”](#), 16 December 1966, Articles 7 and 13.

26 OHCHR, [“Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”](#), 10 December 1984, Article 3. The UN Convention emphasises prevention, prosecution and monitoring, while Article 3 of the ECHR is stronger in migration cases due to review by the ECtHR.

27 OHCHR, [“Convention on the Rights of the Child”](#), 20 November 1989, Articles 3 and 22.

28 An individual and careful assessment of the risks of treatment contrary to, among other things, Article 7 of the ICCPR and Article 3 of the CAT, and of specific vulnerability (including children), which makes automatic or collective transfer incompatible with these treaties. The EU has already decided on different arrangements for applying the concept of a ‘safe third country’ to minors (see section 2.4), and the protection of minors will also play an important role in the development of return hubs.

2.3 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

The ECHR dates from 1950 and now has 46 member states of the Council of Europe, including all 27 current EU Member States. It is therefore not an EU treaty: the European Union itself is not a party, but all individual EU Member States are. Compliance with the ECHR is monitored by the European Court of Human Rights (ECtHR), based in Strasbourg. All contracting states must respect human rights as soon as they have actual control over a person – both on their own territory and during rescue operations at sea.

The ECHR forms the foundation of human rights protection in Europe and is therefore an essential and cherished treaty. At the same time, the treaty – and in particular the way in which it is interpreted by the ECtHR in migration cases – has long been the subject of debate.²⁹ Article 3 of the ECHR stipulates that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. Through the case law of the ECtHR, the prohibition of torture has developed into a prohibition of expulsion.³⁰ However, the ECtHR does not derive a right of residence from Article 3 of the ECHR; that right of residence has been created primarily by EU law (see section 2.4), building on existing practices in many Member States. The interpretation of Article 3 of the ECHR has gradually shifted from a strictly individual risk assessment to recognition that belonging to a systematically persecuted minority group, or even the general situation of serious violence or human rights violations, may be sufficient to constitute a ‘real risk’ of a violation of Article 3 of the ECHR in the event of transfer or expulsion.³¹

Article 8 of the ECHR, which enshrines the right to respect for private and family life, has also come to play an important role in the deportation of (established) migrants residing unlawfully. This article is balanced in the sense that paragraph 1 refers to individual rights, while paragraph 2 focuses on the interests of the community: *‘There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the*

29 See the Annex for developments in the debate on the ECHR.

30 EHRM 7 juli 1989, [Soering t. Verenigd Koninkrijk, nr. 14038/88](#).

31 See the Annex and Myrthe Wijnkoop, [‘Every refugee is a migrant, but not every migrant is a refugee’](#), in: Monika Sie Dhian Ho et al. (eds.), *Over de grens*, 2022, Van Gennep Amsterdam, p. 57.

economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.’

The case law of the ECtHR largely determines how broad or how limited the scope for states may be. The Court emphasises that it does not take the place of national authorities, as long as the national courts examine the facts carefully, apply the ECtHR case law, and strike a fair balance between the interests at stake.

In practice, this means that the individual proportionality test determines how strictly or how flexibly states can approach transfers or returns to third countries with which the individual has no (family) ties, for example via so-called ‘transit or return hubs’.³²

2.4 Applicable EU law framework

The international obligations described above are enshrined in EU law. However, EU law – and its interpretation – goes considerably further and contains far more detailed provisions than the international standards on which it is based. Moreover, EU law has a more mandatory character. As a result, it ultimately takes precedence and imposes stricter constraints on national asylum policy than the Refugee Convention and other international treaties. This conclusion was also reached by Donner and Den Heijer in their ‘exploration of the opportunity for an investigation into whether, and if so how, the 1951 Refugee Convention can be updated to provide a sustainable legal framework for the international asylum policy of the future’.³³ The Third Rutte Cabinet (2017-2022) had announced this independent study in its coalition agreement.³⁴ Donner and Den Heijer summarise their findings as follows: *‘The possibilities for pursuing national policy have become more limited, but this is not due to the Refugee Convention. It is undoubtedly dated, but not obsolete, and it certainly does not stand in the way of a responsible asylum policy. Much more significant restrictions arise from the ECHR and EU law.*

32 A transit or return hub is a reception or detention centre outside the EU for migrants who are required to leave and are awaiting their return to their country of origin.

33 J.P.H. Donner and M. den Heijer, [‘Terechte Zorg, verkeerd aanknopingspunt’](#) (Justified Care, Wrong Starting Point), 2020, p. 39.

34 See: VVD, CDA, D66 and ChristenUnie, [“Vertrouwen in de toekomst. Regeerakkoord 2017 – 2021”](#) (Confidence in the future. Coalition agreement 2017–2021), 2017, p. 51.

Amending or terminating the Refugee Convention will therefore not substantially change or alleviate the Netherlands' obligations towards asylum seekers and refugees.'

This section provides a brief overview of EU law. We highlight only those (new) provisions that influence externalisation and limit or expand the scope for external asylum procedures and deportations to third countries.

Charter of Fundamental Rights of the EU

Since the entry into force of the Treaty of Lisbon in 2009, the Charter of Fundamental Rights of the European Union (EU Charter) has been legally binding on both the EU institutions and the Member States when they implement or apply EU law.³⁵ Insofar as the EU Charter contains rights corresponding to those in the ECHR, their content and scope are the same; however, EU law may offer broader protection, including through provisions on human dignity (Article 1).³⁶ Article 18 of the EU Charter guarantees the right to asylum '*in accordance with the rules of the Refugee Convention and the 1967 Protocol*', thereby embedding international obligations in EU law.

Article 19 of the EU Charter stipulates that 'no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment'. Article 4 reinforces this by imposing an absolute prohibition on torture and inhuman or degrading treatment or punishment, comparable to Article 3 of the ECHR. Article 7 guarantees the right to respect for private and family life, mirroring the protection offered by Article 8 of the ECHR. Article 24 emphasises the importance of the child. Transfers to countries where families are separated and children's rights are not safeguarded, or where reception and detention conditions are harmful to them, may therefore be contrary to these articles.³⁷

35 Violeta Moreno-Lax and Cathryn Costello, "[The Extraterritorial Application of the Charter: From Territoriality to Facticity, the Effectiveness Model](#)", in: S. Peers et al. (eds.), *The EU Charter of Fundamental Rights: A Commentary*, Hart Publishing, 2014, pp. 1657–1683.

36 [Charter of Fundamental Rights of the European Union](#), 26 October 2012. Art. 52(3) Charter, see: Charter of Fundamental Rights of the EU, European Law Expertise Centre.

37 Concrete guarantees of physical safety, access to basic services and protection against violence and exploitation, with the best interests of the child and family unity as core principles. Child detention is therefore almost never justified: only as a last resort and for the shortest possible period of time.

Finally, Article 47 of the EU Charter guarantees the right to an effective remedy and to a fair trial, implying that asylum seekers must have access to independent judicial review of decisions, including transfer and return decisions to third countries. Any asylum seeker present on EU territory is entitled to request protection in the EU, including the possibility of appealing against a negative decision.

Common European Asylum System

The EU legal framework for asylum and migration has developed significantly since the launching of the Common European Asylum System (CEAS) in the early 2000s. The CEAS, which is laid down in various directives and regulations, harmonises, among other things, the standards for asylum procedures, reception conditions and the criteria for determining which Member State is responsible for examining an asylum application. The Asylum Procedures Directive sets out the procedural rules for granting and withdrawing international protection and forms the basis for a common asylum procedure in the EU.³⁸

The current directive (as of 12 June 2026, the Asylum Procedures Regulation) also contains provisions that are directly relevant to externalisation, such as the safe third country concept. An asylum application may be declared inadmissible if a third country can serve as the ‘first country of asylum’, provided that the person concerned has already been recognised as a refugee there or otherwise enjoys sufficient protection and is readmitted.³⁹ In addition, an application may be declared inadmissible if a third country can be designated as a ‘safe third country’.⁴⁰ This requires, among other things, that the person concerned has a meaningful connection with that country (this will change on 12 June 2026, see below) and that that country is willing to take him or her back. In such cases, the further asylum procedure may take place in the third country concerned.

EU law also sets clear limitations on outsourcing asylum procedures outside the EU. Article 9 of the Directive (and Article 10 of the Asylum Procedures Regulation)

38 The Asylum Procedures Directive will be replaced in June 2026 by the Asylum Procedures Regulation (EU) 2024/1348. See: [“Asylum Procedures Regulation \(EU\) 2024/1348”](#) and [“Directive 2013/32/EU on common procedures for granting and withdrawing international protection”](#).

39 Pursuant to Article 33(2)(b), in conjunction with Article 35 of the Asylum Procedures Directive. See also Article 58 of the Asylum Procedures Regulation.

