

## The pushback – disconnect: current and anticipated practice

The EU's newly agreed asylum and migration, a failed attempt to end pushbacks at EU borders



**Protecting Rights  
at Borders**

## Summary

Protecting Rights at Borders (PRAB) is an initiative of protection and legal aid groups that focus on ensuring human rights are upheld at the EU's external and internal borders. The members of PRAB have a well-established field presence in the countries of operation, which allows them direct access to victims who have experienced pushbacks and significant experience in strategic litigation.

The PRAB initiative gathers partner organisations operating across eight countries in Europe: Belarus ([Human Constanta](#)); Bosnia and Herzegovina ([Danish Refugee Council \(DRC\) Bosnia and Herzegovina](#)); Greece ([Greek Council for Refugees \(GCR\)](#) and [DRC Greece](#)); Italy ([Associazione per gli Studi Giuridici sull'Immigrazione \(ASGI\)](#), [Diaconia Valdese \(DV\)](#) and [DRC Italy](#)); Lithuania ([Diversity Development Group](#) and [Sienos Grupė](#)); North Macedonia ([Macedonian Young Lawyers Association \(MYLA\)](#)); Poland ([Stowarzyszenie Interwencji Prawnej \(SIP\)](#)); and Belgium ([DRC Brussels](#)).



\*All references to Kosovo shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.



The PRAB project has been supported by the European Philanthropic Initiative for Migration (EPIM), a collaborative initiative of the Network of European Foundations (NEF). The sole responsibility for the project lies with the organisers and the content may not necessarily reflect the positions of EPIM, NEF or EPIM's Partner Foundations.

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## List of Acronyms

ASGI	Associazione per gli Studi Giuridici sull'Immigrazione
DRC	Danish Refugee Council
DV	Diaconia Valdese
EPIM	European Philanthropic Initiative for Migration
EU	European Union
FRONTEX	European Border and Coast Guard Agency
GCR	Greek Council for Refugees
IBMM	Independent Border Monitoring Mechanism
IOM	International Organization for Migration
MoU	Memorandum of Understanding
MYLA	Macedonian Young Lawyers Association
NEF	Network of European Foundations
NGO(s)	Non-Governmental Organisation(s)
PRAB	Protecting Rights At Borders
SIP	Stowarzyszenie Interwencji Prawnej
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

**Pushbacks** are “various measures taken by States which result in migrants, including asylum-seekers, being summarily forced back to the country from where they attempted to cross or have crossed an international border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement”.

– United Nations Office of the High Commissioner for Human Rights<sup>1</sup>

## 1. Pushbacks at Europe’s borders: a reality

Acknowledging the staggering impact of conflict, persecution, and the climate crisis on global displacement is crucial. As of the end of 2023, the number of refugees worldwide exceeded 43.4 million, with 40% under 18 years old. Additionally, in 2024, an unprecedented 120 million people have been forcibly displaced globally, with many trapped in conflict zones within their own countries. The challenges facing these communities are immense, as they struggle to find safety, stability, and support amid harrowing circumstances. Despite growing critical needs for international cooperation, solidarity and more assistance to address the humanitarian needs around the world, this report is a reminder of policies and practices that indicate trends at the far opposite to the global cries – lacking human dignity.

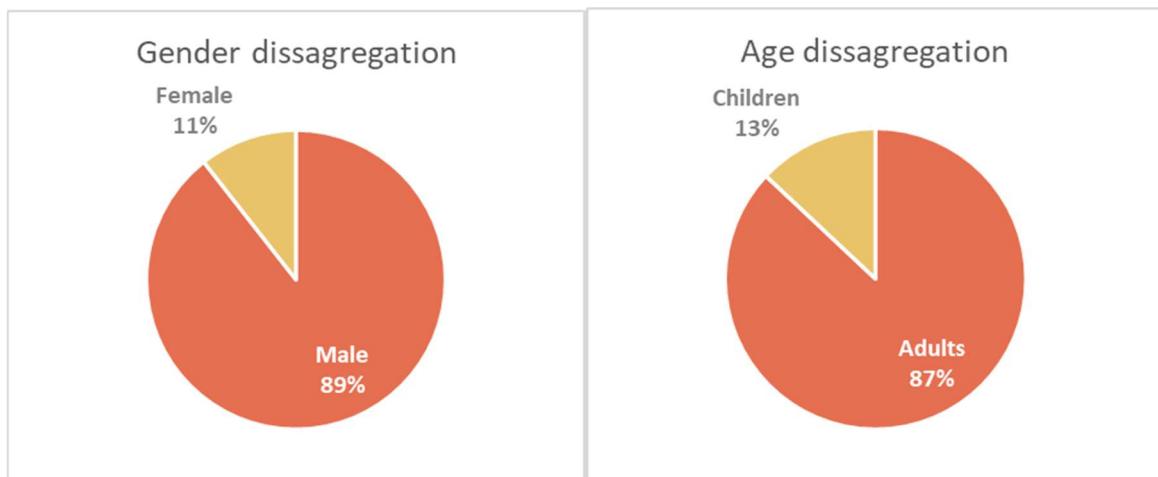
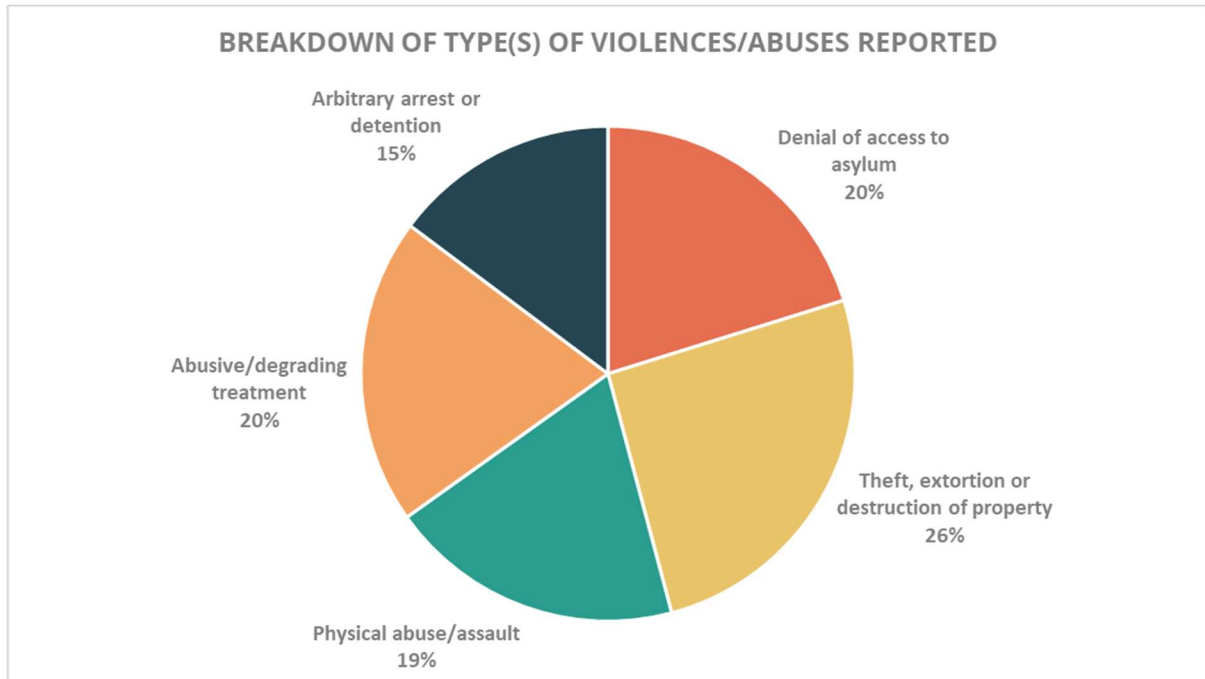
The European Union's (EU) work on migration reflects a commitment to a broader externalisation strategy, keeping displacement affected population from Middle East, Africa and Asia from reaching and possibly seeking protection within EU borders. Since 2016, this broader aim justified turning a blind eye to the forceful deterrence and violation of human rights at the borders and resulted in spiralling violence as well as surging death rates on land and at sea.

