

## EU VALUES AS A SHIELD AND A SWORD IN EU MIGRATION AND ASYLUM LAW

IRIS GOLDNER LANG\*

### Abstract

*European Union values increasingly shape the EU's migration and asylum governance, invoked both as a shield to protect migrants' rights and as a sword to justify their restriction. This paper frames these two positions as protective and restrictive approaches to the same set of EU values. It identifies the legal 'red lines' that cannot be crossed without negating the essence of EU values and assesses the extent to which EU values and Article 2 TEU are capable of serving as enforceable legal standards in this field. The analysis of the protective approach shows that EU law provides migrants with a dense web of human rights. On the other hand, the restrictive approach illustrates how values are increasingly mobilized to justify migrants' integration duties and stronger border controls against irregular migration. The paper concludes that the coexistence of both approaches is not in itself problematic provided it does not undermine the essence of the values concerned and leaves intact absolute rights such as non-refoulement and the right to life.*

### 1. Introduction

Today's migration governance and discourse in the European Union (EU) are both driven and shaped by EU values. EU values are referred to in EU migration legislation, its policy documents and political statements. They are invoked by all EU institutions, by Member States with divergent migration positions, interests and needs, by politicians of all affiliations and by social groups and EU citizens of completely diverse ideologies. Those pleading for stronger protection of migrants' rights and more open EU migration and asylum policies, often rely on a whole set of EU values proclaimed by Article 2 TEU: human rights, non-discrimination, human dignity, rule of law, solidarity, tolerance and justice.<sup>1</sup> They claim that

\* Jean Monnet Professor of EU Law, Head of Department of European Public Law and Vice-Dean, University of Zagreb, Faculty of Law.

1. This paper takes the position that the terms listed in the second sentence of Art 2 TEU are also EU values, like the ones in the first sentence. For the same approach, see Jan

Member State(s) are violating EU values by pushing back migrants who try to enter the EU at the green border or at official border crossing points, or by committing other forceful or restrictive activities or by adopting national legislation which violates migrants' rights either substantively or procedurally.<sup>2</sup> The invoked legal basis for the justiciability of these EU values are always EU migration and asylum secondary law and the Charter, which elaborate these EU values in detail and create legally binding obligations for the EU and its Member States. While Article 2 TEU itself is occasionally explicitly invoked in political discourse on migration, it has been referred to in only nine judgments and seven Advocate General Opinions on migration, asylum and borders, decided by the Court of Justice.<sup>3</sup> In all these nine judgments, Article 2 TEU was briefly mentioned in the Court's reasoning, alongside the Charter and EU legislation, but never in the operative part of the judgment. However, Article 2 TEU has never been used as a standalone legal basis for migrants' rights.<sup>4</sup>

Wouters, 'Revisiting Art. 2 TEU: A True Union of Values?' (2020) EP 258–259; Lucia Serena Rossi, "'Concretised", "Flanked", or "Standalone"?: Some Reflections on the Application of Article 2 TEU' (2025) EP 12.

2. For example, Katrien Luyten, European Parliament Research Service Briefing, 'Addressing Pushbacks at the EU's External Borders', PE 772.882, 2025, <[www.europarl.europa.eu/RegData/etudes/BRIE/2025/772882/EPRS\\_BRI\(2025\)772882\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2025/772882/EPRS_BRI(2025)772882_EN.pdf)> (all websites last visited 18 November 2025); PRAB (Protecting Rights at Borders) Report, 'Pushbacks at Europe's Borders: A Continuously Ignored Crisis', January 2024 <[drc.ngo/media/1sgpw3ng/prab-report-september-to-december-2023-\\_-final.pdf](http://drc.ngo/media/1sgpw3ng/prab-report-september-to-december-2023-_-final.pdf)>.

3. For the political invocation of Art 2 TEU in the context of, *inter alia*, fundamental rights of migrants and refugees, see the European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded, 2017/2131(INL) <[www.europarl.europa.eu/doceo/document/TA-8-2018-0340\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2018-0340_EN.html)>.

