

REGULATION 2024/1359 - THE “CRISIS AND FORCE MAJEURE REGULATION”

***« THERE IS NOT ENOUGH EUROPE IN THIS UNION. AND THERE IS NOT ENOUGH
UNION IN THIS UNION »***

– JEAN CLAUDE JUNCKER, FORMER PRESIDENT OF THE EUROPEAN COMMISSION.



Regulation 2024/1359 « addressing situations of crisis and force majeure in the field of migration and asylum » provides a legal framework for managing migration crisis in the case of mass arrivals, or a situation of instrumentalization of migrants as well as force majeure.

PUBLIC CONCERNED:

- Member States
- Beneficiaries of international protections
- Asylum seekers

MAIN ISSUE

Although Regulation 2024/1359 was designed to respond to the Member States' concerns regarding the growing migration influx and its destabilizing impact on the European Union, *the framework established may ultimately prove problematic, threatening the solidarity principle and States' sovereignty due to its lack of clarity.* Additionally, despite the Regulation's premise of respecting human rights, *its implementation might result in apparent solutions that actually risk violating migrants' fundamental rights and normalize crisis.*

Entry into force:
11th June 2024

Full effect:
1st July 2026

LEGAL ENVIRONMENT

PRIMARY LAW:

- Treaty on the Functioning of the European Union (TFEU – articles 4, 78 and 80)
- The Charter of Fundamental Rights of the European Union (article 5)

OTHER LEGAL INSTRUMENTS:



- Recasts Regulation 604/2013 of the European Parliament and of the council (Dublin 3)
- Connected with Regulation 2024/1351 of the European Parliament and of the Council
- Connected with Regulation 2024/1348 of the European Parliament and of the Council
- Connected with Commission Recommendation 2020/1366 of 23 September 2020



TERMINOLOGICAL APPROACH

CRISIS

« An **exceptional situation** of mass arrivals of **third-country nationals** or stateless persons in a Member State by land, air or sea, including of persons that have been disembarked following search and rescue operations, of such a scale and nature » – Regulation 2024/1359

FORCE MAJEURE

« **Abnormal** and **unforeseeable** circumstances outside a Member State's **control**, the consequences of which could not have been avoided notwithstanding the exercise of all due care » – ECJ, 2017, C-640/15

INSTRUMENTALIZATION

« A situation where a **third country** or a hostile **non-state actor** **encourages** or facilitates the movement of **third-country nationals** or stateless persons **to the external borders** or to a Member State, with the **aim** of **destabilising** the Union or a Member State. » – Regulation 2024/1359

DEROGATION

. "A derogation is a provision in an EU legislative measure which allows for all or part of the legal measure to be **applied differently**, or not at all, to individuals, groups or organisations " – Eurofound

RESPONSABILITY SHARING

in the EU context means to **equally distribute responsibilities** among the Member in order to facilitate an overburdened State (Dublin3 Regulation)

EXCEPTIONALITY

It refers to situations or actions that **deviate** from the standard legal or normative framework, typically justified by **extraordinary circumstances**. Regulation 2024/1359



AMBIGUOUS FRAMEWORK BETWEEN STATE'S SOVEREIGNTY AND SOLIDARITY

The Regulation fails to define non-State actors. The Regulation uses vague terms throughout the whole text, granting a marge of discretion to States.

Actions are evaluated based on their potential risks rather than the concrete outcome. This approach raises serious concerns about the potential misemployment of the Regulation

Instrumentalisation in the recent history of the European Union has resulted in grave violations of migrants' human rights.

Belarus, Lybia and Turkey are three non-EU States that used migrants as tools for political bargaining.

EU countries located at the external borders were the ones more affected by this inhumane action.



