

# Administrative Detention in the European Union – Balancing Security Requirements and Immigrants' Rights

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**Abstract:** Understanding the balance between security and respect for human rights is essential for assessing the effectiveness and legitimacy of the detention regime. The administrative detention of immigrants in the European Union is an area at the intersection of security requirements and obligations to protect fundamental rights. The detention regime for immigrants is a coercive measure used in migration control policies. In the context of intensified migration flows and pressure on border control mechanisms, Member States are called upon to simultaneously manage the imperative of security and compliance with international and European human rights standards. The article examines the European legal framework applicable to administrative detention and how states harmonize their sovereign control prerogatives with their obligations under treaties and conventions. The conclusions emphasize that the institutions of the European Union and national institutions, through the consistent and comprehensive application of legal norms, transform the principles of migration and asylum into effective security practices, ensuring border protection, migration management, and respect for individual rights.

**Keywords:** Migration, Security, Control, European Migration, Asylum Pact

## Introduction

European security and, implicitly, national security and migration are interconnected areas, and European Union member states must balance their sovereign control prerogatives with the obligations imposed by international and regional European law regarding the protection and respect of the fundamental rights of all persons on their territory, including immigrants.

The illegal introduction of migrants is one of the most dynamic forms of cross-border crime, characterized by both operational flexibility and adaptation to legislative changes and the security policies of the European Union and its member states. At the same time, this crime is not only a form of organized cross-border crime, but also a significant threat to the internal security of the European Union and the major public interest (Europol, 2025, p. 51). The structural complexity of this criminal phenomenon directly affects public safety and order, border security, the administrative capacity of states, and social cohesion, which justifies its classification as a major public interest objective and a legitimate basis for intervention by European and national authorities.

The obligation of states to protect their public interest becomes greater as more immigrants with illegal status appear (Bessa, 2025, pp. 2-5). As emphasized in the opening lines of the Commission Communication on Protect EU Security: a European Internal Security Strategy, "*security is the bedrock upon which all our freedoms are built*". Thus, the European approach once again emphasizes the fundamental principle that the exercise of rights and freedoms depends on the existence of a stable and protected environment.

Implementing restrictive measures in response to security threats is essential within international law architecture. These measures function as "adjustment variables", allowing international human rights law to adapt its mechanisms and strengthen its social role, in a manner consistent with the requirements of protecting the fundamental interests of states and the international community. Therefore, the flexibility of this legal framework becomes indispensable for reconciling the imperative of security with the guarantee of individual rights (Christakis & Bouslimani, 2021, p. 12).

The 2025 Schengen Report highlights that “*navigating geopolitical changes and their implications for freedom and security*” must be based on a reaffirmation of commitment to two essential values: responsibility and mutual trust (European Commission, 2025, p. 4). Therefore, security management is not done in isolation, but requires Member States to act in concert, based on cooperation and mutual responsibility, in order to respond as effectively as possible.

### **Administrative detention as a security tool: limits and safeguards**

The detention of immigrants is a coercive measure that can be applied in situations of migration control (Anderson, Gibney, & Paoletti, 2011, pp. 547-549), such as identification, document verification, and prevention of the risk of absconding from the asylum procedure, but also in situations that pose a threat to national security. As pointed out in the literature, “*international law focuses on preventing arbitrariness in detention; it does not seek to prevent detention itself*” (de Londras, 2007, p. 224). In other words, detention is accepted as a legitimate measure, as long as it is regulated by law, proportionate, necessary, and accompanied by adequate procedural safeguards (such as access to court, review of legality, and notification of reasons).

Cross-border crime remains “*a persistent threat to the EU’s external borders*” (European Border and Coast Guard Agency, 2025, pp. 7-8). According to the European Border and Coast Guard Agency (Frontex) *Annual Risk Analysis 2025/2026*, organized crime networks are involved in a range of illicit activities, including document fraud. Human trafficking and migrant smuggling networks pose a real threat to law and order, especially when linked to organized crime and intersecting with the movement of illicit goods, including weapons and drugs. According to Europol (2024, p. 7), criminal groups involved in migrant smuggling and human trafficking are expanding their activities to other forms of crime in order to maximize illicit profits and facilitate their operations. On the other hand, during 2024, the Member States of the European Union, together with the associated states (EU+), continued to face considerable systemic pressure on European and national asylum mechanisms, with over one million applications for international protection being registered (European Union Agency for Asylum [EUAA], 2025, p. 25).