4. The nine judgments are: Case C-156/23, *Ararat*, EU:C:2024:892, para 36; Joined Cases C-185 & C-189/24, *Tudmur*, EU:C:2024:1036, para 30; Case C-392/22, *X*, EU:C:2024:195, para 43; Case C-646/21, *K and L*, EU:C:2024:487, para 34; Joined Cases C-228, C-254, C-297, C-315 & C-328/21, *Ministero dell'Interno, Dipartimento per le libertà civili e l'immigrazione – Unità Dublino and Others*, EU:C:2023:934, para 130; Case C-483/20, *XXXX*, EU:C:2022:103, para 27; Joined Cases C-297, C-318, C-319 & C-438/17, *Ibrahim*, EU:C:2019:219, para 83; Case C-163/17, *Jawo*, EU:C:2019:218, para 80; Case C-331/16, *K*, EU:C:2018:296, para 46 (this case is primarily based on EU citizenship and only indirectly on asylum provisions). The seven AG Opinions are: Opinion of AG Medina in Case C-753/22, *OY*, EU:C:2024:82, para 27; Opinion of AG de la Tour in Joined Cases C-608 & C-609/22, *AH and FN*, EU:C:2023:856, paras 7, 9, 59 and 79; Opinion of AG Emiliou in Case C-406/22, *CV*, EU:C:2024:442, para 83; Opinion of AG Bobek in Case C-556/17, *Torubarov*, EU:C:2019:339, para 49; Opinion of AG Sharpston in Case C-573/14, *Lounani*, EU:C:2016:380, paras 10 and 77; Opinion of AG Mengozzi in Case C-285/12, *Diakité*, EU:C:2013:500, para 96; Opinion of AG Mengozzi in Joined Cases C-57 & C-101/09, *B*, EU:C:2010:302, para 7.

Just like those asking for better protection of migrants' rights, those demanding stricter migration and asylum policies equally invoke EU values. They often refer to the EU's and Member States' commitment to democracy, freedom, equality, rule of law, human rights and solidarity. They assert their commitment to all EU values, including human rights, but state that there needs to be a balance between the protection of democracy and public security, and the protection of migrants' rights. They claim that in certain cases, especially in the context of instrumentalization and irregular border crossing, third countries and migrants are jeopardizing EU values and abusing their rights, which necessitates restrictive measures.<sup>5</sup> EU political institutions also often invoke EU values in the context of restrictions in the area of migration, asylum and border controls.<sup>6</sup> Both the 2019–2024 and the 2024–2029 EU Strategic Agendas explicitly link migration and protection of the EU external borders with EU values.<sup>7</sup> However, judgments of the Court of Justice, which authorize Member States to impose obligations on migrants or to otherwise restrict their rights, have, so far, not mentioned EU values or Article 2 TEU.

The crucial difference between the more open and more restrictive positions towards EU migration and asylum policies is not that one of them upholds and the other denies EU values. Just the opposite: proponents of both views express their strong commitment to EU values. However, while the former approach relies on EU values as a shield, to protect migrants' rights and to invoke the EU's and Member States' duties to respect EU and international law, the latter approach relies on EU values as a sword, to justify migrants' duties towards the host Member States. This paper frames these two positions as protective and restrictive approaches to the same set of EU values. This dual invocation of values unfolds in the context of significant demographic changes in Europe, where ageing populations, labour market needs, and political polarization interact with migration pressures. In this context, it is important to understand how both the

5. Eg, the open letter of nine EU Member States to the Council of Europe, dated 22 May 2025 <[www.governo.it/sites/governo.it/files/Lettera\\_aperta\\_22052025.pdf](http://www.governo.it/sites/governo.it/files/Lettera_aperta_22052025.pdf)>. See also the joint letter of 12 Member States to the Commission, dated 7 October 2021 <[www.politico.eu/wp-content/uploads/2021/10/07/Joint-letter\\_Adaptation-of-EU-legal-frame-work-20211007.pdf](http://www.politico.eu/wp-content/uploads/2021/10/07/Joint-letter_Adaptation-of-EU-legal-frame-work-20211007.pdf)>.

6. Eg, European Council Conclusions, CO EUR 20, CONCL 5, 17 October 2024, points 38 and 45; Press release from the 2618th meeting of the Justice and Home Affairs Council, 14615/04 (Presse 321), point 10 and Annex 'Common Basic Principles for Immigrant Integration Policy in the European Union' <[www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/82745.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/82745.pdf)>.

