Realistic Approach(es) to Remigration for EU Member States

Markus Johansson-Martis

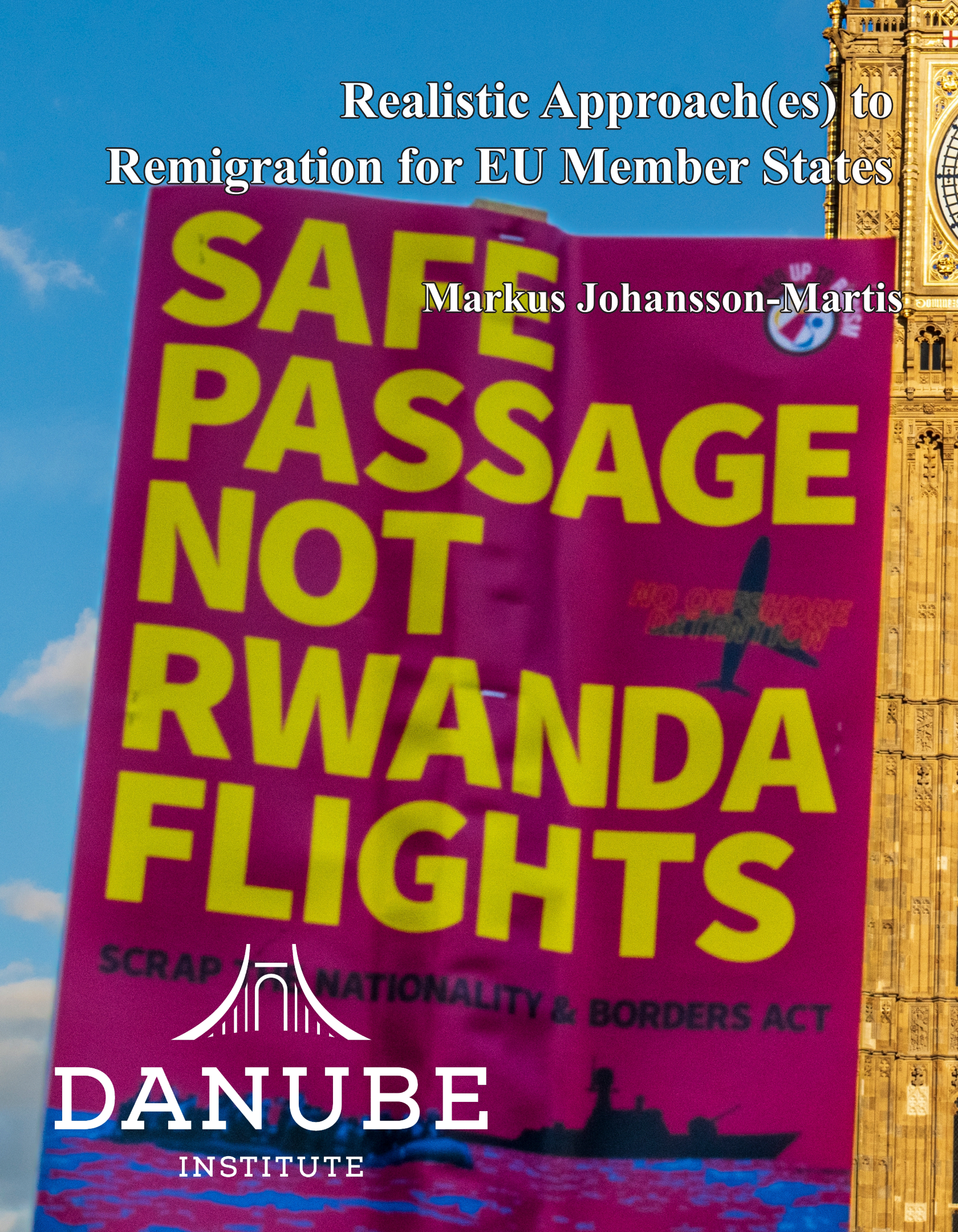

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Image: Protesters gathered outside Westminster Square in opposition to the Illegal Migration Bill

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About the Author

Markus Johansson-Martis is a lawyer by training and a columnist. He has written for Riks, Sweden's largest conservative media outlet. He is the former chairman of the Conservative Students' Union, Northern Europe's largest conservative student organisation, and has also served as a policy advisor to the Sweden Democrats. He holds an LL.M. from Stockholm University, specialising in constitutional law and the governance of public authorities.

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Abstract

This paper examines how the European Union (EU) can develop a realistic remigration strategy within the constraints of EU law and the European Convention on Human Rights (ECHR). By analysing the failures of the UK's Rwanda Plan and Italy's Albania Model, the paper identifies the structural legal barriers that prevent Member States from unilaterally externalising asylum procedures. Recent Court of Justice of the European Union (CJEU) and European Court of Human Rights (ECtHR) jurisprudence further narrows the scope for national experimentation. The EU's new Migration Pact significantly reshapes this landscape by harmonising asylum rules, introducing a Union-wide safe third-country framework, and enabling external so-called "Hotspot" processing under the legal fiction of non-entry. These reforms reduce fragmentation and create new opportunities for cooperation with third countries, though strict human-rights safeguards remain in place.

