



FIDE 2027

Questionnaire

Topic II – The Union’s External Borders and Fundamental Rights

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Introduction

EU migration law and policy, used here as a shorthand for the EU’s immigration, asylum, return, and integrated border management regulatory and policy frameworks, ranks today among the central fields of Union law and policy. A significant legislative corpus has developed over the past twenty-five years, while the EU Court of Justice has set important principles through its case law. This policy field faces significant challenges. First, realising policy implementation has proved challenging; the policy suffers from an implementation deficit. Next, implementing migration policy in a rights-sensitive and rights-compliant manner has also proved complex. Another set of challenges relates to ensuring enforcement, including where fundamental rights violations are at play. For the past decade, at the very least, these challenges have led to the emergence of deep political rifts between Member States, and occasionally between individual Member States and the European institutions; renationalisation tendencies; the emergence of unilateral responses such as the reintroduction of internal border controls to cater in essence for migration management purposes; and the occurrence of (systemic) fundamental rights violations that are arguably also connected with rule of law failings.

To counter these challenges, the EU adopted in the spring of 2024 a comprehensive regulatory framework, the so-called New Pact on Migration and Asylum. The Pact’s stated aim was to establish ‘seamless migration processes and stronger governance’. To that end, the Pact instruments seek to streamline migration policies and establish new governance structures. Most of the instruments consisted of regulations. While these regulations are in force since 2024, most of them will become applicable in the spring of 2026. This 2-year period between adoption and application reflects the Union’s realisation of the important administrative and factual implications (e.g. human and financial resources) related to the realisation of the New Pact instruments. Therefore, at the timing of circulation of this questionnaire, it is only possible for national rapporteurs to appraise the Pact instruments’ potential effects based on their legal design, but not yet to comment on their actual impact on national policy and practice.

Against this backdrop of multi-layered and complex challenges, this questionnaire targets five areas deemed seminal for EU’s migration law and policy and its effects on national legal orders (chapters 2-6 of this questionnaire). These are:

- i) the functioning and implications of the principle of mutual trust, as well as that of solidarity between the Member States (chapter 2);
- ii) the governance and effects of EU and national level crisis prevention and management (chapter 3);

- iii) effective judicial protection, as well as the effectiveness of extra-judicial means of fundamental rights compliance (chapter 4);
- iv) the prospects, limitations, and fundamental rights compatibility of safe third country arrangements as well as external processing arrangements (chapter 5);
- v) and, the constitutional underpinnings and mandate operationalisation of EU agencies, as well as the apportioning of responsibility for agency action (chapter 6).

In addition, the questionnaire provides space for national rapporteurs to comment on the intersections that they consider as most seminal between integrated border management, asylum, migration, return policies, and fundamental rights in their jurisdiction (chapter 1), as well as to offer their broader outlook and their recommendations for legal and policy developments in this field (chapter 7). It is hoped that this combined approach of in-depth analysis of selected topics and flexibility to comment on potentially different angles, as well as to provide overarching comments and recommendations will allow for a holistic treatment of the issue.

Chapter 1: Intersection between Integrated Border Management, Asylum, Migration, and Return Policies, and Fundamental Rights

1. What do you consider to be the most seminal intersections between integrated border management, asylum, migration, and return policies, and fundamental rights in your jurisdiction? [NB: *Please note that while these intersections can of course focus on the situation at the Union's external borders, they could also relate to linked issues, such as reintroduction of internal border controls, secondary movements, the operation of the principle of mutual trust, intra-EU responsibility sharing and solidarity, or deployments through EU agencies*]
 - a) Concretely, can you identify the two or three most seminal legal issues arising out of these intersections for your jurisdiction?
 - b) For each of these legal issues, can you elaborate on the two or three most seminal fundamental rights at play (e.g. right to asylum, right to an effective remedy, prohibition of refoulement, prohibition of collective expulsions)?
 - c) For each of these issues, can you briefly describe and summarize any relevant national level legal scholarship and case law?

Chapter 2: Mutual Trust and Solidarity among Member States

2. In which instances have national courts refused to implement decisions on intra-EU transfers ('take back' or 'take charge' decisions) based on Regulation 604/2013 ('Dublin III Regulation)? To what extent has the notion of systemic deficiencies played a role in relevant national case law? What effect, if any, do you consider that the provisions on responsibility allocation under the new Regulation 2024/1351 ('Asylum and Migration Management Regulation') will have on national practice and case law in this field?
3. One of the main innovations of the new Regulation 2024/1351 ('Asylum and Migration Management Regulation') is the introduction of structured provisions around solidarity

among Member States in the field asylum and migration management. What do you consider are the two or three most relevant features of the mechanism and how do you appraise them based on their legal design? [NB] *Elements to comment on can concern for example: the activation process for solidarity and the roles of EU institutions therein; the types of solidarity contributions foreseen; elements on constraint and flexibility in the functioning of the mechanism; its effectiveness potential; amendments considered conducive compared to the current status quo and limitations of the mechanism.*