7. European Council, 'A New Strategic Agenda 2019–2024', 20 June 2019; European Council, 'Strategic Agenda 2024–2029', 27 June 2024.

protective and the restrictive approaches utilize EU values, whether it is possible to reconcile the requirement of protection of individual rights with public security and other policy objectives, and where are the legal ‘red lines’ that must not be crossed.

This paper acknowledges the challenges in defining EU values, which are often framed in vague and general terms and whose exact content and scope may vary across EU Member States, institutions, and individuals. However, the paper starts from the premise that the core of EU values should be understood as Europe-wide ‘red lines’ that must not be transgressed by any EU institution or Member State.<sup>8</sup> In other words, EU values are comparable to mechanisms of negative integration, as their aim is to prevent and remove any EU or Member State’s measure, action or failure to act that crosses the ‘red line’ by negating the very essence of a certain value.<sup>9</sup>

Consequently, the paper accepts the possibility that simultaneous reliance on EU values when demanding more protection and more restrictions of migrants’ rights could be the result of different understandings of the exact content of a certain EU value and of the need to balance different interests and policy objectives. However, this divergence is acceptable only provided three conditions are cumulatively satisfied. First, the different readings of EU values are possible only provided EU law leaves room for them. This is the case only provided the given value is not specified in more detail by the Charter, EU secondary legislation and relevant case law of the Court of Justice and the European Court of Human Rights, which is not likely to happen often, considering the ever higher level of legislative harmonization and interpretation of EU migration and asylum law by the Court of Justice. Second, as mentioned previously, a given understanding of an EU value must not negate the very essence of the value itself. Third, and related to the second point, different interests and policy objectives can legitimize balancing the protection of migrants’ individual rights and other public interests, such as public security or national identity, provided this does not lead to the very negation of an EU value. However, certain EU values and rights, such as human dignity, the right to life, the prohibition of torture and inhuman and degrading treatment or punishment, as well as the principle of non-refoulement, are absolute.<sup>10</sup> Consequently, they are not subject to the principle of proportionality and no limitations may be

8. Armin von Bogdandy, ‘Towards a Tyranny of Values’ in Armin von Bogdandy and others (eds), *Defending Checks and Balances in EU Member States* (Springer 2021) 91–92.

9. On the criterion of the ‘negation of values’, see the Opinion of AG Ćapeta in Case C-769/22, *European Commission v Hungary*, EU:C:2025:408, paras 237–247.

10. Case C-156/23, *Ararat*, para 36.

imposed upon them, as this would violate the very essence of these rights, contrary to Article 52(1) of the Charter.<sup>11</sup>

The aim of this paper is threefold. First, it clarifies the dual role of EU values as both a shield, protecting migrants' rights (protective approach), and a sword, justifying restrictions on those rights (restrictive approach), and analyses how these values are invoked in EU migration and asylum law. Second, it identifies the legal 'red lines' that mark the limits of permissible balancing between the protection of individual rights and broader policy objectives, beyond which measures undermine the very essence of EU values. Third, it evaluates the extent to which EU values are justiciable and capable of serving as enforceable legal standards in this field. The paper uses the terms 'migrants' and 'migration' broadly, to encompass both economic migrants, as well as asylum seekers and beneficiaries of international protection. It is structured in five sections. Following this introduction, the second section analyses the protective approach to EU values in EU migration and asylum law and its main practical challenges. Section 3 examines the restrictive approach and its reliance on EU values to justify migrants' obligations and other restrictions of their rights. Section 4 assesses the justiciability of EU values in migration and asylum, and the paper concludes with final remarks.

## 2. EU values as a protective shield of migrants' rights

EU migration and asylum law adopts a predominantly protective approach towards migrants, with human rights as its core EU value. Title V TFEU on the Area of Freedom, Security and Justice, extensive EU secondary legislation and the Charter contain numerous provisions on migrants' human rights. Most importantly, Article 67(1) TFEU commits the Union to respect fundamental rights in an Area of Freedom, Security and Justice; Article 78 (1) TFEU obliges it to offer appropriate status to any third-country national requiring international protection, ensure compliance with the principle of non-refoulement and comply with the Geneva Convention and its Protocol, while Article 79(1) TFEU commits the EU's immigration policy to ensure a fair treatment of legally resident third-country nationals and prevent trafficking in human beings.

