

## THE EUROPEAN PHYSICAL BORDER PROTECTION AND ITS EFFECT ON IRREGULAR MIGRATION

**Róbert BARTKÓ**

Associate professor, Széchenyi István University, Hungary  
E-mail: bartko.robert@sze.hu

**Ferenc SÁNTHA**

Associate professor, University of Miskolc, Hungary  
E-mail: santhaferenc@hotmail.com

### **Abstract**

Irregular migration has posed a persistent challenge to the European Union for decades, reaching a critical peak during the 2015–2016 migration crisis. In response, several Member States implemented physical border protection measures, including the construction of fences and barriers. This study investigates three core research questions: (1) whether the erection of border fences represents a unique phenomenon in Europe; (2) whether such measures are lawful under EU border protection law; and (3) whether they are effective in mitigating irregular migration. Drawing on time-series data from FRONTEX (2014–2025), the paper analyses trends in irregular border crossings and the evolution of physical border infrastructure across the EU. The findings indicate that border fences are not unprecedented in Europe, are legally permissible under current EU frameworks, and can serve as a legitimate, though not exclusive, tool for managing migratory flows. The study also explores conceptual distinctions between irregular and illegal migration and considers the instrumentalization of migration as a political tactic. While physical barriers may reduce pressure on specific border sections, their effectiveness is contingent upon broader geopolitical, legal, and humanitarian factors.

**Keywords:** *irregular border crossing, border barrier, EU law, FRONTEX, Schengen, instrumentalization, migration policy.*

## 1. Introduction

Migration and, most significantly, irregular migration in the international sphere has intensified over the past 20 years. While roughly 173 million migrants were detected internationally in 2000, by 2020, this number had risen to nearly 281 million (Coccia et al., 2024). Most of them moved from developing countries (Triandafyllidou & Maroukis, 2012) for many different reasons, including work, family, study, or asylum seeking (Coccia et al., 2024). Over the past three decades, major political and economic shifts have intensified global migration pressures, placing a significant burden on EU Member States.

Migratory pressure means a situation brought about by arrivals by land, sea or air or applications of third-country nationals or stateless persons that are of such a scale that they create disproportionate obligations on a Member State, taking into account the overall situation in the Union, even on a well-prepared asylum, reception and migration system, and require immediate action, in particular solidarity contributions pursuant to Part IV of this Regulation; taking into account the specificities of the geographical location of a Member State. ‘Migratory pressure’ covers situations where there are many arrivals of third-country nationals or stateless persons or a risk of such arrivals, including where such arrivals from recurring disembarkations following search and rescue operations, or from irregular movements of third-country nationals or stateless persons between the Member States” (Regulation (EU) 2024/1351. Art. 2. Par. 24). In this study, this term is operationalized through detection data, meaning that irregular migratory pressure is assessed exclusively based on the number of detected irregular movements.

While between 2009 and 2010, the number of irregular border crossings detected at EU’s external borders was around 100,000 per year (Morehouse & Blomfield, 2011), by 2014, this figure had risen to over 280,000 at a pan-European level, while at the peak of the European crisis in 2015, almost 1,800,000 irregular border crossings were detected by EU countries (FRONTEX, 2018).

Irregular border crossing refers to an act of crossing borders without complying with the necessary legal requirements for entry into the State (International Organization for Migration, 2019), a term that needs to be distinguished from the concept of irregular migration, which will be explained in a separate chapter. We aim to analyse the EU data on irregular border crossings and, later in the paper, to evaluate the specific measures to thwart such crossings, such as construction of border fences and barriers, considering the data mentioned above. While this paper focuses primarily on the border management metrics of irregular crossings, the legal analysis inherently addresses how these measures intersect with the rights of asylum seekers and the broader international protection framework.