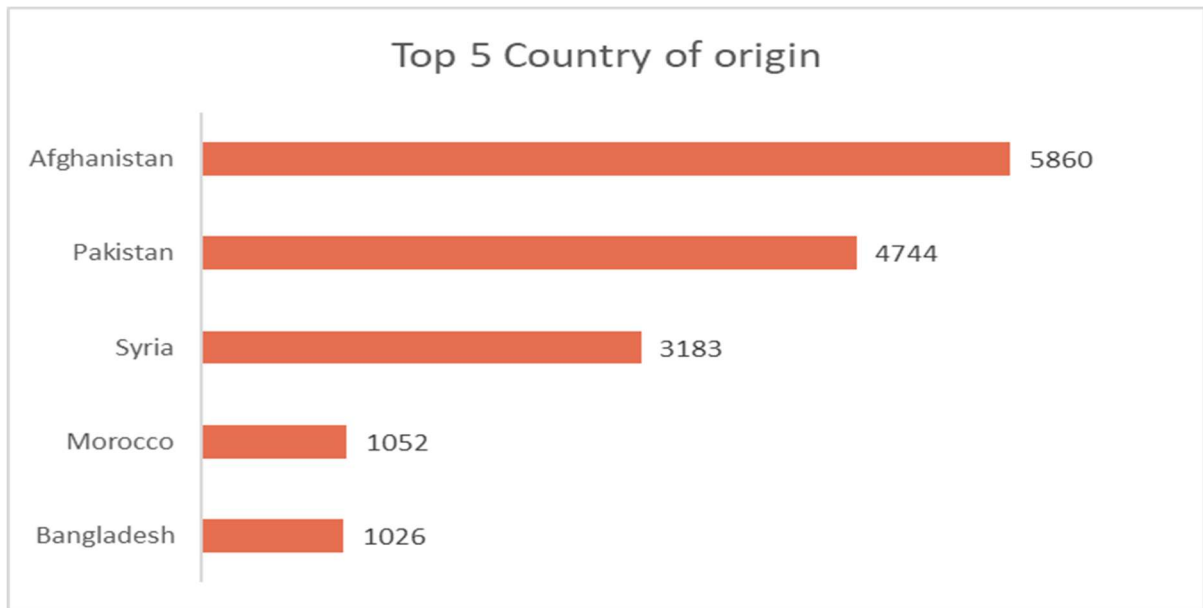
Over the past years, pushbacks have been commonly used and tacitly accepted across EU’s external and internal borders as means of border management. While human rights and humanitarian actors have been calling the EU to effectively address the rights violations at its borders, the question remains - whether the long awaited, much debated and finally adopted reform of the Common European Asylum System will put an end to pushbacks?

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<sup>1</sup> [www.ohchr.org/en/special-procedures/sr-migrants/report-means-address-human-rights-impact-pushbacks-migrants-land-and-sea](https://www.ohchr.org/en/special-procedures/sr-migrants/report-means-address-human-rights-impact-pushbacks-migrants-land-and-sea)

### 1.1. PRAB reporting over the past 2.5 years: overview in infographics





## 1.2. Rights violations at Europe's borders

The European Union has faced criticism for its role in these pushback practices, especially as EU member states often seek to deter irregular migration through strict border enforcement measures. One of the primary concerns is that pushbacks may prevent individuals from exercising their right to seek asylum. According to international law, as confirmed in article 18 of the EU's Charter of Fundamental Rights, everyone has the right to seek asylum. Those searching for safety should further not be returned to a country where they face persecution or serious harm (non-refoulement principle). Here's an overview of some of the reported rights violations:

- **Denial of Access to Asylum and Arbitrary Arrests or Detention:** Many reports suggest that individuals subjected to pushbacks are not given an opportunity to have their asylum claims properly assessed. They are often returned to neighbouring countries or pushed back across borders without access to legal representation or asylum procedures.
- **Attacks, Forced Disappearance and threats to life:** Pushback practices are violent, exposing persons subjected to them to life threatening risks. Throwing a person to the sea, omitting to rescue, abandoning refugees on islets in the middle of a river or forcing persons in overcrowded inflatable boats with no safety equipment are all practices that may endanger human life.<sup>2</sup>
- **Physical Assault and Theft, extortion or Destruction of Property:** There have been allegations of excessive use of force by border guards during pushback operations. This includes physical abuse, confiscation of belongings, and intimidation tactics aimed at preventing individuals from entering a country.