The paper concludes that the Migration Pact creates, for the first time, a coherent legal framework that enables the EU to pursue an active remigration policy through externalised procedures and structured cooperation with third countries. *It likewise highlights the strategic trade-offs between national and EU-level implementation: while Member State-led initiatives grant political autonomy and flexibility, they remain highly vulnerable to judicial challenges, whereas EU-level mechanisms deliver greater legal durability, operational capacity, and harmonisation at the cost of reduced national discretion.*

Why a Realistic Approach to Remigration is Needed

A dark blue wave is sweeping over European politics. Migration policies sit at the epicentre of political turbulence across all Member States, with governments under escalating pressure to respond as border arrivals rise, public trust in existing solutions erodes, and polarised debates risk leaving the hardest questions unresolved. Against this backdrop, calls for remigration have become increasingly urgent and contentious.

In this context, remigration refers to the formulation and implementation of policies requiring non-citizen migrants in Europe — whether seeking asylum, having asylum or residing illegally — to be transferred outside the European Union's external borders. For the purposes of this paper, the focus is on transfers to Migration Centres located outside the EU: this means that individuals would eventually return to their countries of origin or relocate beyond the borders of the Member State of the Union in which they currently reside. This definition is intentionally neutral, setting aside political, ethical, or ideological connotations to provide a clear starting point for the following analysis.

The issue of migration or asylum was within the Member States' competence. Now, however, with the new Migration Pact, new changes have been introduced. Not only has it moved more national sovereignty to the EU's competence. The Migration Pact, as will be shown, is not only a bad thing, but it has also, at the same time, made it easier to process asylum seekers' requests outside the Union's external borders. This is highly relevant for national legislatures in member states to grasp, since much of the focus on this topic is colored by the negative outcomes and the burned "political capital" of the failed initiatives, such as the Rwanda Plan in the United Kingdom (UK) and the Albanian model in Italy.

This paper examines how a realistic remigration strategy could be developed within the EU following the implementation of the Migration Pact. It assesses potential models for establishing external "Hotspots" for asylum processing, beginning with an analysis of the failed Rwanda and Albania initiatives, followed by an overview of the Pact's reforms and the legal constraints that shape externalisation policies.

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The reason for including the UK in this paper, despite its departure from the EU, is that Union law remains relevant to the analysis. So do the ECtHR's precedents and the substantive provisions of the European Convention on Human Rights (ECHR). The paper concludes by assessing whether such centres should be pursued by individual Member States or, in the longer term, established at the EU level.

Although the topic is legally technical, the aim is to provide a concise introduction to the institutional and political tensions surrounding remigration at the EU level. The analysis focuses on the practical interplay between national sovereignty and new EU procedures, with particular attention to the evolving constraints created by the Migration Pact and relevant ECtHR jurisprudence. By evaluating the feasibility of external processing and the comparative advantages of national versus EU-level implementation, the paper offers a pragmatic framework for policymakers seeking workable solutions beyond political rhetoric.

To understand how such a framework might operate, one needs to consider legal development not only within the EU but also case law from the ECtHR. The precedents set by the ECtHR are particularly relevant because they directly affect which remigration policies are legally feasible and which measures risk violating established human rights protections. By bridging the gap between abstract legal rules and the practical scenarios policymakers face, these cases offer concrete, actionable guidance for crafting effective remigration strategies.

This paper does not address issues related to people who have already received citizenship, nor those who hold a valid residence permit, such as students, workers, or seasonal labour migrants. National laws determine these legal grounds for individuals and should therefore be decided at the national level. The analysis in this paper focuses instead on the situations of asylum seekers, illegal migrants in Europe, and people with asylum living in any Member States, where both EU and ECHR norms are most applicable. For the sake of limiting this report's context, reflections upon how so-called "vulnerable groups" should be treated differently will not be considered.

Lastly, it is important to note that this report will focus solely on EU law and individual rights under the ECHR. These legal frameworks are the most relevant and indeed represent the primary obstacles to a more flexible migration policy. For the reasons stated above, this paper seeks to answer the question: *How can EU Member States implement a realistic remigration strategy through institutional restructuring within existing law, aligned with conservative and sovereigntist priorities?*

Border corssing between Belarus and Poland (Shutterstock)

A Tale of Two Failed Schemes: the Rwanda Plan and the Albania Model

The ambition to ease the burden on the national refugee reception system — one of the stated goals of remigration — is not new. As this section of the paper will show, conservative governments attempted to implement similar policies years ago. However, they failed for various reasons, and understanding these factors is essential before considering the path forward. This chapter draws on lessons learned both in Italy, within the Union, and in the United Kingdom, which like all EU Member States, has ratified the ECHR.