40 Pursuant to Article 33(2)(c) in conjunction with Article 38 of the Asylum Procedures Directive. See also Article 59 of the Asylum Procedures Regulation.

stipulates that asylum seekers have the right to remain in the Member State for as long as their procedure – including first instance appeals – is ongoing. A transfer based on the safe third country concept can therefore only take place once a rejection or declaration of inadmissibility has become final.

Important parts of the EU asylum acquis, such as the Asylum Procedures Directive and the Reception Conditions Directive, are territorially limited and apply only to applications lodged on EU territory. The EU not only protects refugees but also ‘subsidiary protection beneficiaries’ based on the Qualification Directive,⁴¹ and also offers temporary protection to Ukrainian displaced persons on the basis of the Temporary Protection Directive.

Reform of the Asylum Procedures Regulation

On 18 December 2025, a political compromise was reached between the Council and the European Parliament. If adopted, the conditions for applying the ‘safe third country’ concept in the Asylum Procedures Regulation (APR) will change.⁴² The most important changes affecting the possibilities for externalisation are as follows:⁴³

No mandatory ‘substantial connection’

Previously, a substantial link between the applicant and the third country (e.g. family ties or prior residence) was required. This is no longer mandatory, but optional.

Transit or bilateral agreement is sufficient

Merely transiting through a third country and/or the existence of an agreement guaranteeing access to an asylum procedure there is sufficient to declare an application inadmissible.

41 Subsidiary protection beneficiaries are persons who are not eligible for refugee status but who face a real risk of serious harm – such as the death penalty, torture or indiscriminate violence in an armed conflict – and therefore enjoy protection under the Qualification Directive.

42 European Parliament, [‘Application of the “safe third country” concept, 2025/0132\(COD\)’](#), 2025.

43 Council of the European Union, [“Safe third country: Council and European Parliament agree on new EU law restricting admissibility of asylum claims”](#), 18 December 2025. On 10 February 2026, the European Parliament approved the amendment of the safe third country concept and the establishment of an EU list of safe countries of origin, see press release: [Asylum: new rules for safe third countries and EU safe countries of origin list | News | European Parliament](#).

Appeal without automatic suspensive effect

Applicants may lodge an appeal, but this no longer has an automatic suspensive effect. However, a judge may still decide to grant a suspension.

In addition, the Council and the European Parliament have agreed that the safe third country concept cannot be applied solely on the basis of an agreement or arrangement in the case of unaccompanied minors, unless there has been transit through the third country and a meaningful connection with a transit country.⁴⁴

Reform of the Return Directive

An EU Member State may only return individuals within the limits set by the Return Directive. This means that the journey to a third country, the stay there, and the transit to the country of origin must all comply with the definition of return in the Return Directive.⁴⁵ In the case of forced return, an EU Member State may only organise a return to the country of origin or to a country that has formally agreed to admit the person concerned during their transit. EU law contains hardly any rules on temporary reception or residence in a third country *en route* to the country of origin. Transit usually involves a short stay. It is therefore evident that a stay in a transit or return hub should be limited in time if the objective is to enable onward travel to the country of origin.

When a return operation aims at removing someone to a country officially designated as a ‘transit country’, a longer stay in a transit hub can be better justified. In such cases, a country may only be used as a transit country if there is a formal agreement with that country.

On 11 March 2025, the European Commission proposed a Common European Return System to harmonise rules and increase the return rate.⁴⁶ On 8 December 2025, the Council agreed on a draft that includes return hubs and stricter

44 For example, in the case of a previous permanent residence of an unaccompanied minor in a third country and under an EU readmission agreement and acceptance by the third country.

45 European Parliament and Council, [“Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals”](#), 16 December 2008, Article 3(3). ‘Return’ is the process whereby a third-country national returns – voluntarily or forcibly – to: 1) his or her country of origin, or 2) a country of transit on the basis of Community or bilateral readmission agreements or other arrangements, or 3) another third country to which the person concerned voluntarily decides to return and which accepts him or her.

46 European Commission, [“New Common European System for Returns”](#), 11 March 2025.

detention and sanction provisions, and the proposal is now entering the next phase. The plan introduces clearer procedures for voluntary and forced return, stricter measures against absconding and special provisions for security risks. It also provides a legal basis for transit and return hubs in third countries, based on agreements and arrangements with third countries that respect international law, including the principle of *non-refoulement*.

Under the current Return Directive, the consent of the person concerned (and admission by the third country) is required for a return to any third country.⁴⁷

Forced return to the country of origin or to a designated ‘transit country’ under EU or bilateral readmission agreements is possible. Any return to a third country depends on the will of the person and the cooperation of the third country. The proposed Return Regulation seeks to nuance or reduce this consent in order to facilitate forced return. The proposal also formalises the use of ‘arrangements’, such as soft-law instruments or bilateral political declarations in addition to treaties, to reduce technical obstacles to cooperation.

Although certain requirements –such as monitoring mechanisms and exclusions for minors– are included, the proposal for a Return Regulation gives Member States some leeway, including with regard to the geographical location of hubs. The proposal defers the elaboration of safeguards, such as reception and detention standards, to future bilateral agreements. Ultimately, the effectiveness and legality of transit and return hubs will depend on how they are implemented by Member States. The European Parliament’s draft report proposes only limited safeguards, such as the application of the EU Charter and prioritising returns to countries of origin, but practical obstacles to legal protection and oversight remain.⁴⁸

47 Article 3(3) Return Directive.

48 ECRE, [“European Parliament Draft Report on Return Regulation”](#), November 2025; European Parliament, [“LIBE draft report, PR_COD_1amCom”](#), 30 October 2025; Meijers Committee, [“Meijers Committee Comment on the Proposal for a Return Regulation”](#), April 2025.

3 Forms of externalisation and cooperation with third countries

The models for externalising (parts of) the asylum procedure, or for facilitating return, that are currently being discussed internationally or are already being implemented vary widely. The differences depend largely on how three key questions are answered:

1. Which part of the asylum procedure is transferred abroad (procedural scope)? This may include screening, processing, protection and/or return.
2. Who bears legal responsibility? This may remain with the destination country or be transferred to a third party.
3. Who actually implements the policy (the implementer)?

These choices produce a spectrum of externalisation models. They range from pre-entry screening, through a partial or full outsourcing of asylum procedures, to mechanisms limited to return. Each model seeks to address different shortcomings of the existing asylum and migration system.

- **Pre-entry screening** focuses on mixed migration flows and aims to disrupt the business model of human smuggling by filtering asylum claims before arrival in the EU.
- **Full transfer of jurisdiction** aims to negate the perceived pull factor of asylum as a pathway to permanent migration to a country of choice, instead emphasising temporary protection in the first safe country.
- **Return mechanisms** focus on the practical ability to return asylum seekers whose claims have been rejected.

The analysis below covers five different models:

1. **Screening along the migration route**
2. **Disembarkation platform**
3. **(External) border procedure in a non-EU country**
4. **Procedure and reception in a third country (Safe Third Country concept)**
5. **Return and transit hubs**

For each model, we discuss the structure of externalisation, the specific systemic problems that the model seeks to address, examples of the model in practice, the risks and obstacles associated with its implementation, and the possible courses of action to mitigate and/or overcome these challenges. We emphasise that the models are not mutually exclusive and may be combined.

3.1 Screening along the migration route

Design

This model⁴⁹ moves the first screening phase of the asylum process to transit countries along the migration route as well as the EU's external borders. After screening, applications that are considered likely to be unfounded are assessed extraterritorially – either along the migration route or in a third country. For people in this category, protection or return procedures are offered extraterritorially. Any return decisions are also implemented from that third country.

'Destination countries' refers to all participating countries – European and non-European – that are willing to participate in this multilateral framework. In order to avoid legal, technical and practical complications, screening may take place in separate facilities (such as embassies) or, in the context of a pilot project, at a joint location managed by a single private party or an international organisation (a regional hub). The UNHCR or IOM may be involved in the pre-screening of candidates. Successful candidates are then invited to the destination states, with final screening decisions being taken by those countries themselves.

This takes place in accordance with the relevant international and regional legal standards, including the Refugee Convention and, where applicable, the ECHR and the EU Charter.

Applicants whose claims are likely to be well founded are transferred to a destination country (with participating states determining the allocation among themselves), where they undergo the full asylum procedure. Those found to be entitled to asylum receive protection in the destination country; those whose

49 This model has been inspired by Nikolas Feith Tan's approach to transnational asylum models: Nikolas Feith Tan, "[Transnational Asylum: Toward a Principled Framework](#)", 2025.

claims are rejected enter that state's return procedure. Jurisdiction usually remains with the destination country or is shared with international organisations such as the UNHCR or IOM, which act as implementing parties.