<sup>2</sup> <https://www.bbc.com/news/articles/c0vv717yvpeo>; see also Report of the Special Rapporteur on the human rights of migrants, 12 May 2021, Human Rights Council, 47 th session, 21 June–9 July 2021, Report on means to address the human rights impact of pushbacks of migrants on land and at sea, <https://documents.un.org/doc/undoc/gen/g21/106/33/pdf/g2110633.pdf?token=5DlxZqhevsLBtbuty3&fe=true>, para. 53 and Submission by the Office of the United Nations High Commissioner for Refugees in the case of S.A.A. and Others v. Greece (No. 22146/21) before the European Court of Human Rights, [https://www.refworld.org/jurisprudence/amicus/unhcr/2022/en/120427?prevDestination=search&prevPath=/search?sm\\_country\\_name%5B%5D=Greece&sort=score&order=desc&page=2&result=result-120427-en](https://www.refworld.org/jurisprudence/amicus/unhcr/2022/en/120427?prevDestination=search&prevPath=/search?sm_country_name%5B%5D=Greece&sort=score&order=desc&page=2&result=result-120427-en), paras. 2.2.17 and 4.1.1.

*Testimony collected from a group of Syrian family members (9 persons in total, including 4 children) in Bosnia and Herzegovina:*

*On 2 January, we crossed the border and walked through Croatia. On January 3 at night hours, police caught us and placed us in the van, then drove us to a location where they held us in the van for several hours. Police then again started the drive and stopped at some location in the border region. They ordered us to leave the van and took all of our personal belongings. It was raining, and our clothes were wet to the skin. Police ordered us to walk towards the border and escorted us. We walked escorted by police van for about 2 hours, until we reached the border line, and police stopped. Officers ordered us to continue walking. We walked for 5-6 hours until we reached TRC Borici.*

- Inhumane conditions: Testimonies from individuals who have experienced pushbacks describe harsh conditions during the process, including being left stranded in remote areas without access to food, water, or shelter. Such practices can endanger the lives and well-being of those affected.
- Discrimination and vulnerable groups: There are concerns that certain groups, such as women, children, and LGBTQ+ individuals, may be particularly vulnerable to abuse during pushbacks. Reports suggest that they may face heightened risks of violence, exploitation, or discrimination.
- Legal challenges, investigations, and limited remedies: Human rights organizations and legal experts have documented these incidents and called for accountability. Legal challenges have been mounted in various jurisdictions to ensure that pushbacks comply with international human rights standards.
- Political and policy context: Pushbacks often occur within broader immigration and border control policies aimed at managing irregular migration. The EU and its member states face ongoing debates about how to balance border security with humanitarian obligations

## 2. The EU Pact on Asylum and Migration: a lost opportunity to end pushbacks

In May 2024, the EU co-legislators, the European Commission and the Council, agreed on a reform of the Common European Asylum System, the so-called EU Pact on migration and asylum (EU Pact). The EU Pact both changes the current legislation and introduces new measures, such as a new system at the border and management of emergency situations. The EU Pact must be operationalized by the EU member states by June 2026. In June 2024, the European Commission published a Common Implementation Plan, which aims to operationalize the Pact. Following up on the European Commission's example, all EU member states developed national implementation plans by mid December 2024.

This chapter analyses whether the EU Pact can be seen as an effective framework to end pushbacks and other rights violations at the EU's borders. In the different sub-chapters, relevant legal provisions of the EU Pact are outlined, followed by examples of current practices at EU borders. This approach seeks to bridge the discrepancy between the policy proposals on paper and the current implementation in practice by providing concrete recommendations for the implementation when the legal frameworks, and national implementation plans, are operationalized.



Finally, since the agreement on the EU Pact, some EU leaders have increasingly focused on the external dimension, aiming to prevent people from arriving on EU soil, to speed up forced returns and deepen cooperation with third countries to externalize asylum and migration management. These proposals are not addressed in this PRAB report, as these schemes are not foreseen by the legislative reform under the EU Pact and they often involve a rehashing of previously discarded or tried-and-failed proposals. Many of these proposals run contrary to current EU legal frameworks, including the right to asylum. Ten steps for the EU to ensure sustainable and rights-based asylum systems, can be found on this [joint statement](#).

## 2.1. Access to international protection, also in times of crisis

The European Charter on Fundamental Rights<sup>3</sup> stipulates in article 18 the right to asylum be guaranteed with due respect for the rules of the Geneva Convention. The question is whether the new EU Asylum and Migration Pact (EU Pact) has, in line with the EU's primary acquis, maintained the right to 'territorial asylum', in one of the EU Pact's novelties: the [regulation addressing situation of crisis and force majeure in the field of migration and asylum](#) ("Crisis Regulation").<sup>4</sup> The Crisis Regulation allows EU member states the possibility, if properly approved by the European Commission, to derogate from the right to immediately register an application for international protection to allow for a 4-weeks extension for that derogation as well as an expedited procedure. The derogation must be based on a situation of crisis or forced majeure and can be applied immediately while the European Commission and the Council considers the request for derogation. The letter of the law stipulates the obligation to register requests for international protection, however, safeguards to effectively ensure access to the procedure, including legal pathways to justice for challenging the violation of people's right to asylum, and accountability measures for when borders are closed without access for third country nationals remain absent.

The crisis at the EU-Belarus border over the past years illustrates that access to international protection is being restricted. The European Court of Human Rights (ECtHR) has repeatedly ruled<sup>5</sup> that in **Poland**, requests for international protection submitted by third country nationals at Poland's border were repeatedly ignored by the border guards. The ECtHR found that Poland had violated numerous rights<sup>6</sup> set out in the European Convention on Human Rights, but measures required to address this have not been fully implemented.<sup>7</sup> Moreover, [by October 2024 the European Court of](#)

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<sup>3</sup> The Charter of Fundamental Rights of the European Union is a legal document that outlines the fundamental rights and freedoms guaranteed to individuals within the European Union. It became legally binding in 2009 with the Treaty of Lisbon, ensuring these rights are upheld and protected across all EU member states.