A Failed Trip to Rwanda

In 2022, the conservative UK government signed the now-infamous agreement with Rwanda, known as the *Migration and Economic Development Partnership* (MEDP). The policy was presented to "fix" what the government described as a "broken system," referring to the global asylum framework. As part of the UK's substantial financial commitment to Rwanda (£100 million), individuals arriving illegally in the UK could be considered for relocation to the African country. Instead of remaining in the UK while their asylum applications were processed, they would stay in Migration Centres in Rwanda. The primary target group consisted of irregular arrivals by small boats, but the policy never materialised as intended.[1]

The plan collapsed even before takeoff - and in a literal sense. On June 14, 2022, a Boeing 767, chartered for £500,000 from a Wiltshire military base, sat fueled with seven passengers. At 19:30, the ECtHR issued a Rule 39 interim measure, halting the removal of one individual due to risks under the ECHR. Rwanda lay outside the ECHR's legal space, lacking enforceable return mechanisms to the UK if domestic courts later intervened.[2] Given the alleged risk of treatment contrary to applicants' ECHR rights (as the UK has ratified to give asylum seekers), the transfer of asylum seekers outside the ECHR's legal space was inappropriate. Also, in the absence of any legally enforceable mechanism for the applicant's return to the UK in the event of a successful merits challenge before the domestic courts, the ECtHR decided to grant this interim measure to prevent the applicant's removal temporarily.[3] By 22:15, all passengers were off the plane. One ECtHR ruling had blocked the implementation of the Rwanda Plan.

Challenges to the Rwanda Plan came thick and fast. In June 2023, the UK Court of Appeal[4] found Rwanda unsafe. The judges found that there were substantial grounds for believing, notwithstanding the guarantees and assurances given, that (a) there was a real risk that asylum claims would not be properly determined by Rwandan authorities, and (b) that in consequence there was a real risk of refoulement (art. 3 ECHR). Therefore, for as long as such a ground existed, any removal under the MEDP would be unlawful under section 6 of the Human Rights Act 1998 (which gives ECHR domestic effect[5]).

Later, in the decision of the Supreme Court of the UK,[6] The judges noted that the UNHCR in relation to Rwanda have found (i) defects in the processing of asylum claims by Rwandan authorities, (ii) prior examples of refoulement of asylum seekers from Rwanda to other countries, and (iii) the Rwandan government's failure to abide by the assurances set out in earlier arrangements of a similar kind.[7]

Also, they noted precedents from the ECtHR that it is the duty of the removing state to examine thoroughly the question whether or not there is a real risk of the asylum-seeker being denied access, in the receiving third country, to an adequate asylum procedure, protecting him or her against refoulement.[8] However the UK government had argued that the MEDP set out arrangements for the future that provide adequate safeguards against refoulement, and the Rwandan government can be relied on to fulfil its undertaking to process the claims in accordance with those arrangements.[9]

The Supreme Court also found support in European court precedents to attached "critical importance" to evidence brought forward by UNHCR[10] and, therefore, that this situation was similar. Therefore, the Supreme Court agreed with the Court of Appeal´s decision that the sending of asylum seekers to Rwanda was unlawful.[11] The Rwanda Plan was never revived. While a democratically elected Conservative government had sought to mend a broken system and prevent deaths at sea from "first safe country" asylum abuse, courts prioritised rule-of-law protections for every individual case.

Italy, Albania and the Court of Justice of the European Union (CJEU)

In 2024, the government of Italy, under Prime Minister Giorgia Meloni, faced a similar situation to that of the UK government some two years previously. Meloni wanted asylum seekers to be processed not in Africa but in Albania, a nearby country in Eastern Europe that is outside the EU. Further, if the asylum seekers had approached the EU in boats across the Mediterranean, she wanted them to be sent directly to Albania.

The governments of Italy and Albania struck a deal in February 2024, two years after the Rwanda plan failed, to transfer 36,000 asylum seekers to detention centres in Albania every year. There were two centres that could accommodate ate an estimated 39,000 migrants in total. The stated goal of the Italian government was to combat human trafficking and prevent illegal refugee flows from entering the country, and to repair a clearly broken system. Refugees would be able to find protection outside of the EU, in Albania, where they would receive care and protection. People who were granted asylum would have been allowed to enter Italy, while others would likely have been returned to their country of origin.[12]

In contrast to what had been envisaged for Rwanda Plan, these centres would have followed Italian laws and standards and not domestic ones. The Italian government initially budgeted €650 million over five years for the deal, but total spending could - according to some reports - have exceed €1 billion. This deal was focused on asylum seekers and illegal migrants, excluding the group of most "vulnerable" (who would continue to be held in Italy) since, according to EU law, they need extra careful treatment.[13] Just as had been the case for the UK government and its Rwanda Plan in the previous years, it was an international court, not the ECtHR but the Court of Justice of the European Union (CJEU), that stopped the deal between Italy and Albania. According to the CJEU, the deal was evidently illegal for several reasons:

- Articles 36 of Directive 2013/32 (on the conditions under which a country may be designated a safe country), 37 (on the possibility for Member States to designate third countries as safe countries of origin) and 46 (on the applicant's right to an effective remedy) of Directive 2013/32, read in conjunction with Article 47 of the Charter of Fundamental Rights (CFR) of the EU, must be interpreted as not preventing a Member State from designating certain third countries as safe countries of origin by law. Nevertheless, it must nevertheless remain possible for the courts to review whether the substantive criteria for such a designation are in fact fulfilled.[14]
- If a Member State designates a third country as a safe country of origin, this designation must be based on the sources listed in Article 37(3) of Directive 2013/32, so that a domestic court is able to review an appeal against a decision on an application for international protection.[15] In light of Article 46 of Directive 2013/32 and Article 47 of the CFR on the right to an effective remedy, it is necessary that both the applicant and the court hearing the appeal not only have access to the reasons for the rejection decision, but also to the information sources on which the determination that the third country is a safe country of origin was based.[16]
- Lastly, and most importantly, the Court held that when assessing Article 37 of Directive 2013/32, it must examine under what circumstances a third country may be considered safe. According to the criteria in Annex I, a third country can only be regarded as a safe country of origin if the material conditions set out in that Annex are fulfilled, which, in this case, they are not for certain categories of the country's population.[17] Therefore, CJEU concludes that Albania cannot be designated as a "safe country", according to the meaning of Article 37 in Directive 2013/32.[18]

The definite article CJEU held that the 12 individuals initially transferred from Italy to Albania could not lawfully be moved there, as Albania was not a safe third country under EU law at the time. For a Member State to designate a non-EU country as safe for the purpose of transferring migrants, the country must be safe (a) for the state as a whole and (b) for all individuals concerned, including vulnerable persons. Therefore, this project failed in almost every sense. All migrants initially transferred were transferred back to Italy. For obvious reasons, the prime minister, who initiated the deal with Albania, was frustrated. On X, she commented that the CJEU had decided on its own that national judges in Member States should have more power over states' migration policy than the governments themselves. Furthermore, she complained about the court´s timing, since the decision had come a few months before the EU's Migration Pact had been established.[19]

Parallels and Contrasts

As the reader may have noticed so far, the Rwanda plan and the Albanian model share some similarities. First and foremost, there was a political conflict between the elected national governments and the non-elected judges in the system of international courts. Second, deals were struck with non-EU countries to manage systems for the processing of asylum seekers outside the EU.

At the same time, there are a few important differences.

One arises from the fact that the UK was bound by the ECtHR, which oversees compliance with the ECHR among states that have ratified it. Italy, by contrast, became subject to EU regulations and therefore to review by the CJEU. In both instances, however, the decisive issue was not whether the centres in Albania or Rwanda complied with the domestic laws of those countries or with the laws of the Convention states. Nor did it matter that asylum seekers transferred to Rwanda would remain there, while those sent to Albania would, if granted asylum, eventually be transferred to Italy. Both the ECtHR and the CJEU concluded that these third countries did not meet the necessary standards required for lawful transfers.

Daniel Thym, Director of the Research Centre for Immigration & Asylum Law at the University of Konstanz, analysed this development in an essay titled "*Safe Third Countries: the Next Battlefield*," published in July 2024. He argued that the media and public debate surrounding both the UK's Rwanda plan and Italy's Albania model largely ignored the significant political and legal controversies attached to them. The ECtHR accepts that safe third country arrangements are permissible, provided that several strict conditions are met. These conditions formed the basis for both the UK Supreme Court's judgment and the CJEU's rulings.[20]

A legally crucial point is that the UK and Italy, in different ways, remain responsible for the situation in these centres. Italy retained full responsibility for the treatment of asylum seekers, since Italian officials would exercise effective control over the reception facilities located on Albanian territory. In other words, Italy did not transfer effective control to a third country — which was precisely what the UK had attempted to do.[21]

The UK had sought to establish its centres in Rwanda, delegating control to the Rwandan authorities, which also meant applying domestic Rwandan law. However, as the ECtHR ruled, the UK remains indirectly responsible for ensuring that ECHR standards are upheld.

By examining both the UK, which is no longer an EU Member State, and Italy, the comparison illustrates how similar legal problems can arise before European courts regardless of whether the underlying framework is the ECHR, EU law, or the CFR. This is particularly relevant given that Article 52(3) of the CFR explicitly requires that Charter rights provide at least the same level of protection as the ECHR and may go further.

One last relevant conclusion Thym made was regarding *so-called third-state countries*. Their status depends entirely on whether their asylum procedures are robust and ensure unconditional respect for ECHR rights, since the country transferring individuals are indirectly still responsible for how they will be treated.