As for the legal approach to irregular migration, some Member States regard irregular migration as a criminal offence, while others provide administrative legal responses to the issue, though criminalisation is not a widespread response as irregular border crossing and staying are not typically considered a crime in Western European countries (Carrera & Guild, 2016). Assistance relating to irregular border crossing and the support provided for it are mainly covered by the internal criminal legal regulations (Haddeland & Rabe, 2025). Therefore, within the European Union, Member States have predominantly resorted to criminal legal measures in respect of offences that are layered onto irregular migration, for example, trafficking in human beings and smuggling of human beings (Mitsilegas, 2015), which contribute to the continued persistence of irregular migration on a global scale (Galateanu, 2017). This overcriminalisation of facilitation of irregular entry has allowed the Member States to use domestic criminal law to prosecute a wide range of elements of assistance of migrants (Mitsilegas, 2025). As a result, irregular border crossing generally appears in the European internal legal systems as a misdemeanour, or as a phenomenon that should be addressed by law-enforcement measures.

In the latter case, therefore, the Member State responds to irregular migration exclusively from a border-management perspective. Naturally, in many states, including in Hungary, politics has designated mass irregular migration as a threat and framed the phenomenon in ways that justified the introduction of a state of emergency. By providing a social framing of this phenomenon, the Hungarian legislation made the relationship between security and defence (Markiewicz, 2023, Karyotis et al, 2025) the axis of its policy. Considering that public security can be affected by this phenomenon, Member States have adopted various legal and operational measures to control the irregular migratory flow (Broaders & Engbersen, 2007). However, this paper does not aim to address the new security policy phenomenon, as it is not relevant to answering our research questions.

One form of border protection that has become increasingly widespread on the European continent in recent times is the construction of border fences and barriers. The fences typically consist of wire mesh and wire rollers placed between steel posts. Given its prevalence, this study focuses primarily on this form of border protection.

As will be demonstrated in subsequent sections, the construction of border fences accelerated after the migration crisis in 2015-2016, but the concept of “Fortress Europe” was widely discussed by non-governmental organizations even before the period mentioned above. Hungary played a pioneering role in initiating this process by developing a complex legal system that included criminal legal measures and physical border barriers in 2015. The increasing number of external borders protected by fences raises the question: how should irregular migration be addressed most effectively, by criminal legal measures or by law-enforcement?

To answer this question, the problem of the legitimacy of fence construction needs to be addressed, and along this line, an analysis of migration statistics is needed, with particular attention to the border sections affected by the physical barrier. This study, therefore, focuses on three main areas: first, the legality of building border fences; second, the evolution of border fences in Europe; and third, the effectiveness of these fences in controlling irregular border crossings, as demonstrated by statistical data. This paper aims to examine the European border fences and their effects, using the terms “border barrier, or “border closure” as collective categories and synonyms.

This study is based on FRONTEX data, which are derived from Member States' reporting and clearly show the trends in irregular migration over the period under review. This paper contributes to the academic discourse by offering a comprehensive legal and empirical assessment of physical border barriers within the EU context.

However, a methodological caveat must be noted: FRONTEX data are highly aggregated by migratory routes, some of which encompass expansive maritime boundaries (such as the Eastern Mediterranean) or are only partially fenced. Consequently, tracking raw numbers cannot establish a direct, exclusive causal link between physical barriers and reduced crossings. Instead, this quantitative trend evaluation serves to contextualize general shifts in migratory pressure alongside other critical geopolitical variables.

## 2. The concept of irregular migration

Irregular migration, as a multifaceted and dynamic phenomenon (Spencer & Triandafyllidou, 2022), is defined differently across the EU Member States and is therefore represented differently in their national legislation. The terminology used to describe the phenomenon in the relevant international literature is far from consistent. Definitions change, and the terms used to label the phenomenon have evolved. Throughout the 20th century, “illegal migration” was the dominant term, until it was rather recently pushed out by “undocumented migration” and “irregular migration” (Schrover, 2023). Over the past decade, a growing consensus has emerged in the relevant academic literature and international organizations that the term “illegal migrant” (or “illegal migration”) is an inappropriate label, as it carries discriminatory and pejorative connotations due to its association with prohibited behaviour or crime (Kraler & Ahrens, 2023).

