

International Court of Justice affair: To what extent can the European Union and its agency Frontex strike a balance between safeguarding borders and complying with international law and the fundamental rights of migrants?

File defense

Country : Turkey

Commission: ICJ

Affaire : Balance between EU border security and compliance with international law and fundamental rights of migrants

Turkey's cooperation with the EU and Frontex upholds sovereignty, shared responsibility, and international law while managing migration flows. The 2016 EU-Turkey Statement and 2012 Memorandum of Understanding (MoU) facilitate non-operational support like training and risk analysis without infringing on Turkish control. Turkey hosts 3.6M refugees, providing safe third-country status under the 1951 Refugee Convention.

Turkey's engagement aligns with EU frameworks authorizing third-country cooperation, such as Regulation (EU) 2019/1896 establishing Frontex, which permits working arrangements with non-EU states on border management. CJEU rulings, including cases on the EU-Turkey Statement (e.g., *NF v European Council*), confirm such agreements respect member state and third-country sovereignty without constituting binding EU acts reviewable by the Court. No ICJ precedents directly challenge cooperative border arrangements; instead, cases like *Bosnia v Serbia* emphasize state responsibility only for direct control, supporting Turkey's non-binding partnerships.

- In its 2017 ruling, the General Court of the Court of Justice of the European Union held that the EU–Turkey Statement does not constitute an EU legal act, but an intergovernmental arrangement. This confirms its non-binding nature and the absence of EU authority over Turkish border operations.
- In Case C-134/23, the Court of Justice of the European Union held that an asylum application may be declared inadmissible when return to a safe third country is feasible and effective. This confirms that external cooperation on migration management is lawful when fundamental rights are respected, as is the case with Turkey.
- Furthermore, Frontex has concluded similar Memoranda of Understanding with several third countries, limited to training, risk analysis, and information exchange. These arrangements are explicitly non-operational, demonstrating that cooperation with third states can occur without transferring authority or undermining sovereignty.
- EU secondary law also explicitly authorizes this form of cooperation. Regulation (EU) 2019/1896 allows Frontex to conclude working arrangements with third countries for non-operational purposes such as training and risk analysis, while excluding any executive powers on third-country territory. In addition, the 2016 EU–Turkey Statement formalizes cooperation on returns and support without establishing an operational Frontex presence, thereby preserving Turkey's sovereignty and responsibility

The Court should affirm that EU-Turkey/Frontex cooperation complies with international law, including non-refoulement under the 1951 Refugee Convention, as Turkey maintains full border control. Declare no violations of sovereignty or migrant rights, rejecting claims of pushback complicity. Order EU recognition of Turkey as a key partner deserving enhanced funding and burden-sharing.

Turkey's pragmatic cooperation strengthens regional stability without breaching rights or sovereignty.