<sup>4</sup> Within this Regulation, article 1.4 defines what for the purposes of this regulation a situation of crisis means: (a) an exceptional situation of mass arrivals of third-country nationals or stateless persons in a Member State by land, air or sea, including of persons that have been disembarked following search and rescue operations, of such a scale and nature, taking into account, inter alia, the population, GDP and geographical specificities of the Member State, including the size of the territory, that it renders the Member State's well-prepared asylum, reception, including child protection services, or return system non-functional, including as a result of a situation at local or regional level, such that there could be serious consequences for the functioning of the Common European Asylum System; or (b) a situation of instrumentalisation where a third country or a hostile non-state actor encourages or facilitates the movement of third-country nationals or stateless persons to the external borders or to a Member State, with the aim of destabilising the Union or a Member State, and where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security.

<sup>5</sup> ECtHR, M.K. and others v. Poland (application no. 40503/17, 42902/17 and 43643/17); D.A. and Others v. Poland, no. 51246/17; A.I. and Others v. Poland, no. 39028/17; A.B. and Others v. Poland, 42907/17; T.Z. and Others v. Poland, no. 41764/17.; Sherov and Others v. Poland, application no. 54029/17. Those judgements were decided upon from 2020-2024.

<sup>6</sup> Art. 3 (prohibition of torture, inhuman or degrading treatment or punishment), Art. 4 of Protocol No. 4 (prohibition of collective expulsion of foreigners), art. 13 (right to an effective remedy) and art. 34 (by failing to comply with the interim measure ordered by the ECtHR).

<sup>7</sup> <https://interwencjaprawna.pl/en/council-of-europe-expresses-doubts-over-polands-non-implementation-of-an-echr-judgement-regarding-the-situation-on-the-polish-belarusian-border/>



[Human Rights has granted Interim Measures under Rule 39 in more than 80 cases](#) of persons in risk of pushback at the Greek-Turkish land borders, while dozens of Applications with regards alleged pushback cases at the Greek-Turkish land and sea borders are pending before the Court. [In June 2024 the Court held the first oral hearing regarding two pushback cases at the Greek Turkish sea and land borders.](#) <sup>8</sup>

Current practices indicate that the right to asylum is not only at risk in times of a so-called “crisis”, PRAB and many others have been reporting over the past years about the challenges to get access to international protection at many of the EU’s external and internal borders. PRAB partners reported that since the beginning of the data collection (12 February 2021) until April 2024, 37% of the people who have been pushed back reported denial of access to asylum. European borders are increasingly wired and equipped with ‘[hard and smart borders](#)’ that prevent people from crossing, with official border crossings being closed or highly militarized and inaccessible for those seeking safety. The reality at many of Europe’s borders is that third country nationals at Europe’s doorstep do not have a place to request international protection, and if the place is available, it is not guaranteed that requests will be registered. Many third country nationals face pushbacks, from official border crossings, but also at other places across land borders, even when explicitly requesting international protection to official border guards. When people’s right to asylum is violated, and while they are often exposed to the risk of refoulement, they face tremendous challenges to access legal remedies. They have very simply been pushed out of the state, equalling being physically removed from the country’s legal system and the absence of legal pathways to justice.

**PRAB calls for EU member states to implement the EU Pact on Asylum and Migration, and in particular the crisis regulation, to ensure that:**

1. Asylum-seekers, migrants and refugees can access official **border crossings where they can at all times lodge an asylum application to prevent refoulement**, also in times of crisis or increased numbers of arrivals.
2. **Legal and procedural safeguards** should be provided to ensure that requests for international protection can be lodged and are followed by fair and efficient asylum procedures.
3. Not providing access to international protection cannot come without consequences. **Accountability mechanisms** should be put in place to uphold the rights of vulnerable people seeking safety.

## 2.2. High risk of conflicting narratives, and a need to monitor the monitor

When the EU Pact was officially adopted by the European Parliament, it came with a big promise from Commissioner Ylva Johansson, as the Pact would provide “[a] new, robust, and independent monitoring mechanisms to uphold rights at the border”.<sup>9</sup> Monitoring of fundamental rights is of course utmost welcome, however the legal text does not provide what is being promised. While the [screening regulation](#) includes the ‘monitoring of fundamental rights’ in article 10, the scope of the mechanism is limited to the screening procedure itself. Therefore, the agreed upon mechanism will only monitor the screening facilities, the basis of on-the-spot checks and random and unannounced checks. This limited scope of the mechanism will de facto not prevent pushbacks, nor monitor alleged

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<sup>8</sup> G.R.J. v. Greece and A.E. v. Greece (nos. 15067/21 and 15783/21), Chamber hearing - 4 June 2024, <https://prd-echr.coe.int/web/echr/w/g.r.j.-v.-greece-and-a.e.-v.-greece>

<sup>9</sup> Commissioner Johansson’s plenary speech on the Pact on Migration and Asylum - European Commission (europa.eu); [https://home-affairs.ec.europa.eu/news/commissioner-johanssons-plenary-speech-pact-migration-and-asylum-2024-04-25\\_en#:~:text=The%20Pact%20will%20help%20us,a%20true%20compromise%20for%20sure](https://home-affairs.ec.europa.eu/news/commissioner-johanssons-plenary-speech-pact-migration-and-asylum-2024-04-25_en#:~:text=The%20Pact%20will%20help%20us,a%20true%20compromise%20for%20sure)

fundamental rights violations, as the vast majority of unlawful practices take place outside of official border crossings, police facilities or formal procedures. Since the start of the PRAB initiative in January 2021, **46.946 pushbacks\*** have been documented, of which the majority did not occur at official border crossings. PRAB partners report that the majority of pushbacks took place from busses and train stations at borders (e.g. at the internal border between **Italy** and **France**), as well as at official border crossings (e.g. between **Poland** and Ukraine or Belarus). The more common place for pushbacks is at other places at the often called “green borders”, in forests (e.g. at the **Poland**-Belarus border), or in the mountains (e.g. at the **Croatia**-Bosnia or **Italy-France** borders). Consequently, the fact that the mechanism will only ensure monitoring in agreed-upon places, blind spots will still exist and violations would not be prevented. [An effective mechanism safeguards that the monitoring mechanism covers all instances of pushbacks, from the moment there is \(or has been\) contact between border enforcement authorities and people on the move.](#)