Individuals should not be labelled as illegal because this is not an identity but a legal category. An individual's departure, entry, or stay may be illegal, but calling an individual illegal is dehumanizing. In other words, classifying migrant as illegal can also be considered a denial of their human nature, as migrants are human beings who have fundamental rights regardless of their status. Furthermore, the term illegal criminalizes migration, especially when it

is regularly mentioned in contexts such as unauthorized work, drug trafficking, or arms smuggling (Schrover, 2023). Based on these arguments, this study will use the term irregular migration/migrants.

One category of terms describing irregular migration focuses on migrants' journeys and their entry into a given country. These include the definition often cited in the literature provided by the International Organization for Migration (IOM), according to which “irregular migration is movement that takes place outside the laws, regulations or international agreements governing the entry into or exit from the State of origin, transit or destination.” However, according to criticism in the literature, most persons residing irregularly in each country entered legally, mainly as tourists or students, and only became irregular when they exceeded their permitted length of stay: they are the “overstayers”.

The flow of individuals who entered legally and then overstayed their permits or engaged in activities for which they were not authorized, especially employment, exceeds the number of those who crossed the border without valid documents (Ambrosini & Hajer, 2023). It therefore seems reasonable to interpret the term irregular migration as an umbrella term for the entire phenomenon: “irregular migrants are those who, at some point in their migration project, have violated the rules of entry or stay.” In contrast to the IOM concept, this approach can refer to both stocks and flows (Kraler & Ahrens, 2023) – meaning it captures both and total population of unauthorized residents present at specific time (stocks) and the ongoing movement or status shifts over time (flows).

However, problems also arise in connection with the use of the term “irregular.” Critics argue that, on the one hand, “patterns of irregularity are diverse”, meaning that there are many forms of irregularity that characterize migrants in different situations: these may include those who have crossed the border illegally, visa overstayers, children of undocumented parents, migrants who have lost their regular status due to unemployment or failure to meet certain requirements, and rejected asylum seekers (Spencer & Triandafyllidou, 2022). Classifying individuals in such diverse situations into a single group can make it difficult to provide tailored protection, formulate policy responses to the phenomenon, and conduct research. On the other hand, irregularity should be seen not as a static phenomenon but as a process in which migrants lose, or gain legal status depending on their actions, circumstances, and the political framework (Dumbrava, 2025; Rheindorf & Vollmer, 2025). The status of migrants is therefore temporary and variable; some may move from irregular to regular status and vice versa, which makes categorization and measurement of the phenomenon difficult. This problem is compounded by the fact that the line between irregularity and regularity is often blurred and relative: sometimes migrants are allowed to stay in a country but are not allowed to work, or restrictions may apply to their participation in the labour market.

Therefore “irregular migration needs to be conceptualised not as a black-and-white distinction between legal and illegal status but rather as a continuum of different statuses between regularity and irregularity” (Triandafyllidou & Bartolini, 2020). Finally, referring to migration as “irregular” may suggest that the problem lies with migrants and, as a result, migration is often seen as the fault of migrants. Consequently, there is a tendency to criminalize irregular migrants at various stages of their irregular situation (Dumbrava, 2025). However, “irregularity is not entirely of the migrant’s making” (Spencer & Triandafyllidou, 2022), and irregular situations are often caused by government regulatory decisions, restrictive asylum policies, and labour market demands, as employers in the destination country often prefer irregular residence and employment. There is certainly a more neutral term, e.g., “people with irregular status”, that would be more suitable for eliminating the problems outlined above. However, we consider the term “irregular migration” acceptable and, in this study, focus on its narrower meaning: illegal entry into a country, as we assess the effectiveness of border fences based on the number of irregular border crossings detected by FRONTEX.