Addressing systemic gaps (dangerous routes and pre-screening)

This model is designed to address the fairness and security issues arising from mixed migration flows and dangerous journeys. By engaging with potential asylum seekers before they reach the territory of a destination country, it becomes possible for them to apply for asylum along the migration route. The aim is to manage mixed migration flows more effectively.

Through this screening, applicants with presumably unfounded asylum claims enter the asylum procedure and, if rejected, immediately enter the return process from that extraterritorial location. In this way, such a model can reduce the number of unfounded asylum applications in the destination country and speed up returns to countries of origin – provided that these applicants are convinced that further travel to the destination country is not worthwhile,⁵⁰ or are offered alternative pathways (e.g. for specific legal labour migration).

Some of the applicants with likely well-founded asylum claims will be transferred to the destination country for the asylum procedure. This is in line with the whole-of-route approach of the IOM and UNHCR, which aims to create safe, legal and protected options along the entire migration route, options that are currently largely absent.⁵¹ The model seeks to address inequalities in access to the current system, which disproportionately favours young men who are able to survive dangerous irregular routes, while many who are equally or more in need are denied access.⁵² Moreover, the provision of such safe and legal routes may help to undermine increasingly lucrative and deadly human smuggling practices.

50 It cannot be ruled out that, after being rejected, they will continue their journey and apply for asylum in the EU. Asylum seekers are allowed to remain in the Member State for as long as their asylum procedure is ongoing, see section 2.4.

51 UNHCR, ['Route-Based Approach: Establishing Multi-Purpose Hubs – A guide'](#), July 2025.

52 Over the past ten years, approximately two-thirds of first-time asylum seekers in the EU have been men, mostly between the ages of 18 and 34. The pattern is similar in the Netherlands. See EUAA, ['Data Analysis of Asylum Applications by Sex and Age in 2024'](#), August 2025; CBS, ['Asylum and integration'](#), 2025, p. 28 ff.

Examples

- **Heavy model:** facilities abroad managed by the destination country, applying the destination country's standards (legally complex; see section 3.4).
- **Light model:** pre-screening via embassies or the UNHCR/IOM (such as the *American Safe Mobility Offices*) or traditional resettlement schemes. A digital profile is created and shared, with each participating country retaining full control over the numbers and criteria.

In this model, asylum applications that are likely to be unfounded are examined by the transit country.

The transit-country part resembles the US-funded *Safe Mobility Offices*. Launched under US President Biden in several Latin American countries in 2023, these centres served as regional hubs offering (prospective) migrants information on their chances of asylum, humanitarian admission, and other legal pathways – such as family or work visas – in the United States, Canada and Spain, alongside UNHCR screening.⁵³ Access was exclusively through an online platform; the offices did not accept walk-ins, and their locations were kept confidential to prevent queues. The Biden administration's strategy was to offer these legal pathways, including programmes – some requiring private sponsors, valid passports and self-funded flights –, in combination with stricter US border procedures and a reversal of the burden of proof when applying for asylum at the US border.

According to the US State Department, 266,570 individuals applied; 31,361 received information about legal pathways to the US or opportunities for integration where they currently reside; 26,738 travelled through the US Refugee Admissions Programme; and more than 1,000 were referred to third countries via *Safe Mobility Offices*.⁵⁴ For example, Spain admitted around 200 Nicaraguans from Costa Rica and is considering establishing centres in Senegal and Mauritania that would provide information on migration routes.⁵⁵

53 Kathleen Bush-Joseph, "[Outmatched: The U.S. Asylum System Faces Record Demands In Search of Control, United States of America Country Report](#)", *MPI*, February 2024.

54 U.S. Department of State, "[Safe Mobility Initiative: Helping Those in Need and Reducing Irregular Migration in the Americas](#)", *Bureau of Population, Refugees, and Migration*, accessed January 2026.

55 Kelsey P. Norman and Ana Martin Gil, "[Opening doors, hardening borders: Inside Biden's strategy on mixed migration and the lessons learned for Europe](#)", *Mixed Migration Centre*, October 2025.

The relative success of Safe Mobility Offices was also linked to stricter US border procedures, which were designed to ensure that screening took place earlier in the process. From June 2026 onwards, stricter screening and external border procedures will be introduced in the EU. In addition, the variant involving foreign facilities (the heavy model) lends itself to being combined with outsourcing asylum procedures to a third country, thereby reducing the number of applications arriving at the external border at the same time (see section 3.4). Most US legal pathway programmes were dismantled within months of the Trump administration taking office in 2025.

Risks

The proposed model faces several challenges. Politically, its success depends on the willingness of transit countries to conduct screening and, for asylum applications that are likely to be unfounded, to conduct the entire asylum process – including returning the rejected applicant to their country of origin. This requires strong, mutually beneficial partnerships, which take time to build.

In addition, it may be difficult to garner political support in Europe for such arrangements, as the system could lead to broader access to protection in Europe. Individuals found to be in need of protection could be transferred to the EU, which may act as a significant pull factor. This effect could be moderated by resettlement and visa quotas, based on three factors: the capacity of the location, public support for refugee reception, and agreements with non-EU countries (including a mutual quota allocation).

Finally, the establishment and management of screening facilities in third countries by one or more states poses major operational challenges. They require a robust monitoring of reception and return conditions by actors such as the UNHCR and IOM and, where appropriate, by the EUAA or Frontex.

3.2 Disembarkation platform

Set-up

A disembarkation platform provides a safe location for disembarkation after rescue at sea. It is a designated site or facility outside the EU where rescued migrants and asylum seekers can safely go ashore. This applies when individuals have been rescued either in the territorial waters of third countries or in international waters by EU vessels, provided that the principle of non-refoulement is respected.

Addressing systemic gaps (dangerous routes)

This model has the potential to address mixed migration flows and dangerous sea crossings by shifting the screening outside the EU's territory. In the absence of formal agreements between states, the International Maritime Organization recommends that primary responsibility for organising a 'place of safety' lies with the state that is responsible for the relevant Search and Rescue (SAR) zone. This obligation does not necessarily require disembarkation on that state's own territory.⁵⁶ As such, it does not confer an automatic right of access to EU territory or to an EU asylum procedure for persons rescued by an EU vessel.

Example

- **Disembarkation procedure between Italy-Albania:**

The agreements stipulate that single men from countries designated by Italy as 'safe countries of origin' who are rescued in international waters by an Italian vessel do not disembark in Italy, but in Albania, in reception centres established for this purpose. Upon arrival at the Port of Shëngjin, they are registered and medically screened, and vulnerable persons are identified and returned to Italy. Only those assessed as *suitable for detention* are transferred to the closed centre in Gjadër, where the accelerated border procedure is carried out.

Risks

The duty to rescue people at sea is only fulfilled when those rescued can safely disembark. If a third country retrieves people to its own territory ('pullbacks'), this does not constitute refoulement, but it may violate their right to leave any country freely.⁵⁷

When an EU vessel outside its own territory and territorial waters transfers people to any non-EU country without assessing their individual circumstances, this may amount to collective expulsion and may entail a risk of (chain)

56 According to IMO guidelines (including [MSC.167\(78\)](#)), the primary responsibility for providing a "place of safety" lies with the state responsible for the SAR zone where the rescue has taken place. However, the guidelines do not oblige that state to allow disembarkation on its own territory; they only require that a safe place be arranged within a reasonable time.

57 Nora Markard, '[The Right to Leave by Sea: Legal Limits on EU Migration Control by Third Countries](#)', *European Journal of International Law*, Volume 27, Issue 3, August 2016, pp. 591–616.

refoulement under Article 3 of the ECHR.⁵⁸ If such risk assessments are conducted under significant time pressure during disembarkation, legal safeguards are inevitably weakened. It is therefore important to make agreements with a non-EU country as a ‘place of safety’. It is most obvious to start by considering European countries that are bound by the ECHR and that respect the principle of non-refoulement in practice.

Although the model does not require amendments to EU legislation – and the European Commission concluded in 2018 that such platforms are legally and practically feasible – its implementation continues to depend on the willingness of partner countries around the Mediterranean.⁵⁹ Without the cooperation of partner countries (so far only Albania), along with investments in coastguard capacity and procedures that comply with human rights standards, the operational feasibility of disembarkation platforms remains uncertain.

Against this background, the question arises as to which model is most suitable for making disembarkation outside EU territory both legally sustainable and operationally feasible. The choice largely depends on the extent to which the EU Member State wishes to retain control over the procedure. If the disembarkation platform is primarily viewed as an extension of the EU’s external border, then the most logical model would be an external border procedure conducted in a non-EU country, in which jurisdiction remains fully with the destination country and the procedure is effectively carried out extraterritorially (see section 3.3).