The Charter further protects migrants' rights. Article 18 entails the right to asylum, Article 19(1) prohibits collective expulsion, Article 19(2) enshrines

11. On the essence of fundamental rights, see Koen Lenaerts, 'Limits on Limitations: The Essence of Fundamental Rights in the EU' (2019) 20(6) GLJ 779, doi: 10.1017/glj.2019.62.

the principle of non-refoulement, while Article 4 contains a general prohibition of torture and inhuman or degrading treatment or punishment. Additionally, many Charter provisions provide indirect protection: Article 1 on human dignity; Article 2 on the right to life; Article 6 on the right to liberty and security; Article 7 on the respect for private and family life; Article 10 on freedom of thought, conscience and religion; Article 20 on equality before the law; Article 21 on non-discrimination; Article 24 on the rights of the child; Article 34 on social security and social assistance; and Article 47 on the right to an effective remedy and a fair trial.

Out of these numerous human rights, the right to asylum and non-refoulement are paramount.<sup>12</sup> Reflecting the absolute character of the principle of non-refoulement, the Grand Chamber of the Court of Justice opted for a broader definition of its beneficiaries in *M, X and X*, by stating that it is contrary to EU law to return or expel a person whose refugee status has been revoked or refused due to the fact that there are reasonable grounds for regarding him or her as a danger to the security of the host Member State or due to the fact that he or she has been convicted of a particularly serious crime, if refoulement or expulsion would place that individual at risk of exposure to torture or to other inhuman or degrading treatment or punishment.<sup>13</sup> However, non-refoulement does not entail the right to obtain asylum in the Member State observing the prohibition of expulsion or return. Even though Article 18 of the Charter, titled 'Right to Asylum', commits EU Member States to respect the right to seek asylum, it does not oblige them to conduct a full refugee status determination procedure if protection can be offered by another 'responsible' State, be it another Member State or a 'safe third country'. Due to such a limited reach of Article 18, the principle of non-refoulement does not exclude the possibility for asylum to be assessed and granted in a State different from the one where the asylum seeker has applied for asylum.

EU secondary legislation further concretizes migrants' Charter rights, including non-refoulement and the right to seek asylum. The EU's Pact on Migration and Asylum – whose ten legal acts, containing well over 1,000 A4 format pages, will become applicable in June and July 2026 – and revisions of other related acts which are formally not part of the Migration Pact (such as the Schengen Borders Code and the Single Permit Directive) introduce extensive safeguards for migrants' rights. Except for the new Reception Conditions Directive, all nine instruments contained in the Migration Pact are regulations, which is expected to enhance harmonization and compliance with EU values.

12. Iris Goldner Lang and Boldizsar Nagy, 'External Border Control Techniques in the EU as a Challenge to the Principle of Non-Refoulement' (2021) 17(3) *EuConst* 442.

13. Joined Cases C-391/16, C-77 & C-78/17, *M, X and X*, EU:C:2019:403, paras 95 and 110.

The Migration Pact declares itself ‘fully grounded in European values and international law’, including ‘full respect for the principle of non-refoulement and fundamental rights’.<sup>14</sup> It also requires partnerships with third countries to be ‘based on human rights, rule of law and the respect of the Union’s common values’.<sup>15</sup> Border control, screening, and new border procedures are bound by the principle of non-refoulement and other human rights. Even in exceptional cases, such as instrumentalization, regulated by the Crisis and Force Majeure Regulation, derogations must comply with non-refoulement, the right to seek asylum, proportionality, the right to an effective remedy and other Charter and international obligations.<sup>16</sup>

Additionally, amendments to the Schengen Borders Code require that closures or limited hours at border points, in response to instrumentalization, be proportionate and respect the right to seek asylum, as well as the rights of long-term residents and EU citizens.<sup>17</sup> This is important, as the right to asylum must be effective and real. Excessive distances between crossing points can undermine this right. This is in line with the judgments of the European Court of Human Rights in *N.D. and N.T.*,<sup>18</sup> where it stated that pushbacks at the ‘green border’ do not violate the Convention provided the host State genuinely and effectively enables individuals to apply for asylum at its official border crossing points and there are no cogent reasons for individuals not to make use of official entry procedures.<sup>19</sup> Additionally, the Court of Justice ruled in *M.A.* that, even though Member States may require applications for international protection to be lodged in person and at a designated place, this right should not undermine ‘the practical effectiveness of the right to seek asylum’.<sup>20</sup>

To summarize, EU primary and secondary law set the bar high for the protection of migrants’ human rights. On top of this, the principles of direct effect and supremacy of EU law give a biting effect to most of these

14. Commission Communication on a New Pact on Migration and Asylum, COM(2020) 609 final, 23 September 2020, points 1 and 2.1.