### 3. Materials and Methods

#### 3.1. Border fences and barriers in Europe

As far as border fences in Southern Europe are concerned, the Western Balkan route has become one of the main entry points for migrants into the European Union since the beginning of the migration crisis in 2015 and 2016, which is why border fences and increased border protection are of the utmost importance for the countries concerned. Slovenia, citing the protection of the Schengen system and the country's borders, began building the fence at the end of 2015, which, once completed, stretched for almost 200 km along the Slovenian-Croatian border. After the change of government in mid-2022, the new government announced the dismantling of the fence. The process is moving rather slowly, which can be explained by the number of irregular border crossings at the southern border. Austria, although it had previously sharply criticized the Hungarian solution, also erected a 3.7 km border fence in 2015 near Spielfeld, one of the busiest border crossings on the Slovenian-Austrian border. It was the first time a border fence was erected between two countries in the Schengen area (Dumbrava, 2022). Serbia initially refrained from building border fences, but the Serbian government started constructing the fence on the Serbian-North Macedonian border in June 2020. The length of the fence has gradually increased, and by mid-2024, it has grown to dozens of kilometres. North Macedonia has become a key transit country on migration routes from Asia and Africa, mainly through Turkey and Greece, to Central and Western Europe (Mileski & Pacemska, 2022). The European migration crisis of 2015-2016 dramatically increased the number of migrants passing through the country, with approximately 800,000 migrants transiting through North

Macedonia during this period (European Commission, 2020). The government began building a fence on the Greek border in November 2015. As a result, due to the Austrian government's decision to accept up to 80 asylum applications per day, chaotic conditions have emerged in the Greek border town of Idomeni. Migrants confined to the refugee camp made repeated attempts to breach the border fence. In 2016, the migration situation was less dramatic, partly because the Greek authorities had dismantled the refugee camp and because of the presence of the border fence.

Border fences are also being built one after another on the EU's eastern border, primarily to stop artificially generated waves of migration and hybrid threats coming from Belarus and Russia (Lubinski, 2022). Latvia began building a fence on the Latvian-Russian border in 2015 and on the Latvian-Belarusian border in 2021, with the latter completed along the entire border section in 2025. Lithuania finished the construction of a 502 km long fence on the Lithuanian-Belarusian border in August 2022 (Dumbrava, 2022). In the spring of 2023, Finland began work on a border fence along its eastern border with Russia because, according to the Finnish government, Moscow had launched a wave of migration against them. The fence will ultimately be 200 kilometres long and is scheduled for completion in 2026. Finally, in 2021, Poland began construction of a fence on the Polish-Belarusian border in response to the Belarusian government's transport of Middle Eastern migrants, mainly from Iraq, to the Belarusian-Polish border in the previous year, who then attempted to enter the EU (Poland completes electronic barrier along border with Belarus, 2025). The construction faced criticism due to its environmental implications for the protected Białowieża Forest ecosystem, but the current Polish government considers the fence an important part of its policy against irregular migration. It is also supported by the European Commission.

The situation in Poland, in Latvia, and in Lithuania shows that the construction of border fences may be linked to a phenomenon known as the “instrumentalization of migration”. This new political phenomenon in the migratory pressure can also be a significant reason for maintaining migration. This new political trend refers to the strategic use of migrants and refugees by state or non-state actors to achieve political, economic, or ideological goals. Some authors regard it as a “hybrid attack to destabilise Europe” (Galani, 2024, Pūraitė & Seniutienė, 2025), some authors talk about “weaponization of migrants” (Kazanovich, 2025). Migrants are often manipulated as tools to exert pressure, provoke reactions, or shift public discourse (see more: Schmalz, 2025). This political trend raises significant ethical and legal concerns, particularly regarding compliance with international human rights standards. It violates the principles of human dignity and protection enshrined in international law, including the Geneva Convention (see more: Ho Sie Dhian & Wijnkoop, 2022). Therefore, this notion of instrumentalization of migration has also come under sharp criticism in the literature. Its uncritical acceptance and imprecise definition can lead to political responses that may blur human

rights and humanitarian considerations (Galani, 2024). Moreover, the rule of law may be at risk if the political response (European Parliamentary Research Service, 2022) is accompanied by the introduction of exceptional legal measures (Gkliati, 2023). This could also have a significant impact on the border management measures of individual Member States. Therefore, the EU aims to minimise these risks through its legislation. Regulation (EU) 2024/1359 (“Crisis Regulation”) defines instrumentalization in Article 1 (4) (b) as 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, to destabilise the Union or a Member State, and where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security”. The central idea of the regulation, which will be mandatory from summer 2026, is that instrumentalization of migration constitutes a crisis and justifies exceptional measures, including the extension of the deadlines for registering asylum applications or applying simplified border procedures to asylum claims (asylum applications can be examined in closed facilities directly at the border). Furthermore, Member States affected by instrumentalization can also receive assistance from the EU Asylum Agency (EUAA), the FRONTEX, and the Europol (Kohlenberger et al., 2025).