If, on the other hand, a model is chosen in which not only physical reception but also the asylum procedure and responsibility for protection are entrusted entirely to a third country, the model shifts towards a safe third country concept, in which the EU Member State largely transfers its responsibility (see section 3.4). This choice determines both the legal risks and the practical feasibility of extraterritorial models.

58 See: Sergio Carrera et al., [“The 2023 Italy-Albania Protocol on Extraterritorial Migration Management”](#), CEPS, December 2023.

59 European Commission, [“Commission contribution to the European Council: Economic and Monetary Union, migration, EU budget for the future”](#), 20 June 2018.

3.3 (External border) procedure in a non-EU country

Structure

In this model, the destination state screens asylum seekers at the external border, creating a legal fiction of non-admission (external border procedure).

Applicants who appear likely to have well-founded asylum claims are then granted access to the asylum procedure within the destination state. If their applications are nevertheless rejected, they follow the return procedure from within the destination state.

Applicants whose claims are assessed as likely to be unfounded are physically transferred to a non-EU country to undergo the asylum procedure there, as well as – in the case of rejection – the return process. If an applicant is found to be in need of protection, they are transferred to the destination country to receive that protection. Throughout the entire process, the destination country retains full jurisdiction, including over the procedures carried out in the non-EU country. This means that EU law and the ECHR continue to apply.

The non-EU country merely hosts the physical infrastructure, providing territory but not the legal framework. Officials of the destination state carry out the procedure in accordance with their own national and EU legislation. This model therefore creates a system of portable responsibility, meaning that the destination country's legal obligations follow its officials wherever they operate.

Addressing systemic gaps (the security aspect and secondary migration)

This separation of territory and jurisdiction can help to address security concerns and secondary movements. By holding applicants in a controlled extraterritorial facility during the procedure, the model prevents them from disappearing into the open Schengen area during lengthy procedures.⁶⁰ This model is also intended to enable more rapid returns.

⁶⁰ A flaw in the current system is that asylum seekers do not remain in the first Member State of arrival and instead travel on or go into hiding to avoid a Dublin transfer to the responsible Member State.

Example

This model formed the basis of the original Italy-Albania Protocol, in which Italy applied accelerated procedures to people intercepted outside Italian territorial waters on their way to Italy.⁶¹ The aim was to identify specific groups, mainly adult male migrants from designated safe countries of origin, and to transfer them to extraterritorial facilities in Albania. The procedures for assessing their asylum applications would remain subject to Italian and EU law, despite the applicants' physical location outside the EU.

However, the original Italian plan has so far encountered legal objections. On 18 October 2024, an Italian court refused to confirm the detention of the first persons transferred. It ruled that the accelerated procedure could not be applied because the migrants' countries of origin (Bangladesh and Egypt) could not be considered safe for certain categories of persons. The court referred preliminary questions on this matter to the Court of Justice of the European Union (CJEU). In its judgment of 1 August 2025, the CJEU held that a country cannot be considered a safe country of origin if it does not meet the conditions laid down in the Procedures Directive for certain categories of applicants.⁶²

The Italian government subsequently converted the Albanian facilities into repatriation centres for migrants who were already subject to an expulsion order from Italian territory. The way in which Italy operates outside its own territory remains legally vulnerable.⁶³ Three preliminary references are currently pending before the CJEU concerning the compatibility of this approach with EU law.⁶⁴

It should be noted that the recently amended Asylum Procedures Regulation allows for territorial or group-based exceptions when designating safe countries of origin. This change may render Italy's original plans feasible.⁶⁵

61 Anna Fazzini, "[The Italy-Albania Protocol on the Extraterritorial Detention of Migrants: Critical Issues in International Law](#)", *The Italian Yearbook of International Law Online*, 2025, pp. 273-294.

62 CJEU 1 August 2025, C-758/24 (Alace) & C-759/24 (Canpelli).

63 See also: ASGI, "[Extraterritorial detention and the return of irregular migrants from Albania: doubts about compatibility with EU law](#)", July 2025.

64 CJEU 24 June 2025, C-414/25 (Sedrata). CJEU 6 November 2025, C-706/25 (Comeri) and C-707/25 (Sidilli).

65 Andreina de Leo, "[Managing Migration the Italian Way: The 'Innovative' Italy-Albania Deal under Scrutiny](#)", *Verfassungsblog*, 29 October 2024.

Risks

The concept of a border procedure in a third country is legally possible. This does not necessarily have to be accompanied by an accelerated procedure for asylum seekers from safe countries of origin, as in the Italian model. However, its practical feasibility depends to a large extent on the willingness of non-EU countries to cooperate, as well as on the way in which states design and implement their bilateral agreements to ensure that EU law and the ECHR are effectively complied with in practice. The costs of reception in a non-EU country may also be higher than anticipated. In Albania, for example, establishing the centres cost eleven times more than creating reception facilities in Italy.⁶⁶ It should be noted that, in order to make a proper comparison of the models, other categories of cost would also need to be taken into account.

3.4 Procedure and reception in a third country (safe third country concept)

Structure

In this model, an asylum seeker (or certain groups of asylum seekers)⁶⁷ is transferred to a third country to undergo the asylum procedure. Even where such a person is recognised as a refugee, they remain in that third country and are not necessarily resettled in the EU. If the application is rejected, they enter the return procedure from that location or remain in the third country. This model represents the most far-reaching form of outsourcing asylum and return, whereby full responsibility for both the asylum procedure and any subsequent protection – or the obligation to return the person concerned – is transferred to a third country.

Addressing systemic gaps

This model aims to decouple the link between territorial arrival and legal residence. By ensuring that physical access to Europe does not lead to settlement, the model seeks to discourage the targeted choice of an EU Member State as a destination country and to reduce irregular migration by groups with a low recognition rate.

⁶⁶ James Imam et al., “€72,461 per bed: Construction costs soar for Meloni’s offshore migrant hubs”, *Follow the Money*, 26 June 2025.

⁶⁷ For example, groups with a low recognition rate for protection. The choice may be to exclude certain categories of vulnerable groups, such as minors.

Examples

The United Kingdom attempted to implement such a model in cooperation with Rwanda. Announced in April 2022, the plan was intended to deter irregular boat crossings for the purpose of seeking asylum in the UK. The idea was to relocate a selection of asylum seekers to Rwanda, where they would have to undergo an asylum procedure under Rwandan law.⁶⁸ Those recognised as being in need of protection would receive that protection in Rwanda and would not be able to return to the UK. Rejected applicants would be offered the possibility of integrating in Rwanda or returning to their country of origin.

The UK government fought a prolonged legal battle to enable removals to Rwanda.⁶⁹ The High Court of England and Wales⁷⁰ initially ruled that transferring asylum seekers to Rwanda did not conflict with the UK's obligations under the UN Refugee Convention, other international agreements, or domestic case law. However, this judgement was overturned by the Court of Appeal (England and Wales).⁷¹ The Court held that, although it is not unlawful per se to send asylum seekers to a safe third country, deficiencies in Rwanda's asylum system created a risk of unfair processing. The ruling left open the possibility that Rwanda might become a safe third country in the future, should it develop sufficient capacity for assessing individual asylum claims.⁷² A few months later the UK Supreme Court unanimously ruled that Rwanda was not a safe country.

The then incumbent UK government rejected the decisions of the Court of Appeal and the Supreme Court and concluded a new agreement with Rwanda designating it as safe.⁷³ Following its election victory in 2024, however, the Labour government decided not to pursue this form of externalisation any further.

68 Asylum seekers who entered the UK without permission since 1 January 2022 with an 'inadmissible claim', mainly via small boats or other irregular routes.

69 Francesco Mascini and Monika Sie Dhian Ho, "[Dealing with Rwanda: Dilemmas in protecting refugees in third countries](#)," *Clingendael*, October 2023, p. 13; see also: Peter William Walsh, "[Q&A: The UK's former policy to send asylum seekers to Rwanda](#)," *Migration Observatory*, 25 July 2024.

70 "[AAA and others v Secretary of State for the Home Department \[2022\] EWHC 3230 \(Admin\)](#)," *High Court of Justice*, 19 December 2022.

71 "[AAA and others v Secretary of State for the Home Department \[2023\] EWCA Civ 745](#)," *Court of Appeal*, 29 June 2023.

72 In June 2023, the Court of Appeal referred to evidence that the hostel where asylum seekers would be housed in Rwanda only had room for approximately 100 people. The infrastructure was lacking in Rwanda.

73 "[Safety of Rwanda \(Asylum and Immigration\) Act 2024](#)," *UK Home Office*, 25 April 2024.