This is particularly challenging in many countries in the Global South, where states may have ratified the United Nations Refugee Convention but often lack strong administrative asylum systems. As a result, functioning asylum procedures in third countries typically require active support from international actors. Finally, Thym notes that agencies such as the EU Asylum Agency (EUAA) and Frontex could potentially play a role within their mandates.[22]

Co-chairwoman of Alternative for Germany (AfD), Alice Weidel (Shutterstock)

The Migration Pact and Hotspots

The EU's Migration Pact represents the most extensive reform of the Union's migration framework in decades. As will be explained, the Pact fundamentally reshapes externalization by introducing harmonised procedures and new mechanisms for shifting asylum processing and responsibilities beyond the EU's borders, while simultaneously strengthening the legal and operational basis for cooperation with third countries.

Comprising 10 legal acts, it has an impact on how asylum procedures are conducted, how border checks are carried out, and how Member States must respond during periods of high arrivals. It also redefines the Common European Asylum System, which according to Article 78 The Treaty on the Functioning of the European Union, requires uniform protection statuses, harmonised procedures, common reception standards, clearer rules on responsibility allocation, and — most relevant for this paper — structured cooperation with third countries to manage asylum inflows.[23] One of the Pact's most consequential innovations is the possibility for Member States to establish "Hotspots" or border processing centres outside the EU's external borders. While the EU has updated its legislative framework, Member States have simultaneously adapted their national reception systems to align with the Pact's requirements, signaling a coordinated shift in how migration management is conceived.[24]

The term Hotspot originates from the large reception centres established in Italy and Greece during the 2015 migration crisis. These facilities were created to manage sudden and large-scale arrivals, with national authorities retaining responsibility while receiving operational support from the EUAA and Frontex.[25]

Under the new Pact, this model can now be replicated outside EU territory. Such external border centers operate under the legal fiction of "non-entry," as defined in Article 6 of the Screening Regulation[26], allowing individuals to be physically present in an EU-controlled facility without being legally considered to have entered EU territory.

Under the previous system, any third-country national applying for asylum within the Union immediately obtained the status of "applicant for international protection," along with rights to remain, receive reception conditions, access legal aid, and appeal decisions — rights that made fast and cost-effective return procedures difficult to implement.[27] If the EU aims to develop more efficient remigration mechanisms, it must therefore design models that comply with the new legal order while making full use of the procedural flexibility introduced by the Pact. For a long time, the lack of harmonisation in migration law among the Member States has posed a legal-technical challenge. As is discussed below, such harmonisation may facilitate more effective remigration strategies. This brings us to the Pact's redefinition of "safe countries".

"Safe Third Countries" as a Concept

The Pact introduces a Union-wide " safe third country" concept: this allows Member States to declare asylum applications inadmissible when applicants could have obtained protection elsewhere, in another designated "safe" country. Moreover, as demonstrated in the CJEU's judgment concerning the Albania model, the possibility of transferring migrants to non-EU states likewise depends on the fulfilment of these criteria. The new framework centralises this assessment at the EU level, providing a more uniform basis for externalisation policies across the EU.

Most importantly, the EU, through the Council of the European Union, has designated multiple countries as "safe third countries". These are Bangladesh, Colombia, Egypt, India, Kosovo, Morocco, and Tunisia, as well as EU accession candidates, except where specific concerns arise. Member States may also maintain national lists of safe countries of origin, in accordance with Article 37 of the Asylum Procedure Directive (APD), allowing them to respond to regional migration patterns. This may be possible, according to Article 38.2 APD when:[28]

- There is a connection between the applicant and the third country (though this is not mandatory)
- The applicant transited through the third country
- There is an agreement ensuring that the third country will examine the asylum claim.

However, the designation of safe third countries by Member States is not required in situations covered by Article 39 of the APD. The provision states that no examination of an application for international protection shall take place where a competent authority has established, that the applicant is seeking to enter, or has entered, the territory illegally from a safe third country. Given these expanded possibilities for relying on designated safe third countries, the EUAA expects greater convergence, as the safe country of origin concept will become mandatory for all Member States under the Migration Pact.[29]

Cooperation with third countries is one of the Pact's most politically popular elements. Such cooperation, whether negotiated by a "coalition of willing Member States" or by individual states, will become central to future migration management. EU agencies such as Frontex and the EUAA may support these arrangements, providing operational capacity and oversight.

Once a partner country is designated safe and facilities are operational, asylum procedures can be conducted there, potentially relieving pressure on EU territory.[30] This approach worked well, for example, in Australia over the last decade when the government achieved a deterrent effect by transferring people to reception centres on remote Pacific islands. After one year, the number of maritime arrivals decreased substantially.[31]

As clarified in the CJEU's joint judgments concerning Italy's "Albania Model," Member States may still designate their own safe countries of origin, but only under strict and narrowly interpreted conditions. However, with the Migration Pact now implemented, the introduction of an EU-level list of safe third countries provide a new basis for use in border procedures and Hotspots, one that carries a significantly lower risk of challenge before international courts.