Nevertheless, the relevance of migrant instrumentalization to our research hinges on its potential impact on statistical indicators on irregular border crossings. The effectiveness of border fencing and barriers as a protection instrument can be examined from the statistical data side by means of data analysis, irrespective of the political or economic motives behind them.

As for the situation in Hungary at the turn of 2014/2015, mass migration to Europe began mainly from certain Balkan regions and some destabilized countries in the Middle East and North Africa. Since the police were initially unable to respond effectively to the increased migration flow, the Hungarian government wanted a quick solution to the situation. In July 2015, following the completion of a sample section, work began on installing the border barrier elements along the entire length of the Hungarian-Serbian border. The initial fence measured approximately 1.5 to 2 metres in height and comprised three rows of wire rods affixed to steel poles. Later, behind this barrier, the so-called main fence with a height of 3-4 metres was erected. The construction of the fence along the Serbian-Hungarian border was completed on 15 September 2015. A few days later, work began on the Croatian-Hungarian border as well. The full closure of the southern border was completed in October 2016, after which the construction of a second line of defence, the so-called ‘smart fence’, began. The construction of the second fence was completed in May 2017, along with an intelligent electronic signalling system.

### 3.2. Statistical data analysis on the effectiveness of border fences and barriers

Open borders between EU Member States make it easy for individuals to migrate to developed Western countries (Stojanovski et al., 2023). This openness of the EU has been and continues to be exploited by irregular migration. Therefore, EU Member States, especially after the migratory pressures of 2015-2016, and the FRONTEX operational units have put more emphasis on external border protection. One of the many operational forms has been the building of fences to increase border control and to direct migration towards checkpoints, as described above. However, the construction of a border fence is not an integrated solution in Europe and is practically unfeasible, especially at the Mediterranean borders. In this chapter, we aim to examine whether this form of border protection had a significant impact on migration flows and changes in migratory routes between 2014 and 2025. We used data published by FRONTEX. In addition to FRONTEX data, the border control authorities of Member States affected by migration pressure also keep records at the national level. However, these were not used as a basis for our analysis. The reason being that the Member States' statistics generally include multiple attempts by the same person. The data provided by FRONTEX, as an EU authority, can be considered more reliable, precisely because FRONTEX data does not focus on the number of specific individuals, but only on the number of detected irregular border crossings. At the same time, these data, as aggregate data, provided the basis for our research, because trends can be seen from these as well. So, the paper employs a mixed-method approach, combining legal doctrinal analysis with quantitative trend evaluation based on FRONTEX data.

The number of border fences and walls has dramatically increased all over the world in recent decades. In 2022, 74 border walls were reported across the globe, up from just six in 1989 (Dumbrava, 2022). A massive increase in the number of border fences in the European Union has been recorded since the 2014-2015 migration crisis. While in 2014, only 5 EU/Schengen borders were covered by a border fence, this number increased to 19 by 2022. Furthermore, while in 2014, the total length of the border fences in the EU did not reach 500 km, by 2022, this number exceeded 2000 km (Dumbrava, 2022). After 2014, the following European countries decided to build border fences: France, Lithuania, Greece, Bulgaria, Hungary, North Macedonia, Estonia, Latvia, Norway, Poland, Austria, and Slovenia. These decisions typically concerned the EU's external borders.