Unlike the UK, Australia succeeded in transferring asylum seekers to third countries under its offshore asylum policy. Individuals attempting to reach Australia by boat were either intercepted at sea and returned to their country of origin or taken to Papua New Guinea or Nauru.⁷⁴ Arrivals were almost completely halted, but the policy had severe consequences for those detained for years on the islands with no prospect of a durable solution. Refugees recognised under this system ultimately depended on the willingness of countries such as the United States and New Zealand to resettle them.

Australia operates in a legally and geopolitically exceptional position: it has no supranational court, no constitutionally enshrined human rights framework comparable to European states, and is surrounded by island nations that are economically dependent on Australia. These conditions made this form of cooperation with third countries possible. Although this approach had been discontinued on several occasions, it was revived after 2023 with a new agreement with Nauru, albeit thus far only for a small number of people.⁷⁵

In 2025, the UN Human Rights Committee, which oversees the ICCPR, ruled that Australia is responsible for the persons in the externalised asylum procedure due to the exercise of effective control, despite repeated denials by the Australian government.⁷⁶

Another example is the application of the ‘safe third country’ concept within the EU–Turkey arrangements. The 2016 EU–Turkey Statement provided for the return of irregular migrants to Turkey, where they would receive protection under Turkish law. Between 2016 and 2020, 2,140 persons were actually returned.⁷⁷ In Greece, Turkey was designated as a safe third country, but the Greek appeal authorities held that a short transit was insufficient to establish a meaningful connection

74 For more information about this policy, see: Anouk Pronk, “[The price of deterrence](#)”, *Clingendael*, 12 February 2024.

75 For monthly statistics, see Australian Border Force [Newsroom](#). Since 2025, a group of non-returnable migrants who had to be released due to a court ruling have also been arrested and sent back to Nauru on long-term visas.

76 OHCHR, “[Australia responsible for arbitrary detention of asylum seekers in offshore facilities, UN Human Rights Committee finds](#)”, 9 January 2025; Parliamentary Joint Committee on Human Rights, “[Human rights scrutiny report](#)”, 5 February 2025.

77 UNHCR, “[Returns from Greece to Turkey \(under EU-Turkey statement\) as of 31 March 2020](#)”, March 2020.

with Turkey.⁷⁸ Since 2021, actual returns to Turkey have been suspended, partly due to court rulings and Turkey's lack of readmission. In October 2024, the CJEU ruled that a Member State may not declare an asylum application inadmissible if it is established that the individual concerned will not be granted access to the designated third country.⁷⁹ Subsequently, in March 2025, the Greek Council of State annulled the designation of Turkey as a safe country on procedural grounds.⁸⁰

Under the EU–Turkey Statement, the EU has in recent years made significant investments in the reception and support of refugees in Turkey. Through the *Facility for Refugees in Turkey*, €6 billion was made available, of which more than €5.7 billion has now been disbursed, focusing on education, healthcare, humanitarian aid and municipal infrastructure.⁸¹ This support has enabled Turkey to better provide for more than 4 million Syrian refugees and other displaced persons. The EU later supplemented this with an additional €3 billion, enabling projects to be continued and expanded. This long-term financial cooperation has demonstrably improved access to basic services, supported social stability, and enhanced living conditions for Syrian refugees, and constitutes a positive and essential part of the broader implementation of the EU–Turkey Statement.

Risks

In the case of the EU, the transfer of applicants at the border to a non-EU country for the asylum procedure is currently restricted by the EU requirement of a 'meaningful connection' to that country, which constitutes an obstacle to transfers to any transit country outside the EU.⁸² Since an EU-level political agreement has been reached to amend this requirement, the model will become

78 See, inter alia, 9th Appeals Committee, Decision 15602/2017, 29 September 2017, European Database of Asylum Law.

79 CJEU 4 October 2024, C-134/23, *Elliniko Symvoulío* (Greek Council for Refugees).

80 RSA, "[The Greek Council of State annuls the designation of Turkey as a 'safe third country'](#)", March 2025.

81 European Court of Auditors, "[The Facility for Refugees in Turkey. Beneficial for refugees and host communities, but impact and sustainability not yet ensured](#)", 2024.

82 Berfin Nur Osso, "[Unpacking the Safe Third Country Concept in the European Union: B/orders, Legal Spaces, and Asylum in the Shadow of Externalisation](#)", *International Journal of Refugee Law*, Volume 35, Issue 3, October 2023, pp. 272–303.

feasible once the amendment is incorporated into EU law in June 2026.⁸³ These proposed changes to EU law – removing the mandatory nature of the connection criterion and limiting the suspensive effect of appeals against inadmissibility decisions – may increase the feasibility of this approach. Nevertheless, significant legal challenges remain, including the need for careful individual risk assessments prior to transfers, shortcomings in protection in so-called ‘safe’ countries, and precedents such as the ruling of the UK Supreme Court.⁸⁴

There are also concerns about human rights standards in non-EU countries. Compliance with the ECHR and the Refugee Convention is obligatory, but monitoring and enforcement abroad are difficult, thereby increasing the risk of abuses ‘out of sight’.⁸⁵ The burden of proof on states to demonstrate practical safety is high, and this model is widely criticised as shifting – rather than sharing – responsibility, thereby undermining international cooperation.⁸⁶

3.5 Return/transit hubs

Approach

This model focuses on transferring migrants who are required to leave to a return or transit hub in a third country, where they can await an onward return to their country of origin. It applies only after a complete, rights-compliant (asylum) procedure has been completed within the EU. The personal scope of this mechanism can be adjusted, for example by excluding certain categories such as minors, or by targeting specific groups such as persons with criminal records.

83 Council of the European Union, [“Safe third country: Council and European Parliament agree on new EU law restricting admissibility of asylum claims”](#), 18 December 2025. See press release: [Asylum: new rules for safe third countries and EU safe countries of origin list | News | European Parliament](#).

84 The ruling stated that Rwanda was unsafe due to systemic deficiencies and the risks of refoulement. See: [“A AA and others v Secretary of State for the Home Department \[2023\] UKSC 42”](#), UK Supreme Court, 15 November 2023.

85 See, for example: [“Indefinite Despair: the tragic mental health consequences of offshore processing on Nauru”](#), MSF, 3 December 2018.

86 David Cantor et al., [“Externalisation, Access to Territorial Asylum, and International Law”](#), *International Journal of Refugee Law*, Volume 34, Issue 1, 2022, pp. 120–156.

Any transfer remains subject to a human rights assessment, particularly the prohibition of inhuman or degrading treatment under Article 3 of the ECHR and Article 4 of the EU Charter.

Addressing systemic gaps (enforcement of return)

This mechanism is a response to the enforcement gap in the return of migrants who are under a legal obligation to leave. Effective enforcement is widely seen as essential to maintain support for the broader asylum system.

The model may also help to address the conflict of interest with the returnee and between the EU and countries of origin. If the alternative to cooperating with return is not continued residence in Europe but waiting in a return or transit hub in a non-EU country, then individuals may be more inclined to accept a voluntary return to their country of origin. Similarly, the country of origin loses its bargaining leverage vis-à-vis the EU because its national is no longer physically present in the EU.

Example

One example is the planned transit hub in Uganda, developed by the Netherlands during the previous cabinet term. The coalition agreement between D66, CDA and VVD noted that these plans would be put on hold.⁸⁷ The Netherlands has developed proposals to transfer rejected migrants from the region who would then be required to leave with their initial destination being Uganda, starting with a limited number during a pilot phase. The aim was that those transferred would subsequently return to their country of origin. However, the Netherlands would remain responsible for these persons to a certain degree.

At present, both countries have signed a letter of intent; the details of the cooperation were still under negotiation, with close involvement by the IOM and UNHCR.⁸⁸ The intention was that the facility would be open and that the Netherlands would retain responsibility for ensuring the proper treatment of returnees. Other EU Member States, including Germany and Greece, are also considering similar transit or return hubs, while the agreement between Italy and Albania has developed into a comparable model.

87 Coalition agreement between D66, VVD and CDA, '[Aan de slag: Bouwen aan een beter Nederland](#)' (Getting started: Building a better Netherlands), 30 January 2026.

88 Central Government, '[The Netherlands and Uganda make arrangements on returning migrants via Uganda](#)', 25 September 2025.

Risks

Transfers to a hub remain subject to the protection against inhuman or degrading treatment under Article 3 ECHR. This protection applies both to the hub country and to the country of final destination, and must be assessed on the basis of the conditions prevailing at the time of removal. If the stay in the hub involves detention, it must be ensured that detention conditions comply with human rights standards. Where a Member State manages the detention in the hub country or is involved in the removals, its personnel exercise effective control over the individuals in question. In such cases, the Member State is responsible for upholding and guaranteeing the relevant human rights obligations.