Dutch Politician and Party for Freedom (PVV) Leader, Geert Wilders (Shutterstock)

Legal Limits of Hotspots

Although establishing Hotspots in non-EU countries has been facilitated, difficulties remain. Member States must overcome ECHR-related obstacles. Only after clearing such transfer barriers can facilities operate effectively within EU and international law frameworks.

It is often the prohibition of refoulement that is called the "gold standard" of international refugee law.[32] Non-refoulement is the principle that no person shall be returned, in any manner whatsoever, to a country where they would face threats to life or freedom on account of race, religion, nationality, membership of a particular social group, or political opinion, as stated in Article 33(1) of the 1951 Refugee Convention. It is, as previously mentioned, regulated in the ECHR in Article 3 and also in the CFR in Article 19. It prohibits any transfer to states where a person would be persecuted or subjected to grave human rights violations.

Originally, Article 3 ECHR prohibits expulsion or extradition to a state where there is a real risk of torture or inhuman or degrading treatment; this absolute rule stems from ECtHR case law like *Soering v. UK* (1989). Although if this protection exists for a good reason, we have seen that the reasons for not legally transferring people are expanding.

In *Tarakhel v. Switzerland*, the ECtHR held that Switzerland violated Article 3 ECHR because it planned to return an Afghan couple and their six children to Italy under the Dublin Regulation without first obtaining individual assurances that the children's needs would be met and that the family would remain together.

These precedents have direct operational consequences for the design and implementation of Hotspots: authorities must ensure that adequate medical care is available and provide individualised safeguards for vulnerable persons before any transfer, thereby placing substantial obligations on hotspot infrastructure and procedures. Hindrances may also occur if families are not transferred together.

Another limitation on a state's ability to deport individuals arises from the right to respect for private and family life under Article 8 of the ECHR. A recent example is *Azzaqui v. the Netherlands* (2023), in which the Court held that removal was impermissible — even though the applicant was an irregular migrant with a criminal record — because his "mental vulnerability" meant he would likely face serious reintegration difficulties in Morocco.[33]

In addition, the CJEU has clarified the scope of transfer prohibitions in several judgments. In Jawo (2019), the Court ruled that a transfer is barred where the individual risks living in conditions amounting to extreme material poverty,[34] Besides this, in C.K. (2017) the CJEU emphasised that authorities must consider the applicant's health status and the possibility of systemic deficiencies in the receiving state.[35] It is not sufficient, moreover, that the third country has merely ratified the ECHR: effective protection must be ensured in practice.[36]

Relocation to Hotspots

In general, European case law requires that the transferring Member State, through its own authorities, must:

- Carry out a thorough assessment of the relevant conditions in the third country.[37] This includes evaluating the accessibility, reliability, and practical safeguards of the country's asylum system.
- Obtain explicit assurances, such as diplomatic guarantees from the receiving state, tailored to the individual's specific circumstances.[38] However, formal promises alone are not considered sufficient by international courts: it must be reasonably expected, based on the current functioning of the receiving state's asylum system, that such guarantees will be effectively upheld in practice.

These effects also create the possibility for Member States to transfer migrants to Hotspots in a fundamental way, since the same limits will most likely affect the transfer opportunities to Hotspots.

These examples from the CJEU and ECtHR are not meant to suggest that protections against refoulement are undesirable. These examples show that international law restricting opportunities for remigration is not confined to Hotspot regulations but stems from legal provisions that take precedence over domestic law. Nevertheless, there remains scope for effective remigration policies, though perhaps not to the extent many currently assume.

The Federalist or Sovereigntist Approach to Remigration

Two clear patterns emerge so far: Multiple countries have long used Hotspots in third countries, but when EU member states or ECHR contracting states attempt to do so, they are often blocked by courts such as the ECtHR and the CJEU.

However, at the same time, we have seen the EU strike "migration deals" that, on multiple occasions, have been criticised for failing to comply with various international law regulations. To give an example, had the EU already in 2016 agreed with Turkey on the return of inadmissible asylum seekers? Also, in 2017, a migration deal was made with Libya and Morocco to encourage more migrants to stay there.[39]

Therefore, a realistic remigration approach within the EU framework will likely involve two distinct strategies, each with its own pros and cons: a Sovereigntist strategy and a Federalist strategy.