AMBIGUOUS FRAMEWORK BETWEEN STATE'S SOVEREIGNTY AND SOLIDARITY

This creates an imbalanced solidarity model among Member States based on **willingness**:

ARTICLE 4§ 2(b)

“Where the Member State is facing a situation of crisis, a draft Solidarity Response Plan, after consultation with the Member State, that ensures the **full discretion** of contributing Member States in choosing **between the types of solidarity measures**”

Flexibility in the implementation of solidarity measures may accommodate national preferences but may also undermine the **principle of shared responsibility**



AMBIGUOUS FRAMEWORK BETWEEN STATE'S SOVEREIGNTY AND SOLIDARITY

ARTICLE 3 of the Regulation shows an increasingly prominent role of the Commission carving away States' sovereignty

The instruments of the Regulation can only be activated after a **review process** of the **Commission** and the **Council**

The central issue lies in ensuring judicial protection against the **potential inaction** of the Commission.





A PATHWAY TO THE NORMALIZATION OF CRISIS

The numerous derogations establishing exceptional measures risk becoming standard practice through repeated use, effectively turning emergency provisions into the new norm.

- Article 10 : extended deadlines for registering protection applications
- Article 11 : measures applicables for asylum border procedures
- Article 12 : extension of time limits for take charge / take back and transfer
- Article 13 : derogations from Dublin III

Article 13 § 1 states that a MS may be exempted from its obligation to take back applicants if faced with a mass arrival of "**extraordinary scale and intensity**", thereby creating a serious risk that CEAS is rendered non-functional.

The exception becomes the ordinary

The framework established risk normalizing disproportionate emergency measures at European borders.

A PATHWAY TO THE NORMALIZATION OF CRISIS

The regulation establishes **exceptional measures** for situations that are, by definition, **unpredictable** such as *force majeure* or *instrumentalization*.

This creates a **paradox**: it attempts to systematize responses to situations that, if genuinely unpredictable, cannot be adequately anticipated or regulated in advance.

- Crisis framing prioritizes **containment, deterrence**, and control over solutions like integration or addressing root causes. It reduces migrants to mere case files.

- Terms like "migration crisis" reveal political and ideological contexts rather than objective realities.



DEVELOPING PSEUDO-SOLUTIONS TO SITUATIONS OF CRISIS AT THE COST OF MIGRANTS' HUMAN RIGHTS

Several articles restrict asylum seekers' access to:

- **legal counsel**
- **interpreters**
- sufficient **time to gather evidence**



The acceleration of asylum procedures may **undermine** the **lawfulness** of international protection procedure

This creates a real danger of unfair or incorrect decisions, **violating EU Directive 2013/32**, which guarantees fair access to international protection.

DEVELOPING PSEUDO-SOLUTIONS TO SITUATIONS OF CRISIS AT THE COST OF MIGRANTS' HUMAN RIGHTS

Art 11 §2-4 permits a MS in a situation of crisis or force majeure to refuse the asylum status to people based on the percentage of the asylum applications that have been accepted for people of their country (or residence)



The Regulation opens the door to the possibility of enabling **mass expulsions** for Member States

It undermines the principle that each application must be evaluated individually

Conditions in sending countries change **quickly**, leading to scenarios where previously rejected asylum applications would now be accepted.

DEVELOPING PSEUDO-SOLUTIONS TO SITUATIONS OF CRISIS AT THE COST OF MIGRANTS' HUMAN RIGHTS

ARTICLE 11 § 1

In a situation of crisis or *force majeure*, Member States may, as regards applications made within the period during which this Article is applied, derogate from Article 51(2) of Regulation (EU) 2024/1348, by **extending** the maximum duration of the border procedure for the examination of applications set out in that Article by an additional period of maximum six weeks.

The prolonged waiting periods and inadequate measures do not sufficiently address the systemic issues faced by migrants. Instead, **they exacerbate existing inequalities** and undermine the EU's commitment to upholding human rights.

The conditions of asylum seekers in countries at the external borders of the EU are already dire. **Italy** and **Greece** have already been reported and condemned for failing to respect the human rights of migrants (J.A. and Others v. Italy, 2023)

NEXT STEPS

At the national level, EU Member States **must adapt their legislation with the provisions** of Regulation (EU) 2024/1351 to ensure its coherent and effective implementation.



The regulation **entered into force on June 11, 2024**, marking its official adoption, though its provisions are not yet applicable.

It will take **full effect on July 1, 2026**, when all its requirements become legally binding

TO GO FURTHER

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TO GO FURTHER

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