Even if the initiative is ultimately permitted under the Return Directive (and the forthcoming Return Regulation), this model entails legal and practical risks. Legally, it is likely to be subject to judicial review before national courts. Feasibility depends, among other factors, on demonstrating compliance with national and international law. Transfers to a third country require a thorough assessment of the human rights situation in that country. For example, Ugandan legislation raises serious concerns about the safety of LGBTQ+ persons and about whether rights could be guaranteed in reception or detention facilities. In addition, it must be assessed whether living conditions after removal are adequate and do not pose a real risk of material deprivation. The desirability of cooperation with the current Ugandan government may also be questioned in light of disputed election results and the house arrest of the opposition leader.⁸⁹

Assigning responsibility for difficult-to-return migrants to a third country gives that country considerable bargaining power. In practical terms, systems for effective return remain underdeveloped. This creates the risk of a prolonged state of limbo for individuals who cannot return to their country of origin, and it makes the monitoring and enforcement of rights abroad challenging until a durable solution is found.

⁸⁹ See DW, “[Museveni’s contested 2026 election](#)”, 19 January 2026. Sky News, “[Uganda election descends into deadly violence as President Yoweri Museveni looks to cling to power](#)”, 17 January 2026.

3.6 Current situation within the EU regarding these models

A leading group of 19 EU Member States, led by the Netherlands and Germany, is urging the European Commission to accelerate the introduction and financing of innovative migration solutions.⁹⁰ Central to this agenda is the establishment of return hubs and partnerships with safe third countries, supported by a robust financial framework and a diplomatic strategy. International organisations and EU agencies are viewed as key partners in the design, implementation and monitoring of these solutions. Their involvement must remain within their mandates and in full compliance with European and international law. This may include strengthening Frontex's operational capacity, and enhanced cooperation with the IOM and UNHCR to ensure oversight mechanisms.

With the amendments to EU legislation adopted on 18 December 2025⁹¹ these models will no longer remain theoretical. From 12 June 2026 they will become legally feasible options within a renewed EU migration policy framework.

3.7 Cooperation with countries that would need to host and/or implement these models

Building effective and legitimate partnerships with third countries as Safe Third Countries willing to undertake refugee protection or host a return hub is complex. It requires clear criteria and conditions that guide decision-making and ensure compliance with European legal and fundamental rights standards.

The core challenge lies in balancing operational effectiveness with the protection of fundamental rights, while maintaining the legitimacy and long-term sustainability of such arrangements.

Willingness to cooperate

A key determinant is whether a partner country is willing to cooperate, whether reliable and workable agreements can be concluded, and whether humane reception conditions can actually be guaranteed. To date, only a limited number

90 See the letter from the ministers: "[Joint follow-up letter from the undersigned ministers on the operationalisation of new and innovative solutions to counter and prevent irregular migration to Europe](#)", 16 December 2025.

91 See section 2.4.

of states have shown such willingness. For Europe, Turkey, Rwanda, Uganda and Albania are examples where significant steps have been taken to develop and implement models for externalising asylum procedures or hosting return hubs.

The limited pool of willing partners poses a considerable risk. Although the European debate on innovative models for migration management has been ongoing for several years, the lack of a sufficiently large group of cooperating willing countries means that the discussion risks remaining somewhat theoretical, particularly if the model is intended to be applied on a larger scale.

It should also be acknowledged that the fewer countries that are willing to engage, the higher the cost of cooperation will be, and the fewer conditions that the EU will be able to impose. At the same time, European legislation requires high standards of protection and monitoring.

For this reason, it is sensible not to seek to pursue such cooperation in isolation, but to embed it within a broader, multi-dimensional partnership strategy that includes economic cooperation, political dialogue, development assistance and other forms of migration cooperation. This can make participation more attractive to partner countries and creates stronger incentives for compliance with externalisation arrangements.

Legitimacy

The legitimacy of externalisation partnerships depends on selecting partner countries that meet minimum standards relating to governance, human rights protection, institutional capacity and political stability.

Under international law, states cannot discharge their legal obligations merely by delegating actions to other states or organisations. Responsibility arises as soon as a state exercises effective control over a person or facility, which means that European human rights standards (ECHR) and EU fundamental rights (insofar as an EU Member State implements EU law) apply to external asylum and return centres operated by or on behalf of EU Member States.

Effectiveness

In addition to legitimacy requirements, the success of partnerships with third countries depends on clear standards of effectiveness. These mechanisms must ensure that policy objectives are achieved without violating legal obligations.

The first effectiveness standard concerns the partner country's ability to provide adequate protection and essential services to transferred persons. This includes not only basic reception and subsistence, but also access to legal assistance, healthcare, education and other services that are necessary for dignified treatment in line with EU standards.

A second effectiveness standard concerns the operational capacity of partner countries to implement externalisation arrangements efficiently. This includes administrative capacity to process transfers, operate facilities, coordinate with EU institutions and carry out return procedures.

Accountability

Effective monitoring mechanisms are essential to ensure compliance and detect problems before they develop into systematic violations. The European Union Agency for Fundamental Rights emphasises that supervisory bodies must be independent, adequately funded, and empowered to investigate complaints and recommend corrective measures.⁹² Without such oversight, externalisation arrangements risk generating protection gaps and insufficient accountability, undermining both legitimacy and effectiveness.

92 European Agency for Fundamental Rights, '[Planned return hubs in third countries: EU fundamental rights law issues](#)', 6 February 2025.

4 Conclusion

This report is being published during a turbulent period. The international legal order is under severe pressure and global asylum policy is increasingly being called into question. The United States is criticising Europe for its immigration policy,⁹³ while sending South American migrants to South Sudan.⁹⁴ In Europe, exclusive nationalist parties that seek to define their communities on the basis of race and religion, such as the AfD in Germany, are gaining ground and are moving ever closer to power. At the same time, a minority coalition of the centrist parties D66, CDA and VVD is taking office in the Netherlands. In their coalition agreement, these parties promise greater control over migration, a reduced influx of asylum seekers and decent reception facilities.

This creates a unique combination of opportunities and challenges. In a world where the international legal order is under strain and a poorly functioning asylum system is causing political unrest in several countries, it is essential to reform that system – but not in a way that further undermines the international legal order. Firstly, the Netherlands is dependent on that legal order and has therefore even enshrined its commitment thereto in the Dutch Constitution.⁹⁵ Secondly, it should be emphasised that, despite its shortcomings, the asylum system does ensure that 67% of all refugees are taken in by neighbouring countries.⁹⁶ A further erosion of the international asylum system could actually cause this percentage to fall.

Against this background, this report focuses on the following research question:

What would be required for initiatives aimed at accommodating more asylum seekers outside the EU and/or processing more asylum applications outside EU territory?

93 See, for example, the speech by US Vice President J.D. Vance in February 2025: Emily Atkinson, [“J.D. Vance attacks Europe over free speech and migration”](#), BBC, 15 February 2025.

94 See: NOS, [“Eight migrants deported by the US arrive in South Sudan”](#), 6 July 2025.

95 The Dutch Constitution, Article 90: *The government promotes the development of the international legal order.*

96 Refugee Council Netherlands, [“Figures on refugees worldwide”](#), consulted in January 2026.

The legal framework within which the possibilities for externalising asylum procedures and returning migrants residing illegally must be examined consists of international treaties – such as the Refugee Convention and the ECHR – and European law.

The table below provides an overview of the most important legal instruments that are relevant to externalisation policy, as discussed in Chapter 2, and summarises their key provisions. These include treaties such as the Refugee Convention and the ECHR, which lay down binding obligations such as the prohibition of refoulement and protection against torture. The EU Charter of Fundamental Rights reinforces this protection within the European legal framework and adds rights such as the right to asylum and human dignity. The Asylum Procedures Regulation will create a legal basis for the processing of asylum applications using safe third country concepts, within the limits of European and international law.

Overview of the key provisions of treaties

Convention	Key provisions	Relevance
1951 Refugee Convention and Protocol 1967	Non-refoulement (Art. 33), No sanctions for illegal entry (Art. 31)	Binding for transfer, protection elsewhere possible
International Covenant on Civil and Political Rights	Prohibition of torture, provisions on expulsion	Binding
Convention against Torture and Other Cruel, inhuman or degrading treatment or punishment	Prohibition of expulsion in cases of a risk of torture	Binding
Convention on the Rights of the Child	The best interests of the child, provisions concerning detention, family reunification	Binding
European Convention on Human Rights	Prohibition of torture and inhuman treatment (Art. 3), Respect for private and family life (Art. 8), Effective remedy (Art. 13), No collective expulsions (Art. 4 Protocol No. 4)	Binding on 46 European States
Charter of Fundamental Rights of the European Union	Human dignity (Art. 1), Prohibition of torture and inhuman treatment (Art. 4), Respect for private and family life (Art. 7), Right to asylum (Art. 18), No collective expulsions (Art. 19), Rights of the child (Art. 24), Right to an effective remedy (Art. 47)	Binding on 27 EU Member States when applying EU law

Within this framework, debates are taking place on the interpretation and application of these rules, particularly with regard to asylum procedures outside the EU and transfers to safe third countries, as well as the tension between border control and human rights. Discussions focus on whether treaty reform is necessary, or whether pragmatic solutions and soft law instruments are sufficient. An initial conclusion of this report is that the externalisation options discussed in this report are, in principle, legally possible if EU legislation is amended as currently envisaged.