Option One: Using EU Agencies and Personnel

One could argue, with previous legal context in mind, that it might be easier and more effective if the Union itself, through its agencies, managed these Hotspots? For example, Frontex has already undergone several upgrades in its power, resources, and capacities over the last decade.[40] The number of Frontex-coordinated joint return operations increased from 428 returnees in 2007[41] to 56,263 non-EU nationals returning in 2024. The latter figure is notably larger than 2023´s number of 39,226 and 2022´s number of 24,855.[42]

Recently, there have been developments in Western Balkan countries regarding the EU's external borders. In general, Frontex's external relations activities revolve around two interlinked axes of (1) supporting cooperation between Member States and third countries; (2) implementing EU policies in the field of migration and border management.[43] For this reason, it would not be a drastic change for Frontex to gain more personnel and resources to handle Hotspots in similar nations. Right now, Frontex focuses on countries next to the EU's external borders.[44] Still, it would not be surprising if it - or other EU agencies - expanded activities to "safe countries" that are further afield. Those activities could include the running of centres for the processing of asylum seekers.

The EUAA supports Member States' asylum management without decision-making power. Since 2022, the EUAA has assisted with reception, registration, relocation, country information, and vulnerable groups.[45] In Hotspots, it would handle asylum processing, EU reception standards, and harmonisation. Its External Cooperation Strategy (2024 –2029) already covers third-country collaboration and resettlement, and is ideal for monitoring external centres.[46]

The European Commission would most likely coordinate frameworks, safeguards, and third-country agreements, drawing on experience with the previously mentioned safe countries. For federalists, this is natural and scalable across numerous Hotspots, with a lower risk of court intervention. Yet it violates subsidiarity and empowers liberal influences to slow progress. EU agencies could be better funded than individual states but may lack conservative resolve.

EU agencies would enjoy superior funding and staffing to those of any single state, but might lack the resolve of conservative national governments. Thus, Member States running their own hotspots, enabled by the Migration Pact, retain a compelling sovereign alternative.

Option Two: Choose Member State Laws Instead of Purely Domestic Laws

The Sovereignist approach is a different way. This is based on the idea that migration, specifically remigration, will be of varying national interest. However, how it works is not necessarily set in stone.

Some guidance on what it may look like can be found in the Danish Institute for Human Rights' 2021 paper, "Human Rights Obligations and Third Country Asylum Processing." This was written because the Danes changed domestic laws enabling the country to establish migration centres outside its territory. It draws partly on lessons from outside Europe, and its conclusions are similar to this paper's on why both the Rwanda Plan and the Albania Model failed.

Tommy Robinson at the Unite the Kingdom Protest (Shutterstock)

They saw that in other countries around the world, they already are using Hotspots as a third country processing for asylum seekers. The United States has used Guantanamo Bay, Cuba, as an asylum processing centre for asylum seekers arriving by boat. The United States exercises complete control and jurisdiction over Guantanamo Bay under a perpetual lease agreement with Cuba. Also, under the Pacific Solution, in place in 2001–2007, Australia transferred asylum seekers arriving by boat to regional processing centres in Nauru and Papua New Guinea. Under this policy, no person seeking protection by boat may have had their asylum claim processed or their protection needs met in Australia.[47]

Lastly, and more recently, the United States and Guatemala entered into a bilateral Asylum Cooperative Arrangement (ACA), under which non-Guatemalan asylum seekers may be transferred from the United States to Guatemala without the chance to claim asylum.[48]

Essentially, the nut to crack here is whether the centres should be under the jurisdiction of Member States or the domestic laws of safe third countries. The Danes chose to follow Danish jurisdiction in these reception centres. That means Danish immigration officers will conduct the asylum procedure, and the Danish state will have effective control over the centre and the asylum seekers inside it. This also means, in fact, that having Danish facilities will automatically make Danish domestic law applicable, according to the ECtHR.[49]

Third Country Jurisdiction and What It Means

If a Member State does not follow that strategy but instead uses a centre under third-country jurisdiction, the Member state is still responsible for ensuring the asylum seeker receives protection under the ECHR, but indirectly.[50]

This was explained in an earlier chapter. However, the developments in the litigation concerning the UK's Rwanda Plan demonstrate that such measures may not be sufficient. The ECHR may still conclude that the third country's domestic legal framework does not provide adequate protection.

In conclusion, when considering the substantial efforts required to establish extraterritorial reception centres, or to rely on facilities located within another state's jurisdiction, the former option appears more sustainable over time.

It allows the transferring state to maintain control over standards and to adapt to evolving requirements imposed by the EU or the ECtHR. By contrast, if the second option is pursued and not initially blocked, it will likely remain permissible only until the third country can no longer be regarded as safe due to extraordinary developments. Consequently, the final assessment will depend heavily on the specific third country with which negotiations are conducted. At the same time, the involvement of the Member State is still indirect.

With both the Sovereigntist and the Federalist approaches in mind, the following conclusions are necessary. The legislator must effectively operate a cost–benefit calculator: how much effectiveness is one willing to risk maintaining cost-effective working models. In both the Federalist approach and the Sovereigntist model involving third-country jurisdiction, there is a structural risk that choosing the cheapest path with the least administrative burden will, over time, undermine effectiveness, namely the ability to significantly reduce the volume of asylum seekers within the Member States while increasing the volume in the Hotspots. This effectiveness may erode if international courts and European legislators intervene, as that path is pursued.