In the context of migration, detention is administrative in nature. Consequently, this measure must not be punitive or arbitrary, but must comply with the provisions of the legal framework, used as a measure of last resort, imposed after an individual examination of each case. However, in cases where alternatives to detention prove ineffective and do not achieve the legitimate objectives pursued, the competent authority is obliged to resort to detention. In the context of asylum applications, detention can only be based on grounds strictly defined by law (e.g., verification of identity, security, return procedures).

In light of the provisions of 2024/1346 Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection, article 2, point 9, detention means “*the confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement*”. Analyzing the above definition, it should be noted that isolation involves placing a person in a confined space where competent authorities control the environment, depriving the person of their freedom of movement, and is thus a more severe measure than simply accommodating an asylum seeker. Consequently, de facto isolation is transformed into detention if the space is controlled by state authorities and freedom of movement is restricted. Alternatives to detention are intensive supervision measures for asylum seekers, which may include, for example, residence in a clearly defined location, bail, electronic monitoring, or home visits (NOAS, 2014, p. 20), involving a lower level of coercion than detention.

In the context of migration control, the need to apply the restrictive measure of detention should not be seen as a sanction, but as a preventive tool, designed to ensure the

smooth running of the asylum procedure and to protect the national community from potential risks. In this case, we are discussing not only the right of the state, but also a positive obligation of the authorities to act to prevent imminent risks, obviously in compliance with the domestic legal framework and international human rights obligations.

In European practice, the intersection between migration control and the detention of foreigners raises several challenges (European Union Agency for Fundamental Rights [FRA], 2025, p. 33). First, migrant smuggling and forced migration can turn human flows into a tool of hybrid threats (European Commission, 2024, p. 1) requiring Member States to adopt strict security measures without violating fundamental rights (Eurojust, 2024, pp. 6-7). Secondly, aspects of detention enforcement, including duration, accommodation conditions, non-discriminatory access to rights, including access to legal assistance and the possibility of challenging measures, are essential criteria for ensuring compliance with the standards of legality and proportionality.

National security is one of the grounds that may justify the detention of immigrants within the European Union; however, this ground must be invoked and applied as a last resort. The detention measure must comply with the requirements of legality, necessity, and proportionality, be based on clear legal provisions, and be subject to a fair trial, including effective judicial review (Favi, 2022, p. 5). The relevant European regulations, as well as the case law of European and national courts, establish the conditions under which public custody may be ordered and require a prior analysis of alternatives to detention, which must be preferred whenever circumstances permit.

Legal certainty (or security of legal relations) is a fundamental principle of the rule of law, recognized both in the case law of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECHR). It implies that legal rules must be clear, precise, and predictable, and that authorities cannot act arbitrarily or discretionally (Peers & Hervey, 2022, pp. 85-86). It is clear that detention must comply with the principle of legal certainty. This requires, among other things, that the law and its legal consequences be predictable. Thus, the explicit identification of the grounds for detention in national legislation fulfills the requirement of legal certainty.

Article 4(2) of the Treaty on European Union reaffirms national identity and the responsibility of states for national security, which "*remains the sole responsibility of each Member State*". However, the exercise of this competence is not absolute: it must be compatible with the obligations assumed by states under international treaties on human rights, refugee law and, for EU Member States, with the legal order of the Union, which imposes significant limitations on state autonomy in the management of borders and immigration. Furthermore, Article 72 of the Treaty on the Functioning of the European Union enshrines an essential principle of the European legal order: although the European Union develops common policies on security, migration, and asylum, the actual responsibility for maintaining public order and protecting internal security remains the exclusive competence of the Member States.

In the context of migration, Article 72 of the Treaty on the Functioning of the European Union intersects with the common European policy on external border management, as well as with that on migration and asylum. For example, measures for the administrative detention of migrants may be ordered by national authorities to ensure the application of asylum procedures or for the protection of internal security, but they must comply with European law, including the Schengen Borders Code (Regulation (EU) 2016/399), the Charter of Fundamental Rights of the EU, and the case law of the European Court of Human Rights and the Court of Justice of the European Union, which require compliance with the principles of legality, necessity, and proportionality.