The following table summarizes the European situation:

<b>Country</b>	<b>Border Fence Location</b>	<b>Year Built / Purpose</b>
<i>Hungary</i>	Border with Serbia and Croatia	2015 – 2016 Response to migration crisis
<i>Bulgaria</i>	Border with Turkey	2014–2017 – Migration pressure
<i>Greece</i>	Border with Turkey (Evros River)	From 2012, expanded in 2021
<i>Latvia</i>	Border with Belarus	2022–2023 – Hybrid threats, migration control
<i>Lithuania</i>	Border with Belarus	2021–2022 – Migration pressure
<i>Poland</i>	Border with Belarus	2022 – Political pressure and migration
<i>Estonia</i>	Border with Russia	From 2018 – Security concerns
<i>Austria</i>	Border with Slovenia (temporary)	2015 – During the migration crisis
<i>Slovenia</i>	Border with Croatia (partially dismantled)	2015–2022 – Migration pressure
<i>Spain</i>	Ceuta and Melilla (border with Morocco)	Since the 1990s, African migration control
<i>France</i>	Calais (around the Channel Tunnel)	2016 – Prevent illegal crossings to the UK
<i>Finland</i>	Border with Russia (planned, construction)	From 2023 – Geopolitical tensions

Table 1: Sections of the EU’s border affected by border fences in 2025.

According to FRONTEX data, 2014 marked a record number of irregular border crossings detected in the EU compared to previous years, with more than 280,000 irregular border crossings. The data show that the largest increases compared to 2013 were recorded on the Central Mediterranean (277%), Eastern Mediterranean (105%), Black Sea (193%), and Western Balkans (117%) routes (FRONTEX, 2015). Although the migration crisis peaked between 2015 and 2016, we started our analysis in 2014 so that the spike in 2015 could be clearly defined and understood.

However, in 2015, irregular immigration into the EU changed both quantitatively and qualitatively. This year marked the highest number of irregular border crossings reported by Member States since World War II. According to the FRONTEX figures for 2015, a total of 1,822,337 cases of irregular border crossers were registered in the Member States, compared to the number of persons who were refused entry or deported, the latter number being less than 300,000. The most affected areas for immigration in this period were the Western Balkans, the Eastern Mediterranean, and the Central

Mediterranean routes, also due to the distribution of immigrants by nationality (FRONTEX, 2016). The crisis in Afghanistan and the fact that the Syrian war had reached its peak at that time played a major role in the increase in volume.

Member States reported a decrease of around 72% in the number of irregular border crossings at the external borders of the European Union in 2016 compared to 2015 (FRONTEX, 2017). The number of migrants attempting to enter the EU illegally decreased significantly in 2016, to 511,371 (FRONTEX, 2016). Political events were decisive again, as the 2016 EU-Turkey agreement and the closure of the Balkan route together reduced the scale of the migration wave. Furthermore, data collected along the Western Balkan route confirmed the temporary diversionary effect of the Balkan border fences that had been constructed.

The FRONTEX report for 2017 confirmed the trend and an easing of migration pressure. The 204,719 detected irregular border crossings published show a 60% decrease compared to the previous year (FRONTEX, 2018). The number of detected irregular border crossings continued to decrease in 2018, according to FRONTEX. A total of 150,114 cases were reported by states at external borders (FRONTEX, 2019). During this period, the border fences built by the EU's eastern Member States clearly had an impact. Only 5,869 irregular border crossings were detected on the Western Balkans route, 1,084 on the Eastern Border route, and 56,561 on the Eastern Mediterranean route (however, this latter figure should be addressed regarding the existence of maritime boundaries along the Eastern Mediterranean route). Also, on the Albania-Greece circular route, only 4550 cases were reported. The closure of borders had the greatest impact in 2017, as the data clearly shows. Pressure decreased and shifted to sea routes.

Between 2019 and 2021, owing also to the restrictions resulting from the pandemic, the traffic on the above-mentioned routes to the EU was consistently low, and the number of irregular border crossings detected during this period was also low at the pan-European level. Of these routes, the Eastern Mediterranean route was the busiest in 2019, and the Western Balkans route in 2021. However, in neither case did the external border traffic load reach 100,000 cases (FRONTEX, 2020, 2021, 2022). After the pandemic, there was an increase in the number of migrants who tried to cross the EU border in an irregular way at the European level, which was proportionate for all routes. Of the 333,553 cases in 2022, the Western Balkan route was the most affected, with its 144,197 cases (FRONTEX, 2023). Between 2020 and 2023, the temporary decline in numbers was due to the COVID lockdown, but from 2021 onwards, numbers rose again, which can be traced back to several political events. Among these are the Belarusian instrumentalization of migration flows, which increased the burden on the eastern border along the Polish, Lithuanian, and Latvian border, and the outbreak of war in Ukraine.