The mechanism further points toward relevant obligations of EU member states but remains vague on the operationalisation of these and the consequences in case there is a lack of compliance:

- While the obligation to investigate allegations to end an abuse is an essential step, there is no guaranteed access to legal remedies, equalling justice for the victims of these rights violations, nor transparency about possible investigations.
- While there is a suggestion to trigger, *where necessary*, investigations into allegations, it remains unclear how the evidence of pushback(s) (practices) collected by other actors than the mechanism can be shared. Further it requires to be clarified whether this trigger equals an investigation, irrespective of a discretionary decision on the necessity.
- While the mechanism refers to participation of independent actors, it does not outline the requirements for its members (i.e. relevant monitoring, reporting or investigation experience).
- While the European Commission is instructed to take into account the mechanism’s findings, corresponding penalties for EU member states failing to cooperate with the mechanism have not been defined

The above mentioned concerns have already emerged when analysing the shortcomings of the existing mechanism in **Croatia**, as outlined in [many previous PRAB reports](#). Having a mechanism failing to deliver on what its name proclaims, risks resulting in conclusions based on the lack of evidence, as any actual evidence will still fall outside of the reporting scope. Such processes could only feed the ongoing pattern in some EU member states, where reported and documented pushbacks are immediately discredited by political leaders as ‘fake news’. Referencing the data collected by the mechanism as unfit for purpose, risks further polarization and denial of rights violations. [It is therefore of paramount importance that the limitations of the mechanism’s scope are recognised, and ideally addressed, and that additional support is foreseen to effectively continue monitoring rights violations at borders – even if that includes the monitoring of the agreed upon monitoring mechanism itself.](#)

**PRAB calls for EU member states to implement the EU Pact on Asylum and Migration, and in particular a border monitoring mechanism, to ensure that:**

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\* This number only includes the persons who reported a pushback and underwent a thorough interview process, using the joint PRAB data collection tool to record their demographics, migratory routes, and the rights violations they reported being exposed to. The numbers reported by the PRAB initiative represent a fraction of the people who are pushed back at Europe’s borders. The infographics in this report are based only on the data collected in the joint data collection tool.

1. The **operationalization of the monitoring mechanism** is done in good faith and EU member states with existing mechanisms confirm that the legal framework (and effective implementation) is fit for purpose, by also guaranteeing access to legal remedies, transparency about investigations, referral systems for recorded rights violations by other actors, and the participation of actors who effectively hold expertise working with people on the move and monitoring.
2. The **geographic scope of the mechanism is broadened** to prevent the existence of places where border management or law enforcement authorities can act outside the functioning mechanism.
3. **Continuous and effective monitoring of the border** remains to be done by the other actors, if the scope of the screening regulation's monitoring mechanism is not expanded.

### 2.3. Paper trail is no future guarantee against pushbacks

The EU Pact requires that the screening authorities complete a 'screening form' with the applicants for international protection, which is effectively made available to them (on paper or electronically). This form, as outlined in article 17 the [screening regulation](#), includes personal information about the applicant, including on whether the person has made an application for international protection. The screening form is merely the traceable (on-paper) part of the screening procedure, also called the 'channelling procedure' by the European Commission. While the screening procedure only starts if the person has arrived, or is irregular on the territory, even if conducted in a 'legal fiction of non-entry', it is not the same as a permission to enter. There are multiple outcomes of the screening procedure: applicants for international protection can be channelled to the regular asylum procedure, or the asylum border procedure, or alternatively their entry can be denied, which equals a border return procedure. Against that 'channelling' decision, no legal remedies are foreseen. The absence of legal remedies is not compensated by the provision of legal counselling throughout the procedure as the nature of pushback practices equals that people are pushed out of the territory and therefore lack access to legal aid providers. This can only be compensated by cross border legal aid networks.

The obligation to conduct this "screening form" is presented by some as a guarantee against pushback, while the reality is that in many EU member states different practices already exist – some including paper work – however none a tool to prevent expulsions. For instance, at **Greece** and **Croatia's** external borders, people are not granted any paper and over the past years – even decades – they have been pushed back without any formal registration. Moreover, in Greece pushbacks are even reported against persons who have already been formally registered, have already applied for asylum or even are recognized beneficiaries of international protection residing legally in the country.<sup>10</sup> However, a 'pushback' can be executed in many ways, including the effective inability to claim international protection and the refusal to let people lodge a request for international protection and the absence of an effective and fair asylum procedure.

At the **Italy-France** border, different written documents are handed out during the formal readmission. The French authorities used, prior to February 2024, a '*Refus d'entrée*', which was declared illegal if used without the application of the EU return directive<sup>11</sup> and if used indiscriminately without any kind of *ad personam* verification. Since then, two different types of documents have been

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<sup>10</sup> RECORDING MECHANISM OF INCIDENTS OF INFORMAL FORCED RETURNS, ANNUAL REPORT 2022, [https://nchr.gr/images/pdf/RecMechanism/Annual\\_Report\\_2022\\_compressed\\_1.pdf](https://nchr.gr/images/pdf/RecMechanism/Annual_Report_2022_compressed_1.pdf) and RECORDING MECHANISM OF INCIDENTS OF INFORMAL FORCED RETURNS, ANNUAL REPORT 2023, [https://nchr.gr/images/pdf/nea\\_epikairothta/deltia\\_tupou/2024/2023.pdf](https://nchr.gr/images/pdf/nea_epikairothta/deltia_tupou/2024/2023.pdf) (in Greek)

<sup>11</sup> The return directive concerns the return of third country nationals without legal stay. <https://eur-lex.europa.eu/eli/dir/2008/115/oj>

used. Firstly, a document informally called '*Arrêté*', which provides a formal readmission of the French police to Italian territory and which includes the general national and EU legal frameworks under which the person is being readmitted. Secondly, some migrants receive a '*Proces Verbal*', a more detailed document where there is a transcript of the interview between the French Police and the migrant. PRAB partners on the ground are concerned as those paper files are handed out also to people who seem eligible for international protection, including people of nationalities with high recognition rates like Eritrea and Sudan, without an in-depth individual examination of their possible application for international protection in France.