Chapter 3 analyses five models for externalising asylum that are already being implemented in practice or are under discussion in policy circles.

Externalisation models				
Model	Procedures (partially) externalised	Operational implementation	Objective	Example
Screening along migration route	Screening, processing and return	International organisations	Managing mixed migration flows	Safe Mobility Offices
Disembarkation platform	Screening	Country of destination	Managing mixed migration flows	Italy-Albania plan
(External) border procedure in a non-EU country	Processing and return	Countries of destination	Control and prevention of secondary migration	Italy-Albania plan
Procedure and reception in third countries	Processing, reception and return	Third country	Reducing arrivals	UK-Rwanda plan
Return hub/ Transit hub	Return	Third country	Promoting return	NL-Uganda plan

Although all these models are legally possible in principle (depending on the third country with which cooperation takes place), their implementation at the level of the individual asylum seeker is likely to lead to considerable practical complications and legal proceedings. The debate focuses mainly on EU legislation rather than on the UN Refugee Convention and the ECHR. It therefore remains necessary to continue to actively pursue discussions on the interpretation and adaptation of EU legislation in Brussels and national capitals.

In addition to the debate on legislation, there is an even greater practical and geopolitical issue. How many countries are actually willing to carry out an asylum procedure on behalf of an EU Member State or to host a return hub? And how many of these countries are sufficiently stable and well governed in the longer term in order to be able to fulfil this role? Furthermore, domestic and international criticism of such options – often seen as a shifting of responsibility – must be taken into account, a characterisation that is not unjustified when these measures are applied in isolation.

The main conclusion of this report is therefore that these externalisation options only have a chance of success on any meaningful scale if they form part of a broader reform initiative. Such an initiative would address the following points:

1) Better geographical representation in discussions on reforms

Recent discussions on ‘innovative partnerships’ and externalisation are taking place mainly in Europe and focus almost exclusively on European problems. This is despite the fact that countries around the world are facing shortcomings in their asylum systems. Because of this Eurocentric approach, the proposed solutions are also strongly oriented towards Europe. The return hub, for example, addresses only a European return problem and does not provide a solution to broader global challenges surrounding refugees and migration.

2) Connect the domains of Regional Reception and Migration Cooperation

Within European governments, the areas of ‘refugee reception/regional reception’ and ‘migration’ are strictly separated. Both at the national level and within the European Commission, these themes fall under the competence of different ministries and directorates. Regional reception is generally regarded as part of traditional development cooperation, while migration cooperation is primarily the responsibility of ministries of migration or home affairs. This leads to separate funding streams, different professional communities and divergent perspectives and motivations. Nevertheless, bringing these worlds closer together is essential in order to develop system-wide solutions. After all, refugee reception in the region and reception in Europe are two sides of the same coin.

It is striking, for example, that while the migration community is discussing *innovative approaches* (externalisation options), the community involved in regional reception is focusing on *sustainable solutions*. These discussions should

be linked. Part of these *sustainable solutions* is, for instance, better, long-term and predictable funding for host countries. Such funding could be combined with discussions on safe third country options.

3) *Proximity Protection*⁹⁷

It is essential to work towards a situation in which more people can receive effective protection closer to home. This reduces the need to undertake dangerous migration routes and decreases the number of unsuccessful asylum applications. The emphasis must be on reception in the region – also referred to as Proximity Protection. This is therefore a different approach from simply seeking to provide protection outside Europe wherever possible, since people may also be forced to flee from areas close to the EU (as in the case of displaced Ukrainians). Proximity Protection as a principle could be achieved through an additional protocol to the Refugee Convention, but also be operationalised within existing regulations, for example through safe third country mechanisms.

4) *Temporary nature of protection and the improvement of registration by host countries*

Improving international regulations and maintaining public support for refugee protection is only possible if it is clear that protection is intended for people who are genuine refugees, and that their status continues only for as long as is necessary on the basis of their individual security risks. Once those risks have disappeared, this should lead either to return or to the granting of a different residence status.

In many countries around the world, refugees are not registered or are only partially registered. They often receive only a *prima facie* status or live in a form of legal limbo. In many cases, this status persists for years, even when the situation in the country of origin has changed. This raises important questions: Is every Afghan in Iran still a refugee? Every Somali in Kenya? And what about the grandchildren of refugees, born in the host country and with no ties to their country of origin? Refugee status should either lead to return when circumstances permit, or to a transition to another form of residence permit.

⁹⁷ Term borrowed from Alexander Betts and Paul Collier, from their book 'Refuge: Transforming a Broken Refugee System' London UK, Penguin Random House, 2018.

Improved registration and a clearer determination of status by host countries are essential to enable better and fairer funding of host countries and thus further stimulate Proximity Protection.

5) *Facilitate legal pathways*

Many asylum seekers in Europe are essentially seeking work and a better life – and, given Europe’s ageing population, demand for labour exists in many sectors. It is likely that Europe will continue to require selective, legal labour migration and will see increasing levels thereof in the coming period. For this reason, Europe could be more generous in issuing work visas and actively facilitate selective legal labour migration (for example in the healthcare and IT sectors). These legal pathways could be incorporated into migration partnerships, with destination countries investing in the training of workers in relevant sectors to prevent a brain drain. Legal pathways could also form part of discussions on Proximity Protection.

In summary, there is a need for a broadly supported reform initiative based on proximity protection, with protection being temporary in nature, combined with broader opportunities for legal pathways and structurally better funding for host countries.

Closing remarks

In our discussions with leading academics and policymakers from the Netherlands and abroad, a clear need for innovation emerged. More often than expected, they described the current system as ‘dysfunctional’ or even ‘unsustainable’. Several interviewees recommended that a compact group of academics, think tanks and (international) policy makers from different regions could take the lead in developing innovative, system-wide solutions to the current impasse. They also indicated that they would be keen to participate in such a group.

In light of the 75th anniversary of the Refugee Convention, would it not be particularly fitting to respond this year to the call for international cooperation already echoed in the preamble to the Convention (see also section 2.1.)? It would be a meaningful way to mark this milestone.

Annex: Debate on developments in the ECHR

This annex has been included because recent developments in the ECHR are relevant to broader policy and legislative debates in the field of asylum but fall outside the direct scope of this report's research questions. In order not to interrupt the main thread of the report, we outline these developments briefly here. They provide context but are not decisive for the core of the research.

Before the turn of the millennium, the Court in Strasbourg offered states considerably more leeway for migration control than it does today. Cases such as *Moustaquim v. Belgium* (1991) and *Chahal v. the United Kingdom* (1996) illustrate this: the Court recognised security interests and allowed states extensive discretion in deportation decisions, while applying limited proportionality tests.⁹⁸ At the time, Strasbourg accepted months of detention at the external borders for entry checks, applying a cautious rather than the now standard strict proportionality test.⁹⁹ Dublin transfers could take place without suspensive legal remedies, reinforcing the principle of mutual trust between states.¹⁰⁰ Attempts to block removal on health grounds were resolutely rejected by national courts, such as the German *Bundesverfassungsgericht*.¹⁰¹

98 ECHR 15 November 1996 *Chahal v. United Kingdom*, [22414/93](#); ECHR 18 February 1991, [Moustaquim v. Belgium](#), [12313/86](#).

99 ECHR 30 oktober 1991, [Vilvarajah e.a. t. Verenigd Koninkrijk](#), no. [13163/87](#), [13164/87](#), [13165/87](#), [13447/87](#), [13448/87](#); ECHR 25 juni 1996, [Amuur t. Frankrijk](#), nr. [19776/92](#); ECHR 29 januari 1997, [Bouchelkia t. Frankrijk](#), no. [23078/93](#).

100 ECHR 7 March 2000, [T.I. v. United Kingdom](#), [43844/98](#). Dublin transfers are the mandatory transfers of asylum seekers to the EU country responsible for their asylum application, usually the first country of entry; other Member States are not permitted to process the application themselves.