15. Recital 5 of the Preamble to Regulation 2024/1351 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (2024) OJ L 2024/1351.

16. Arts 1(2), 1(3) and 11(7)(a) of Regulation 2024/1359 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation 2021/1147 (2024) OJ L 2024/1359.

17. Art 1(3) of Regulation 2024/1717 amending Regulation 2016/399 on a Union Code on the rules governing the movement of persons across borders (2024) OJ L 2024/1717.

18. *N.D. and N.T. v Spain* App Nos 8675/15 and 8697/15 (ECtHR, 13 February 2020).

19. For further discussion, see Iris Goldner Lang, ‘Pushbacks against the Child’s Best Interests’ (*Verfassungsblog*, 7 January 2022) <verfassungsblog.de/pushbacks-against-the-childs-best-interests/>.

20. Case C-72/22 PPU, *M.A.*, EU:C:2022:505, para 65.

provisions, as they are clear and precise enough to enable individuals to rely on them before any national court and administrative body. They also oblige national judges – in case of a clash between an EU and national norm, which cannot be rectified by interpreting the national law in conformity with EU law – to set aside the national norm and apply the EU norm directly. However, the protective standards are often challenged by Member States' practices, whether through exploiting legal ambiguities in usually extremely complex and technical legal texts, or by openly violating migrants' human rights and other EU values in national laws and practices.

Additionally, it remains uncertain whether the Migration Pact will meet the human rights standards it proclaims. Three concerns arise. First, the Pact prioritizes countering irregular arrivals, preventing abuse, and ensuring efficient governance over protecting migrants. It allows, and sometimes requires, Member States to impose spatial or temporal limits that restrict access to EU territory, detain migrants at external borders, or temporally constrain immigration/asylum proceedings. Ensuring that such measures do not violate human rights will be a major challenge.

Further, the Migration Pact's emphasis on externalization is particularly problematic. It relies on formal and informal deals with third countries such as Turkey, Libya, and Tunisia, which prevent migrants from reaching EU territory in exchange for financial support. While these arrangements reduce irregular migration, they raise concerns over accountability and possible breaches of non-refoulement. Similarly, although external border fences, now exceeding 2,000 km, may not directly breach EU or Council of Europe laws, their effect in limiting access to territory, asylum procedures, and Member State responsibility is legally dubious.<sup>21</sup>

Third, Member States' insufficient investment into extremely demanding operational, financial and human resource requirements of border and screening procedures could result in the poor implementation of the Migration Pact and in serious violations of human rights, especially in case of increased arrivals. It might also trigger increased discontent and requests for stronger EU solidarity by frontline Member States and mutual accusations among Member States. It is questionable how the Commission will react to such violations and whether it will try to compensate for such deficiencies by being reluctant to start infringement proceedings against the most affected, frontline Member States in case of violations of human rights.

21. Iris Goldner Lang, 'Walls and Fences at the EU's External Borders and their Monitoring' in Philippe De Bruycker and others (eds), *The Law of Schengen: Limits, Contents and Perspectives after 40 Years* (Edward Elgar forthcoming) <papers.ssrn.com/sol3/papers.cfm?abstract\_id=4788881>.

### **3. EU values as a sword to restrict migrants' rights**

Over the past decade, the term 'EU/European values' has started appearing in political statements and policy documents of both EU institutions and its Member States in the context of the need to restrict EU migration, asylum and external border control policies. Unlike the distinct position of human rights, as the most important EU value in the protective approach towards migrants, here no particular EU value can be singled out. Instead, the discourse on restrictions of migrants' rights refers to EU values in general. Its invocation is related to two topics. First, it is used to justify the need for a stronger protection of the EU's external borders against irregular migration and instrumentalization of migrants by third countries. The European Council's 2019–2024 and 2024–2029 Strategic Agendas state that the effective protection of the EU's external borders (against irregular migration and instrumentalization) is 'a prerequisite for guaranteeing security and upholding law and order, in line with our principles and values'.<sup>22</sup> This seems to suggest that the maintenance of security, law and order in an EU values-compliant manner is possible only provided the EU's governance of its external borders effectively prevents irregular migration and instrumentalization. A joint political statement of EU Member States makes similar links by stating that instrumentalizing third countries 'are trying to use our values and rights against us' and that 'Europe [needs to] regain[s] control of irregular migration'.<sup>23</sup> However, EU migration, asylum and border control legislation does not make the link between EU values and the protection of the Union's external borders, irregular migration and instrumentalization.