Potential Changes to the EU Asylum Law

Regardless of which path a Member State chooses, the process can be legally optimised through a few legislative adjustments at the supranational level. The examples mentioned here represent only a small selection, but they are realistically achievable in the near future, especially if the European Parliament were to gain a right-leaning majority.

One important change in European law would be to allow long-term detention of illegal migrants awaiting transfer, either to their country of origin or while staying at a Hotspot. Currently, the Return Directive strictly regulates the use of detention of third-country nationals, permitting it only as a last resort, in a strictly proportionate manner, and for a limited period, as set out in Article 15 of the Directive.

In the case of Kadzoev (C-357/09 PPU), the unthinkable happened: the third-country national was released after the realistic prospects of removal within the legally prescribed time frame no longer existed — even though he was residing illegally in a Member State, Bulgaria.[51] Such outcomes immediately undermine public authorities' credibility. Instead, it should be up to the Member States to decide this domestically, in accordance with the principle of subsidiarity.

Another improvement to the current asylum system would be to make it legally possible for Member States to fully outsource the processing of asylum claims to safe third countries, to the extent that a Member State deems it necessary.

At present, the European legal framework, through the Qualification Directive, the Procedures Directive, and the Reception Conditions Directive, obliges Member States to examine all asylum applications lodged on their territory.

A shift towards a more subsidiarity-based model would resemble the previously mentioned Australian approach, which has proven effective, and could help reduce the pressure created by current migration flows to Europe. The existing system is also more costly and, paradoxically, disadvantages genuine refugees, while irregular migrants who reach EU territory often acquire multiple legal grounds, established through European case law, to avoid return to their country of origin. Such an outsourcing mechanism would not differ fundamentally from the EU's existing "migration deals" with Turkey and Libya, nor from the efforts already attempted by Italy, as discussed earlier in the report. This approach could be implemented either at the EU level or through bilateral arrangements between individual Member States.

Refugees arriving in Greece in dinghy boat from Turkey (Shutterstock)

Conclusions

As the saying goes, politics is the art of the possible, and any realistic remigration agenda for the European Union will be constrained and shaped by this basic fact. The Union that emerges from the Migration Pact is not the same as the one that existed during the Rwanda Plan or the Albanian model, and this legal and institutional transformation both narrows and opens paths for future policy.

This report has shown that remigration at the EU level will, in practice, have to fall into two main strategic families: a more Federalist approach, where EU institutions and agencies take the lead, and a more Sovereigntist approach, where Member States retain primary control over hotspots and procedures in third countries. Neither path is cost-free. A Union-led Hotspot model promises higher legal certainty, more harmonised safeguards and a lower risk of being struck down by supranational courts, but at the price of higher financial costs and reduced national steering capacity. A Sovereigntist Member State-led model, by contrast, allows conservative governments greater direct control over procedures and standards, but comes with higher litigation risks, more fragmented practice and a higher probability that key schemes will be suspended or overturned after heavy political investment, as seen in the Rwanda and Albania cases.

Within the Sovereigntist track, an additional trade-off concerns jurisdiction. If Hotspots are run under the domestic law of the third country, costs can be lower, but the sending Member State remains indirectly responsible under ECHR and EU law. It is exposed to the risk that the partner's system is later found "unsafe". If, instead, the centres are placed under the jurisdiction of the Member State (or jointly under EU standards), legal control and compliance improve, but so do expenses and administrative burdens. The Migration Pact's Union-wide safe-third-country regime somewhat reduces these frictions by centralising "safety" assessments and creating a more predictable framework. Yet it also further limits purely national room for manoeuvre, thereby confirming critics' concerns about constrained sovereignty in migration policy.

For a conservative majority in the European Parliament, the art of the possible therefore lies not in imagining frictionless remigration, but in sequencing reforms that make the existing framework more permissive to return-oriented policies without triggering systemic legal backlash.

The measures briefly discussed in this report — from stricter conditionality on EU external funding to broader criteria for designating a country as a safe third country — illustrate how incremental, legally grounded adjustments could significantly enhance the effectiveness of remigration policies while remaining politically defensible among conservative electorates.

In the end, there is no single "silver bullet" strategy. Any serious remigration policy must reconcile three competing imperatives: legal durability in the face of ECtHR and CJEU scrutiny, administrative and fiscal sustainability over time, and democratic responsiveness to electorates that increasingly demand order at the border. The Migration Pact, whatever its flaws, has at least clarified the battlefield by harmonising key concepts, such as safe third countries, and by creating explicit tools for externalised processing. A right-of-centre majority that understands these tools and is prepared to use them creatively, whether in a more federalist or more sovereigntist direction, will be better placed to turn remigration from slogan into workable policy, and thereby to begin, step by step, to fix a broken system.

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