101 German Federal Administrative Court, ["Bundesverwaltungsgericht Urt. v. 15.04.1997. Az.: BVerwG 9 C 3 8/96"](#), 15 April 1997.

The case law changed significantly after 2004, as the ECHR increasingly moved in line with more comprehensive European asylum agreements.¹⁰² The test under Article 3 ECHR shifted from requiring strict individualisation to recognising that membership of a systematically persecuted minority group may be sufficient,¹⁰³ and that in situations of violent conflict even the mere fact of originating from the affected area can constitute a ‘real risk’ of a violation of Article 3 ECHR.¹⁰⁴ Political choices that were at first only relatively widely shared – such as the adoption of enhanced protection for members of identifiable groups facing systemic violations, or for persons in situations of generalised violence or severe deprivation – were progressively transformed into binding legal standards through the Court’s jurisprudence.¹⁰⁵

Around 2010, led by the United Kingdom, states criticised what they saw as judicial activism by the Court in areas such as immigration and prisoners’ voting rights (the *Hirst* case).¹⁰⁶ This contributed to the Brighton Declaration (2012) and Protocol No. 15 (2021), which formalised the principle of subsidiarity – the notion that states bear primary responsibility for safeguarding the rights enshrined in the ECHR – and inserted the margin of appreciation doctrine into the Convention’s preamble. In Denmark, in the years leading up to 2018, there was a political and legal debate about the expulsion of long-term resident non-nationals with criminal records, including in connection with the case of *Leváková v. Denmark*.¹⁰⁷ In that broader context, the Copenhagen Declaration was adopted in 2018 as part of the ongoing Interlaken reform process concerning

102 Since 2004, the Common European Asylum System (CEAS) has included EU directives on numerous asylum, reception, procedure and return standards. In 2005, for example, it introduced additional protection for ‘subsidiary protection beneficiaries’ in a general situation of violence.

103 ECHR 11 January 2007, *Salah Sheekh v. the Netherlands*, no. 1948/04.

104 ECHR 17 July 2008, *NA v. United Kingdom*, no. 25904/07.

105 The Court assessed conditions in Greek reception centres, see ECHR 21 January 2011, *M.S.S. v. Belgium and Greece*, no. 30696/09. Obligations also apply outside one’s own territory, as in ECHR 23 February 2012, *Hirsi Jamaa et al. v. Italy*, no. 27765/09. And general risks in armed conflict in ECHR 28 June 2011, *Sufi and Elmi v. United Kingdom*, nos. 8319/07 and 11449/07.

106 ECHR *Hirst v. UK* 6 October 2005, no. 74025/01, concerned prisoners’ voting rights and led to criticism of the Court in the UK. For developments in the ECtHR on migration cases in the UK, see: House of Commons Library, [The European Convention on Human Rights and the UK](#) (Research Briefing CBP-10376, 2024).

107 ECHR *Leváková v. Denmark* 23 October 2018, no. 7841/14, concerned the deportation of a Croatian criminal in Denmark due to a violation of Article 8 of the ECHR. This fuelled the debate and resulted in the Copenhagen Declaration (April 2018), focusing on subsidiarity and the margin of appreciation.

the functioning of the Court. These reforms encouraged states to advocate greater judicial restraint while maintaining core human rights principles.

Through its living instrument doctrine, the ECtHR has developed case law on border detention, collective expulsions, non-refoulement and socio-economic rights that goes beyond what the Refugee Convention itself guarantees.

Over time, important safeguards have emerged in this jurisprudence, including individual risk assessments, effective legal remedies and attention to family reunification and the best interests of the child.¹⁰⁸ At the same time, the Court continues to balance this protection while respecting state discretion by applying principles such as subsidiarity and the margin of appreciation.¹⁰⁹ Its rulings are anchored in the text of the Convention, earlier precedents and detailed fact-finding, and the Court has issued guidelines to ensure greater consistency in its approach.

In recent years, political debate has intensified. Politicians in several member states have criticised current ECtHR interpretations for placing more emphasis on individual rights than on the public interest, including in cases involving persons convicted of serious crimes.¹¹⁰ It is worth noting, however, that immigration cases account for only around 2% of the Court's total caseload and that the ECtHR has found a violation in only about 300 such cases in the past decade.¹¹¹ Nevertheless, the impact is significant: national courts rule on tens of thousands of immigration cases each year in which ECHR standards are the guiding principles. Political debate also tends to oversimplify the complex and evolving nature of ECHR case law and the divergent ways in which national

108 Başak Çalı, Ledi Bianku & Iulia Motoc (eds.), [Migration and the European Convention on Human Rights](#) (Oxford University Press, 2021).

109 *Subsidiarity* means that the ECHR only intervenes when national authorities fail to protect the rights enshrined in the Convention. The *margin of appreciation* gives states room to balance rights and public interests, under the supervision of Strasbourg.

110 House of Commons Library, [The European Convention on Human Rights and the UK](#). InfoMigrants, Judges and bureaucrats 'won't stop us on migrants', Italian PM, 29 August 2025. Prime Minister De Wever's [Choole lecture](#), September 2025.

111 ECHR Factsheet, [Focus on migration](#), December 2025.

courts apply these standards in different legal systems.¹¹² This has contributed to asylum and return policy becoming more legalistic and less flexible than before.¹¹³

In May 2025, upon the initiative of Denmark and Italy, the heads of state and government of nine member states (Denmark, Italy, Austria, Belgium, Poland, the Czech Republic, Estonia, Latvia, and Lithuania) issued a joint letter. They argued that treaties such as the Refugee Convention and the ECHR were drafted at a time when migration and security challenges were far more limited in scale, whereas today states face unprecedented pressures, including large-scale irregular migration, organised crime and the geopolitical instrumentalisation of asylum. They therefore expressed their intention to ‘use their democratic mandate to launch a new and open-minded debate on the interpretation of the ECHR and to restore the right balance’.¹¹⁴ Their proposals include expanding deportation powers, monitoring non-deportable persons and introducing measures to counter the instrumentalisation of migration by hostile actors. Denmark and Italy have since taken the lead with proposals along these lines. Rather than revising the ECHR itself, alternatives such as a political declaration are being considered.^{115, 116}

The Secretary General of the Council of Europe, Alain Berset, stated that ‘the ECHR must be able to adapt to a rapidly changing world, while continuing to uphold its core values. Reforms should be approached with care and rooted in shared democratic principles’.¹¹⁷ In response, Berset convened an informal meeting of the Council of Europe to channel the debate on the ECHR into the appropriate institutional frameworks. On 10 December 2025, ministers from 46 states met informally and agreed to draft a political declaration on migration, to be adopted at a summit in May 2026, together with a new recommendation

112 There is no clear line to be drawn as to which case law of the ECHR is problematic, see Dana Schmalz, [Migrants’ Rights Before the European Court of Human Rights](#), *Verfassungsblog* 7 December 2025. See, for example, the development of case law in the UK included in footnote 103.

113 Daniel Thym, [‘Four Scenarios and a Proposal for the Future of the ECHR’s Dynamic Case Law on Asylum’](#), *Verfassungsblog*, 7 December 2025.

114 See: [“Open letter on the interpretation of the ECHR and the future of migration policy”](#), 22 May 2025.

115 Daniel Thym, [“Four Scenarios and a Proposal for the Future of the ECHR’s Dynamic Case Law on Asylum”](#), *Verfassungsblog*, 7 December 2025.

116 Interview with Nicolaj Hejberg Petersen, Danish Ambassador for Conventions, December 2025.

117 The Guardian, [Convention on human rights must adapt, says Council of Europe head](#), 6 June 2025.

on combating human trafficking and the establishment of an intergovernmental migration committee.¹¹⁸ However, the positions contained therein are not binding on the Court.

However, the ministers of 27 states, including the Netherlands, also issued a joint statement reaffirming the principles of the ECHR while identifying five key challenges:¹¹⁹

- the deportation of serious offenders despite family ties;
- the scope of the principle of ‘inhuman and degrading punishment’;
- the promotion of migration solutions in third countries;
- ensuring timely decisions on the basis of Article 8 of the ECHR; and
- combating the instrumentalisation of migration.

Although 19 states – including France, Spain and Turkey – did not sign, the number of signatories indicates growing support for the Italian/Danish initiative. The joint declaration is an important signal, as rulings of the ECHR are often invoked as arguments in legislative debates in Brussels and national capitals.

118 Council of Europe, “[Informal Ministerial Conference Conclusions](#)”, 10 December 2025.

119 UK Ministry of Justice, “[Joint Statement to the Conference of Ministers of Justice of the Council of Europe](#)”, 10 December 2025. The five different key challenges reflect the diversity of views within the 27 member states, each with their own national legal traditions.