The second restrictive use of EU values in the context of migration is by linking them to integration of third-country nationals in the EU. The October 2024 European Council Conclusions provide that immigrants' 'integration implies respect for the basic values of the European Union'. It continues that 'everybody resident in the EU must adapt and adhere closely to the basic values of the European Union as well as to Member State laws' and that 'Members States are responsible for actively assuring that all residents, including immigrants, understand, respect, benefit from, and are protected on an equal basis by the full scope of values, rights, responsibilities, and privileges established by the EU and Member State laws'. Two conclusions can be drawn from these statements. First, an EU values-compliant integration process is not only the responsibility of migrants,

22. See n 7.

23. Open letter of nine EU Member States to the Council of Europe (n 5).

but primarily of Member States, which need to take active measures to enable successful integration. Second, even though these statements are provided under the heading ‘Common Basic Principles for Immigrant Integration Policy in the European Union’, they refer to ‘everybody resident in the EU’, thus implying that the same duty to respect EU values applies equally to EU citizens and third-country nationals residing in the EU. Consequently, migrants’ integration duties should be considered in the context of the discussion on the duties of EU citizens towards the Union or, more broadly, the discussion on individual responsibilities towards the State/union of States of one’s residence.

Here, two main approaches can be distinguished. First is the position, embraced by this paper, that both EU citizens and third-country nationals who reside in the EU or are in any other way under its jurisdiction (for example by wishing to travel to or reside in the Union as economic migrants, asylum seekers or beneficiaries of international protection) need to abide by its rules and principles, including the values proclaimed by Article 2 TEU. EU citizens’ duty towards the Union are explicitly stipulated by Article 20(2) TFEU, which provides that Union citizens enjoy the rights and are ‘subject to the duties provided for in the Treaties’.<sup>24</sup> There is no such general Treaty provision on the duties of third-country nationals in the EU. However, in my view, their obligation to respect EU law, including EU values contained in Article 2 TEU, arises from the following two elements, taken cumulatively. First, it is the result of the binding effect of EU law and the EU’s jurisdiction over third-country nationals who reside or wish to enter and reside in the EU. Second, it emerges from the EU’s political legitimacy, which justifies its political authority in the domestic and international political arenas, and which stems from the consent of those who are governed by the EU (or public reason, according to John Rawls), from the Union’s adherence to democratic principles, including the rule of law, and from its ability to provide public goods.<sup>25</sup>

The second position, which is not followed by this paper, is linked to the hybrid policy category of the ‘European way of life’, which is the outgrowth of EU values, often linked to the restrictive migration discourse, and which includes a number of EU values – such as human rights, rule of law, solidarity and human dignity – in combination with peace and security

24. See Jan Komárek, ‘EU Citizens’ Duties: Preventing Barriers to the Exercise of Citizens’ Rights’ in Sandra Seubert, Oliver Eberl and Frans van Waarden (eds), *Reconsidering EU Citizenship: Contradictions and Constraints* (Edward Elgar 2018) 64.

25. For the duties of third-country nationals towards the EU, see Pavlos Eleftheriadis, ‘Citizenship and Obligation’ in Julie Dickson and Pavlos Eleftheriadis (eds), *Philosophical Foundations of European Union Law, Philosophical Foundations of Law* (OUP 2012) 159.