At the Italy-Slovenia border, a slightly different practice takes place following a reintroduction of internal border control introduced by Italy from 21 October 2023. Formal rejections orders "*respingimento alla frontiera*" are issued to individuals stopped at the **Italian-Slovenian** border who do not meet the requirements to enter Italian territory – again without assessment of the protection needs of those aiming to find safety in Europe. This has further also led to a ripple effect, as Slovenia re-introduced border control with Croatia and Hungary.<sup>12</sup> At the **Poland-Belarus** border, one of the legal frameworks<sup>13</sup> obligates the border guard to issue a decision ordering an immediate return from the territory of Poland, if the foreigner is apprehended immediately after crossing the external border against the law. This decision shall include a re-entry ban into Poland and other Schengen countries. The Polish Supreme Administrative Court<sup>14</sup> revoked the 2021 decision ordering an immediate return, claiming that it violated the principle of non-refoulement, and that the existence of the prerequisites for issuing the decision was not sufficiently demonstrated (the description of the event in the border crossing protocol was too laconic), as they constitute a derogation from the guarantees of the return directive. Migrants are not provided with information about their rights in an understandable language by the border guards or other Polish forces patrolling the border, on the contrary, it is even reported that the information shared is misleading, a deliberate deception.<sup>15</sup> Moreover, third-country nationals are being regularly forced to sign documents before the pushback without any explanation or translation of what they are signing (e.g. information about the possibility of applying for international protection with a statement that they do not want to seek asylum here). A second legal framework provides that a decision on refusal of entry to Poland, through an official border crossing, is not issued to a person who does not meet the conditions for entry if, during border control, the person declared a willingness to apply for international protection. The reality on the ground is that applications for international protection are commonly ignored and applicants for international protection are usually returned to Belarus without any decision being issued.<sup>16</sup> In reality pushbacks continue at the Polish-Belarus border irrespective of legal safeguards. Pushbacks take place without identification of the foreigners, without any decision being issued or without the inclusion in any official records. In conclusion, following current practices at EU borders it is clear that while a paper trail might provide people with a document about their presence at the territory (even being it at the legal fiction), this will not equal less pushbacks or effective pathways to legal remedies.

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<sup>12</sup> <https://www.gov.si/en/registries/projects/zacasni-nadzor-na-notranji-meji/>

<sup>13</sup> Article 303b(1) of the Act on Foreigners. There are two other legal basis for pushbacks: Regulation of 20 August 2021 (when no document is issued) and decision on refusal of entry to Poland (push back on official border crossing points).

<sup>14</sup> Judgement of 10 May 2023, no. II OSK 1735/22, <https://interwencjaprawna.pl/en/the-principle-of-non-refoulement-on-the-polish-belarusian-border/>

<sup>15</sup> [https://asylumineurope.org/wp-content/uploads/2023/05/AIDA-PL\\_2022-Update.pdf](https://asylumineurope.org/wp-content/uploads/2023/05/AIDA-PL_2022-Update.pdf)

<sup>16</sup> [https://interwencjaprawna.pl/wp-content/uploads/2021/01/CoE-M.K.-and-Others-vs-Poland-execution\\_communication-SIP\\_March-2024.pdf](https://interwencjaprawna.pl/wp-content/uploads/2021/01/CoE-M.K.-and-Others-vs-Poland-execution_communication-SIP_March-2024.pdf)

**PRAB calls for EU member states to implement the EU Pact on Asylum and Migration, and in particular the screening regulation, to ensure that:**

1. **Legal aid, of high quality, free of charge and provided by an independent actor**, should be made available throughout the process, and applicants for international protection should be informed about their rights (and obligations) upon their arrival to a screening facility.
2. The screening procedure as well as the written form should be translated **in a language that the applicant for international protection can be reasonably expected to understand**.
3. **Legal remedies** to challenge the outcome of the screening procedure should be put in place, suspensive effect and cross border legal aid networks should be supported by European funding to use litigation to uphold rights at the border.

#### 2.4. The on paper possible end of indefinite “crises” with rights violations as a *modus operandi* -

The [regulation addressing situations of crisis and force majeure in the field of migration and asylum](#) (“Crisis regulation”), outlines measures EU Member States can use in emergency situations, such as the duration for the derogations and solidarity measures. Article 1 states that the Crisis Regulation “addresses exceptional situations of crisis, including instrumentalisation, and *force majeure*, in the field of migration and asylum within the Union by means of temporary measures”. Article 5 specifies that the initial period of three months can be extended once again with three months upon a confirmation by the European Commission that the situation of crisis or *force majeure* persists.<sup>17</sup> After those 6-months the member state concerned can submit a proposal to the European Commission for a new council implementing decision to amend or extend the specific derogations or the solidarity response plan for a period not exceeding three months, which may again be extended, if the situation of crisis or *force majeure* persists for another three months. It is nevertheless stressed that the duration can be no longer than what is strictly necessary to address the situation, and the total duration is capped at 12 months.