Thus, Article 72 of the aforementioned Treaty creates a balance between the sovereignty of the state to protect its borders and national security and the common

obligations of the European Union to guarantee the fundamental rights of migrants. In practice, it legitimizes the use of administrative detention when justified by security or public order, but at the same time restricts the excessive or arbitrary use of this measure, in accordance with international and European standards, which are also implemented in the national legislation of Member States.

The adoption of the Pact on Migration and Asylum by the European Parliament on April 10, 2024, followed by its validation by the Council of the European Union on May 14, 2024, represents a milestone in the development of the legal regime for migration within the European Union, with significant implications from the perspective of public international law. At the same time, the Pact reflects a collective and solidarity-based approach to the transnational challenges posed by international migration, promoting the idea of shared responsibility among Member States. Although the Pact on Migration and Asylum and the agreement signed at European Union level represent significant progress towards a common and integrated approach to migration governance, their success depends decisively on the implementation phase. Externally, the implementation of the Pact must build on the lessons learned from past shortcomings, strengthening the coherence of the Union's external action and coordination among Member States, including with regard to incentive offers and the opening of legal and predictable migration channels (Mitsilegas, 2021, pp. 112-115).

The solidarity mechanism established by the Pact allows Member States to contribute alternatively, through relocation, financial or operational support, to the management of flows, but all these forms of solidarity are part of a logic of securing the Union's external borders. Thus, detention becomes the legal expression of solidarity on security, in which border protection and effective migration management take precedence over the humanitarian dimension of international protection. In this new paradigm, solidarity between states is achieved through the standardization of control practices, including those involving deprivation of liberty.

The new paradigm indicates that solidarity between states is not only moral or financial, but is also reflected in operational coordination and the harmonization of security measures, including those involving deprivation of liberty. Therefore, the relationship between solidarity, control, and detention reflects a deeper transformation of migration law in the European Union: from solidarity oriented toward protection to solidarity oriented toward management and security. Legally, this transformation requires a reexamination of the legitimate limits of detention in the context of external borders.

In order to ensure the efficient and orderly management of migration flows, particularly at the external borders of the European Union, it is essential that applicants for international protection remain in the Member State responsible according to the criteria laid down, thereby preventing uncontrolled secondary movements. This obligation is explicitly regulated by Regulation (EU) 2024/1351 on asylum and migration management, Article 17.

A central component of the Pact on Migration and Asylum is the introduction of the mandatory border procedure, regulated by Regulation (EU) 2024/1348 (APR). Under this procedure, applicants are not allowed to enter the territory of the Member State, and the restrictions on freedom of movement provided for in Article 9 of Directive (EU) 2024/1346 on the reception conditions for asylum seekers apply systematically.

The effectiveness of Union and relevant national institutions plays a crucial role in translating the principles of the Pact on Migration and Asylum into concrete security practices. Through rapid and uniform coordination of measures, including those involving deprivation of liberty, the institutions ensure that Member States apply the rules in a consistent manner, protecting external borders without losing sight of the function of migration control. Thus, detention is not only a coercive measure, but also a tool through which institutional efficiency translates into real security and operational solidarity among Member States.

## Conclusions

Protecting the public interest and security is the basis on which rights and freedoms are exercised, and the increase in illegal immigration flows heightens the obligation of states to act effectively. Coordination and uniformity of measures, including those involving deprivation of liberty, ensure consistent application of rules across Member States, strengthening the protection of external borders. Effective security management cannot be achieved in isolation; success depends on institutional cooperation between Member States, based on responsibility and mutual trust. Detention is a security tool. That means that detention regime functions as a coherent mechanism for controlling migration and preventing risks to national security, reflecting both operational solidarity between states and institutional efficiency in the application of rules. The detention of immigrants thus becomes a tool for institutional efficiency.

European Union and national institutions are essential for the effective implementation of the Pact on Migration and Asylum, transforming theoretical principles into concrete security practices. Security is the foundation of stability in asylum procedures, and the protection of borders and the public interest is essential to guaranteeing a safe environment in which rights and freedoms can be effectively exercised. The full and consistent application of legal rules ensures that each stage of the asylum process complies with both the principles of international law and the requirements of national and European security. In this context, the efficiency of the responsible institutions becomes crucial: rapid coordination of procedures, standardization of control standards, and consistent implementation of restrictive measures, including detention, enable the effective management of migration flows and the reduction of security risks, demonstrating that security and respect for individual rights can coexist when institutions operate responsibly.

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