and with a collective European identity.<sup>26</sup> This concept came into the spotlight with the appointment of Margaritis Schinas as a Vice-President of the European Commission for the period 2019–2024, responsible for ‘Promoting our European way of life: Protecting our citizens and our values’, and whose portfolio encompassed migration, including integration of migrants and refugees. In her Mission Letter to the newly appointed Vice-President, Ursula von der Leyen defined the ‘European way of life’ as a combination of ‘solidarity, peace of mind and security’ and linked it to ‘legitimate fear and concerns about the impact of irregular migration’ and ‘the need for well-managed legal migration’ and ‘a strong focus on integration’.<sup>27</sup> This way, migration was presented as a threat to the European way of life (and indirectly to EU values), which was rightly criticized by many leading politicians as going contrary to European values and as adopting a ‘Fortress Europe’ mentality and encouraging the far-right parties.<sup>28</sup>

The Commission’s Action plan on Integration and Inclusion 2021–2027 rests on the notion of the European way of life but, here, it is presented as a much more inclusive and open concept.<sup>29</sup> Also, the current Commission no longer has a portfolio on the European way of life, suggesting that this concept has been mostly abandoned due to its negative connotations. As regards the migration and asylum legislation, the Migration Pact refers to the European way of life only once, as the basis for the adoption of the Action Plan on integration and inclusion for 2021–2024.<sup>30</sup>

The Court of Justice has not (yet) created a link between migrants’ integration obligations and EU values. The 2025 Grand Chamber judgment in *Keren* on civic integration obligations imposed by the Netherlands on beneficiaries of international protection recognizes Member States’ discretion in deciding which obligations may be imposed on participants of integration programmes, provided these obligations do not undermine the integration objectives. However, the judgment does not mention EU values or Article 2 TEU, but relies exclusively on EU secondary legislation. On the

26. Francois Foret and Noemi Trino, ‘The “European Way of Life”, A New Narrative for the EU? Institutions’ vs Citizens’ View’ (2022) 24(3) European Politics and Society 336, doi: 10.1080/23745118.2021.2020482.

27. Mission Letter of Ursula von der Leyen to Margaritis Schinas, 1 December 2019 <commissioners.ec.europa.eu/system/files/2022-11/president\_von\_der\_leyens\_mission\_letter\_to\_margaritis\_schinas.pdf>.

28. David M Herszenhorn and others, ‘The Brussels Way of Life: Infighting’ (*Politico*, 12 September 2019) <www.politico.eu/article/the-brussels-way-of-life-infighting-european-commission-jean-claude-juncker-ursula-von-der-leyen/>.

29. Commission Communication ‘Action Plan on Integration and Inclusion 2021–2027’, COM(2020) 758 final, 24.11.2020.

30. See n 14, point 8.

other hand, in her Opinion in *Keren*, Advocate General Medina mentions courses on ‘national values’ only in passing, when defining the expression ‘facilitation of integration’, but also relies exclusively on EU secondary legislation and the Charter.<sup>31</sup> However, considering the intensifying public debates and the growing number of national measures that impose integration obligations on migrants, it seems only a matter of time before the Court will be called upon to address the role of EU values in the context of migrant integration.

#### **4. Justiciability of EU values in migration and asylum**

The partly unresolved issue of justiciability of Article 2 TEU does not have a major impact on migration and asylum. On the one hand, it seems logical that Article 2 TEU, read together with Article 3(1) TEU and 13(1) TEU, creates legally binding obligations for EU institutions to respect EU values when adopting EU legislation in any policy area, including migration, asylum and border controls. On the other hand, even though direct enforceability of Article 2 TEU against Member States’ legislation is much more questionable, this does not call into question the EU-level reviewability of Member States’ migration-related actions. Whenever acting in the area of migration, asylum and border controls, Member States are bound by Title V TFEU on the Area of Freedom, Security and Justice, and by EU secondary legislation and the Charter. This is due to the fact that these policy areas belong to the Union’s and Member States’ shared competences and that they have been heavily regulated at the EU level. Consequently, it is difficult to imagine a situation in these policy areas that would fall outside the scope of EU law. As shown in *Keren*, this applies even to situations involving integration of third-country nationals, where the EU can only incentivize and support Member States’ actions, but it cannot harmonize national laws.<sup>32</sup>

Consequently, when acting in the area of migration, asylum and border controls, Member States are bound by EU secondary legislation and Charter provisions which give concrete expression to Article 2 values, particularly human rights. However, this does not mean that Article 2 TEU can constitute an autonomous legal basis for reviewing national measures. Even though there are strong arguments why – and under which conditions – Article 2 TEU should act as a standalone legal basis for reviewing national