Currently, the guise of a ‘crisis’ has given member states at the EU’s external borders the self-claimed ‘legitimization’, sadly sometimes endorsed or at least tacitly approved by the European Commission to curtail the rights of those aiming to find international protection in the EU for more than 12 months. The Crisis regulation seems to mirror the current practices of EU member states at some EU external borders while attempting to limit it in time. The so-called “instrumentalization of migrants” by the EU-Belarus border, which started in the summer of 2021 continues to have consequences more than three years after its start. **Poland** initially introduced a prohibition of stay on the entire length of the border road strip, including an area of 15 meters from the state border line, on September 1<sup>st</sup> 2021 and a state emergency for a period of 30 days in the wider area (covering 115 towns and villages in Podlaskie Voivodeship and 68 in Lubelskie Voivodeship on the border with Belarus) the day after. The basis for the latter was a “particular threat to the security of citizens and public order related to the current situation on the state border of the Republic of Poland with the Republic of Belarus”; raising a lot of controversy as the constitutional grounds and proportionality were questioned. The state of emergency equalled a suspension of the right to organise and conduct assemblies and mass events, the obligation to carry an identification document, the prohibition of recording areas containing border infrastructure and restricting access to public information activities carried out in connection

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<sup>17</sup> Note that on the onset of the situation of crisis or *force majeure*, the member state facing such situation also has the possibility to request authorization to apply derogations from relevant rules, including the asylum border procedure. Those derogations cannot exceed ten days. Preamble number 24.

to the prevention of illegal migration. When there was no legal possibility to continue the extensions of the state of emergency, the Act on State Border Protection and other laws were amended, which also equalled a ban on staying in specific areas in the border zone. This ban was in force until 30 June 2022 and was reintroduced on 13 June 2024 remaining in effect until today. The ban of stay on the entire length of the border road strip also remains in effect until today. In **Lithuania**, a similar ban was in place during the declared state of emergency in 2021 during the increased flow of asylum seekers over the Lithuania-Belarus border and later in 2022 after Russia's invasion into Ukraine. Later this ban was reintroduced through changes in the Law on the State Border and its Protection of the Republic of Lithuania as of 25 April 2023. In 2024 the policy of pushing back remained, new amendments to the Law of the State Border and its Protection of the Republic of Lithuania were adopted and the state policy of pushing back became justified on a legal level<sup>18</sup>. This is however not the only external border where compliance with fundamental rights, including the right to access international protection, has become an almost unachievable exception instead of the rule. During March 2020, **Greece** had de jure suspended access to asylum pursuant to an Emergency Degree, [a measure challenged before the European Court of human Rights](#).<sup>19</sup>

The reality on the ground highlights the importance of effectively monitoring whether a situation of crisis or *force majeure* persists – and whether states have effectively attempted to end the crisis. The latter does not equal a conclusion on whether stricter border procedures were successful, but an analysis of whether the Member State effectively used the time of derogations to strengthen its asylum system. The European Commission, given this role under article 6 of the Crisis regulation, should step up its game and their assessments should focus on proportionality and necessity of the proposed derogations as well as the human rights implications. Compliance with fundamental rights and humanitarian standards do not allow for double standards. Lessons from a very effective response to a mass influx of Ukrainians under the Temporary Protection Directive should be taken on board and used as an inspiration for a welcoming Europe.

**PRAB calls for EU member states to implement the EU Pact on Asylum and Migration and end the indefinite crisis at EU borders by ensuring that:**

1. At all times – also in a situation of crisis or *force majeure* – **compliance with fundamental rights need to be ensured and safeguards should uphold minimum standards**, including access to humanitarian assistance, the right to apply for international protection, efficient and fair asylum procedures, and legal remedies to challenge potential unlawful limitations to basic rights.
2. **Situations of crisis or *force majeure* are effectively limited in time**, with the duration of twelve months the absolute maximum, in case the situation persists and to ensure measures remain necessary and proportionate. This **temporary crisis should be used to capacity-build the national asylum system** into a more robust system, to prevent it from becoming a crisis exceeding the 12-months threshold and to effectively limit the possibilities for derogations, as they risk violating the rights of those trying to seek safety in the EU, irrespective of the duration of the crisis.
3. **If an EU Member State does not end derogations**, while it has been assessed that the situation of crisis or *force majeure* does no longer exist by the European Commission, **there should be immediate negative financial and political consequences**.

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<sup>18</sup> [Lietuvos Respublikos valstybės sienos ir jos apsaugos įstatymas](#). 2000 m. gegužės 9 d. Nr. VIII-1666, galiojanti suvestinė redakcija (nuo 2024-01-01).

<sup>19</sup> See also <https://rsaeean.org/en/the-right-to-asylum-in-the-context-of-instrumentalisation-lessons-from-greece/>



## 2.5. Humanitarian needs: out of sight, out of mind?

Preamble 16 of the [regulation addressing situation of crisis and force majeure in the field of migration and asylum](#) (“Crisis regulation”) states that “*Humanitarian assistance should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State*”. While the mere possibility of humanitarian aid to destabilize the Union or a member state is highly questionable, not the least considering the low level of assistance provided/allowed; it opens the door to allow for criminalisation of actors providing assistance – a trend which has been noticed in multiple EU countries.

In the previous years, **Greece** has set the poor example by starting to criminalise humanitarian assistance and initiating criminal procedures to those delivering aid, as widely addressed by multiple Special Rapporteurs<sup>20</sup>, the Council of Europe<sup>21</sup> and the bar association<sup>22</sup>. This is also the case in **Poland** where charges have been initiated against persons providing assistance at the Polish-Belarus border. They were accused of committing the crime of facilitating illegal stay on the territory of Poland.<sup>23</sup> Multiple judgments acquitted humanitarian workers.<sup>24</sup> Undermining the work of human rights defenders and humanitarian aid providers is more than a sincere violation of the EU’s core values – and the upcoming reform of the Facilitators’ Package brings the opportunity to set the record straight and clarify that humanitarian assistance can never be criminalised.