Chapter 3: Crisis Prevention and Management

4. An innovation of the New Pact on Migration and Asylum is the introduction of a structured system to prevent and manage crisis under the new Regulation 2024/1359 ('Crisis and Force Majeure Regulation'. What do you consider are the two or three most relevant features of this new system and how do you appraise them based on their legal design? NB *Elements to comment on can concern for example: the definition of crisis and force majeure; the identification of crisis and force majeure in concreto and the roles of EU institutions therein; the types of responses foreseen (derogations and additional solidarity contributions); elements on constraint and flexibility in the functioning of the system; its effectiveness potential; amendments considered conducive compared to the current status quo and limitations of the mechanism; the mechanism's impact on fundamental rights.*
5. Has your Member State reintroduced internal border controls (i.e. towards other Schengen countries) under the Schengen Borders Code (Regulation 2016/399 as amended most recently by Regulation 2024/1717, Articles 25 et seq) on migration-related grounds, such as risks linked with irregular migration or the overburdening of the national asylum system? If so:
 - a) What precise justification has been provided for the reintroduction of internal border controls, and do you assess it as cogent and supported by objectively verified indicators?
 - b) How has the proportionality of the reintroduction or prolongation of border controls at internal borders been assessed?
 - c) Where alternative measures to border controls applied or considered prior to the reintroduction or prolongation of border controls?
 - d) How long have such controls been in place? What have their effects been?
6. Is there current practice in your Member State of introducing responses in view of threats linked with the instrumentalization of migration?
 - a) What form has this practice taken (e.g. administrative-level practice, policy discourse, introduction of legislation)?
 - b) What are the main elements of these responses, especially in terms of their links with fundamental rights (limitations of rights, complete restriction of rights)?
 - c) Can you briefly describe and summarize any relevant national level legal scholarship and case law in terms of this practice?

- d) How do you consider that the entry into application of the Crisis and Force Majeure Regulation will impact on national practice?
- e) Has your Member State invoked or considered invoking Article 72 TFEU to justify the measures adopted? If so, how do you appraise the legal arguments raised?

If your Member State does not currently practice responses to instrumentalization, please provide commentary on the relevant provisions of the Crisis and Force Majeure Regulation and your appraisal of how they are likely to structure future responses at national level, as well as comment to what extent you consider that Article 72 TFEU can be invoked to justify responses to instrumentalization.

Chapter 4: Effective Judicial Protection & Effectiveness of Extra-judicial Means of Fundamental Rights Compliance

- 7. To what extent does the national law and practice of your Member State make it possible for individuals to have access to courts and to effective remedies to contest i) fundamental rights violations in the context of border control operations; ii) asylum or return processing in border contexts? Can you briefly describe and summarize any relevant national level legal scholarship and case law?
- 8. To what extent, and how, do you consider that the new ‘seamless migration process’ under the New Pact on Migration and Asylum that will consist of screening (Regulation 2024/1356); potentially, border asylum procedures (Regulation 2024/1348); and, potentially return border procedures (Regulation 2024/1349) will affect the right to an effective remedy?
- 9. Based on experience from your Member State, how do you appraise the effectiveness of extra-judicial means of fundamental rights compliance in terms of fundamental rights violations in the context of border control operations; and of asylum or return processing in border contexts? *NB Mechanisms to comment on can concern, for example, EU level monitoring mechanisms, national level monitoring mechanisms, procedures before national Ombudspersons, the strategic use of funding to enforce fundamental rights obligations.*

Chapter 5: Safe Third Country and External Processing Arrangements: Prospects, Limitations & Fundamental Rights Compatibility

- 10. Does your Member State currently operationalise the safe third country concept under Directive 2013/32/EU (EU Procedures Directive)?
 - a) Is there a national safe third country list?
 - b) To what extent do you appraise current national practice to be compatible with EU (fundamental) rights law? Please also draw from any relevant national level legal scholarship and case law for your answer.
 - c) How do you consider that the entry into application of the Asylum Procedures Regulation (Regulation 2024/1348) which contains updated provisions on this point will impact on national practice?

- d) How might the adoption of EU proposals as regards the application of the ‘safe third country’ concept currently under negotiation (COM/2025/259) further impact national practice?
11. Does your Member State currently practice, or envisage practising variants of external asylum or return processing? Can you briefly describe and summarize the content of these (envisaged) arrangements, as well as provide commentary in terms of their effectiveness and compatibility with EU (fundamental) rights law? Please also draw from any relevant national level legal scholarship and case law.
- If your Member State does not currently practice or envisage practicing external processing arrangements, please provide commentary (including through existing national scholarship) on the compatibility of current practice in other Member States (e.g. Italy-Albania Protocol) or relevant EU proposals currently under negotiation (that is proposal on ‘return hubs’ under the Commission proposal on an EU returns regulation, COM(2025) 101) in terms of their effectiveness potential, and their compatibility with EU (fundamental) rights law.

NB: By external processing we do not refer to the operationalisation of safe country of origin, transit, or safe third country concepts. Rather we refer to arrangements whereby a third country conducts asylum or return processing on behalf of an EU Member State or allows an EU Member State to conduct (parts of) asylum or return processing on its territory.

Chapter 6: EU agencies: Constitutional Underpinnings, Mandate Operationalisation, and the Apportioning of Responsibility for Action

12. Based on experience from your Member State, how do EU coordinated deployments (whether by a sole agency, such as Frontex, or multi-agency) interact with national authorities in the framework of integrated border management, and to what extent is accountability for fundamental rights violations ensured?
- a) What type of tasks are conducted independently by the EU coordinated contingent, which may involve one or more EU agencies, and what type of tasks are conducted jointly with national authorities? Do you consider current deployments to act within the limits of the EU and national constitutional framework in terms of the division of powers between the EU and the Member States in this field?
- b) How is accountability for fundamental rights violations occurring in the framework of integrated border management operations and involving national authorities ensured at national level? Please refer to both judicial and any extra-judicial accountability mechanisms. How effective do you deem the current system at national level? Which fundamental rights do you consider are especially jeopardized? Please also draw from any relevant national level legal scholarship and case law.
- c) How effective do you consider the current system for ensuring accountability at EU level for the EU’s involvement in fundamental rights violations in the framework of border control operations? How could any current limitations be overcome?



Chapter 7: Outlook and Recommendations

13. What suggestions for reform of European policy in the areas of Integrated Border Management, Asylum, Migration, and Return would you like to offer in view of improving their i) effectiveness, and ii) their adherence to fundamental rights?