31. Case C-158/23, *Keren*, EU:C:2025:52; Opinion of AG Medina in Case C-158/23, *Keren*, EU:C:2024:461, para 47.

32. Art 79(4) TFEU.

measures, my proposal is to treat it as the normative foundation for Member States' migration-related activities, which shapes the content of other Treaty provisions, EU secondary legislation and Charter provision, and which underpins their interpretation and enforceability towards Member States' actions in the area of migration, asylum and border controls.<sup>33</sup>

Additionally, Article 2 TEU should be used as an interpretative tool for national migration, asylum and border control measures, provided such interpretation would not be *contra legem* and it would not violate the principles of legal certainty, legitimate expectations and non-retroactivity.<sup>34</sup> On the other hand, the level of precision and clarity of Article 2 TEU is not high enough to confer individual rights on migrants. However, this should not be a problem, as migrants can rely on a detailed and rich inventory of EU secondary legislation, combined with relevant Charter provisions. Nevertheless, all this is far from sufficient to ensure protection of migrants' right, as most violations of migrants' rights never get to the courtroom. Migrants usually possess neither the knowledge nor the resources to seek judicial protection. For this reason, migrants' rights can only be adequately protected provided there is a political will on the side of Member States to ensure proper enforcement in practice, and on the side of the Commission to start infringement proceedings in case of violations.<sup>35</sup>

## 5. Concluding remarks

The invocation of EU values in both protective and restrictive migration approaches reveals the central dilemmas of migration governance in Europe today. The protective approach, predominant in EU legal acts, highlights the question whether the Union can live up to its own legal commitments, above all the protection of human rights, in the face of persistent migratory pressures, political polarization, xenophobic fears and demographic challenges of an ageing Europe that depends on third-country national labour. By contrast, the restrictive approach, prevailing in policy documents and

33. For arguments why Art 2 TEU should be an autonomous legal basis, see AG Čapeta's Opinion in Case C-769/22, *European Commission v Hungary*, paras 189–218. For arguments against it, see Tom Boeckestein, 'Making Do with What We Have: On the Interpretation and Enforcement of the EU's Founding Values' (2022) 23 GLJ 431, doi: 10.1017/glj.2022.33. See also Davor Petrić, 'Between Values and Self-Preservation in the Interpretation of EU Law' in Alezini Loxa and Luigi Lonardo (eds), *The Reasoning of the Court of Justice of the EU: A Normative Assessment* (OUP 2026) 135.

34. Case C-268/06, *Impact*, EU:C:2008:223, para 103.

35. Iris Goldner Lang, 'No Solidarity without Loyalty: Why Do Member States Violate EU Migration and Asylum Law and What Can Be Done?' (2020) 22 *European Journal of Migration and Law* 39, doi: 10.1163/15718166-12340068.

political speeches, reflects fears that sustained migration of third-country nationals with different cultural, religious, and linguistic backgrounds may threaten national and European identities and ultimately alter EU values themselves. Both perspectives thus express legitimate concerns about the preservation of EU values, but they do so from very different vantage points and with different consequences for rights and obligations.

The analysis in this paper suggests that reconciling these perspectives cannot simply be left to political compromise but requires a structured legal framework. The ‘red lines’, which have been identified here as the respect for the essence of EU values and the absolute rights of non-refoulement, human dignity, and the right to life, mark the limits of permissible balancing between migrants’ rights and broader policy objectives such as public security and national identity. Beyond these red lines, restrictive measures not only undermine individual rights, but also erode the constitutional foundations of the Union.

Looking forward, the tension between protective and restrictive approaches is likely to persist. Labour market needs and demographic trends point to a structural demand for immigration, while political contestation and security concerns fuel restrictive narratives. At the same time, values risk becoming empty rhetorical devices if their invocation is not matched by credible national implementation of EU migration and asylum policies, by political willingness of both Member States and EU institutions to safeguard these values and by effective EU and national remedies in case of violations. Only this can ensure that EU values function as a genuine shield that protects migrants and as a legitimate sword that prevents abuse and imposes non-discriminatory duties to respect EU values on all individuals under the EU’s jurisdiction, no matter whether they are third-country nationals or EU citizens. In this context, Article 2 TEU should serve as a normative foundation underpinning the Court’s interpretation of EU migration and asylum law and as an interpretative tool for national migration and asylum rules.