Humanitarian aid provides lifesaving or emergency assistance to people most in need, based on the principles of humanity, neutrality, impartiality and independence. Humanitarian aid should not be seen as a holy grail, as it remains mainly a plaster of relief to address the most urgent needs when states might be temporarily unable – or unwilling – to address those. The EU should be able to manage possible conflicts with neighbouring third countries without restricting the rights of people seeking international protection, in line with international and European human rights law. The most important question remains “Why humanitarian aid is *de facto* required in the 21<sup>st</sup> century at Europe’s borders?”. The answer is sad and shocking: the reality is that Europe’s borders became some of the most dangerous in the world, due to policy decisions and the lack of safe and legal pathways. The Crisis regulation mentions in preamble 34 and article 6 that there should be particular attention to the compliance with fundamental rights and humanitarian standards; however, how this will be ensured

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<sup>20</sup> Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor - Visit to Greece (A/HRC/52/29/Add.1), 2 Mar 2023, <https://srdefenders.org/country-visit-report-greece/>; Special Rapporteur on the situation of human rights defenders; the Independent Expert on human rights and international solidarity; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on trafficking in persons, especially women and children, Criminalisation of search and rescue work (joint communication), 16 November 2021 <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gl=26828> ; Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the human rights of migrants, Communication to the Government of Greece with regards criminal investigations opened against human rights defenders, 28 December 2022, <https://srdefenders.org/greece-criminal-investigations-opened-against-human-rights-defenders-panayote-dimitras-tommy-olsen-madi-williamson-and-ruhi-akhtar-joint-communication/>; Special Rapporteur on the situation of human rights defenders, Why are human rights defenders in Greece at risk and what can be done about it?, 14 March 2023, <https://srdefenders.org/resource/why-are-human-rights-defenders-in-greece-at-risk-and-what-can-be-done-about-it/?fbclid=IwAR0ltXzRv46bqdkyMQ47Ond-L46Q7Axb3oAC14VXPRKRb65o1diQ7YOVew>

<sup>21</sup> <https://www.coe.int/en/web/commissioner/-/greek-authorities-should-reverse-the-trend-undermining-the-work-of-human-rights-defenders-and-journalists?fbclid=IwAR3HMVpwtUctWLGopkmLioEomRRYGhRIGq2zaerhXpBo3c-3bm9rpFhHsZU>

<sup>22</sup> Thessaloniki Bar Association, Ψήφισμα για τη σύλληψη συναδέλφου (Resolution on the arrest of a colleague), 13-7-2023, <https://www.dsth.gr/psifisma-gia-ti-syllipsi-synadelfou/>

<sup>23</sup> Helsinki Foundation for Human Rights, <https://hfhr.pl/en/news/-i-didn-t-think-there-was-a-law-punishing-the-donation-of-food-drink-clothes-and-medicine-to-a>

<sup>24</sup> HFHR <https://hfhr.pl/en/news/behind-the-border-wall-is-a-strip-of-polish-territory--new-judgment-on-humanitarian-aid->  
<https://hfhr.pl/en/news/behind-the-border-wall-is-a-strip-of-polish-territory--new-judgment-on-humanitarian-aid->



and safeguarded is not further elaborated upon – neither is how people whose rights are violated can find legal redress.

**PRAB calls for EU member states to implement the EU Pact on Asylum and Migration ensuring that those in need have access to humanitarian aid by safeguarding that:**

1. **Humanitarian principles should be safeguarded and cannot be politicised in the EU**, aid cannot be seen as an instrumentalization of migration, as it should be delivered in respect with the principles of humanity, neutrality, independence and impartiality.
2. **Humanitarian aid should be allowed, also in border zones or militarised zones**. Humanitarian assistance is often lifesaving and an emergency measure for people with severe needs, the **root causes for the humanitarian crisis are irrelevant when assessing the need for delivery**.
3. The **criminalisation of actors providing humanitarian assistance** at border areas – or more broadly to displacement affected populations – **should be ended**.

### 3. Safeguards and rights: a building block to turn promises into practice

The reality at EU borders is that pushbacks are being used as a systematic border management tool, as reported by many different actors including grass roots organisations, civil society, the [Protecting Rights at Borders](#) (PRAB) initiative, UN and EU agencies over the past years, even decades. The different legal files of the newly agreed upon EU Pact on Asylum and Migration are unlikely to end pushback practices and right violations at the EU's external and internal borders, as that was simply not the objective during the negotiations. The Pact outlines a clear disconnect between existing practices and required policies to effectively address ongoing rights violations, as it should be recalled that also under the currently applicable legal framework of CEAS pushbacks and rights violations at borders have never been legal and violate the EU asylum *acquis*.

These discrepancies between policy and practice are likely at least in part linked to the lack of effective enforcement of existing legal frameworks. The newly agreed upon Pact might, however, equal an end to the tacit approval – or endorsement – of rights violations by other EU member states or the European Commission. Having a separate building block on “safeguards and rights” as part of the European Commission's [Common Implementation Plan for the Pact on Asylum and Migration](#), seems to be an indicator that rights should not be forgotten and will be monitored more closely. The particular focus on minors and families, with children and single women and mothers as people with specific needs is understandable; and 18% of the pushback cases reported by PRAB partners over the past 4 years also falls within this category. It should nevertheless be noted that each human being has fundamental rights, including single men seeking international protection, in line with the ECtHR judgement<sup>25</sup> that all asylum seekers are to be considered vulnerable, without discrediting the additional vulnerabilities of some. The building block “safeguards and rights” can and should however not be seen in isolation, as is clarified in the European Commission's common implementation plan. For pushbacks it links to the building blocks of border systems, procedures that unite, return, solidarity and responsibility. Regarding the latter, it is important to recall that 75% of the refugees worldwide are hosted in low and middle-income countries, with 69% hosted in neighbouring countries of their country of origin.<sup>26</sup> The EU's increased focus on the external dimension of migration, aiming to curtail arrivals and finding out of the box “solutions”, can further be seen as responsibility shifting instead of responsibility sharing. This approach is a direct obstacle to achieving equitable global solidarity and

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<sup>25</sup> ECtHR, *M.S.S. v. Belgium and Greece* [GC] - 30696/09 Judgment 21.1.2011 [GC].

<sup>26</sup> UNHCR June 2024, *Global Trends Forced Displacement in 2023*, <https://www.unhcr.org/global-trends>.

EU member states might use pushbacks as the last available border management tool to keep people out.

To bridge the disconnect between promises and practice, it will not be sufficient to merely refer to fundamental rights and safeguards on paper. Civil society's knowledge and expertise should be tapped into immediately and they should be considered, recognised and included as a partner when drafting national implementation plans as well as during their implementation and monitoring. Pushback practice will only end if states deliberately decide to stop using them as a border management tool, and when they start putting rights and safeguards at the centre of their response when welcoming people at Europe's borders.



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