In 2024, irregular border crossings showed a 38% decline, reaching the lowest level since 2021, when international migration was affected by the COVID pandemic. Compared to 2023, the number of irregular border crossings on the Eastern Border routes increased by 192% in 2024 (FRONTEX, 2025c). This increase can be linked to the forecast announced by FRONTEX in 2024. As the FRONTEX Risk Analysis for 2024-2025 declared: “the hybrid threat at the Finnish-Russian border will continue if Russia does not change its border policy and geopolitical aims. Instrumentalised migration may intensify at any moment, including between BCPs, if the Kremlin so decides” (FRONTEX, 2024).

At the same time, the authorities measured a 78% decrease on the West Balkan Route, which may be related to the Hungarian border barrier system. The 14% increase detected on the Eastern Mediterranean route cannot be considered an outlier compared to the year 2023.

Unfortunately, we can give two examples of the trend of instrumentalization mentioned above from the EU. One of them is the previously mentioned Belarus-Poland Crisis, in which Belarus uses migration as a form of hybrid warfare against the European Union (Szachon-Pszenny & Zareba, 2024). The other example is Russia. Russia has weaponized immigration policies to pressure migrants into military service (Bahovadinova & Borisova, 2025).

FRONTEX also drew attention to the danger of instrumentalization in its risk analysis for 2025, specifically regarding the Eastern Borders route. As the risk analysis stated: “threats to border security here are highly unpredictable, as they result from opaque political decision-making in Russia and Belarus” (FRONTEX, 2025a).

It is also important to note that the European Union adopted a migration pact in 2024, which will be implemented from 2026. It can be assumed that this document will not have a significant impact on migration pressure, but it may speed up border procedures and institutionalize solidarity. It is also important to note that the decline recorded from 2024 onwards can also be attributed to agreements concluded by the EU with third countries (e.g., the 2023 agreement with Tunisia).

On 12 December 2025, FRONTEX released the aggregated data between January and November 2025 relating to irregular migration. The data show that irregular entries into the EU dropped by 25% in the first eleven months of 2025. We can observe significant drops in the Western Balkan (-43%), the Eastern Land Border (-37%), and Western Africa (-60%). At the same time, increased migration flow also fell 29% at the Eastern Mediterranean route as well (FRONTEX, 2025b).

Based on the above data, if we are to answer the question of whether the construction of fences is an effective security tool, we need to analyse (1) the number of irregular border crossings detected on the fenced routes; (2) the

percentage of traffic on these routes compared to the total EU migratory pressure. The data mentioned above are summarized in the table below. The table shows the migration routes affected by the border fences between 2014 and 2025. These are the routes along which EU countries have installed border fences, as illustrated in Table 1. The data in the table represent irregular migratory data on the respective routes, as reported by Member States and aggregated by FRONTEX.

The percentages at the end of the table show the proportion of routes affected by border fences in relation to the total irregular migration pressure on the EU in the given year. The percentages are calculated by comparing the pan-European irregular migratory data for the given year with the data for each mentioned route. As previously indicated, the eastern Mediterranean route is not only characterised by sections of border protected by fencing but is also shielded by natural maritime barriers. Given that the fenced sections are shorter along this route, it is reasonable to infer that the deterrent effect of such fences is marginal when evaluating the relevant figures.

<b>Year/Route</b>	<b>Eastern Borders Route</b>	<b>Eastern Mediterranean Route</b>	<b>Western Balkan Route</b>	<b>Circular Route</b>	<b>Total EU irregular migratory pressure (%)</b>
<b>2014</b>	1275	50.834	43.357	8841	<b>36,7 %</b>
<b>2015</b>	1920	885.386	764.038	8932	<b>91%</b>
<b>2016</b>	1349	182.277	130.261	5121	<b>62,3%</b>
<b>2017</b>	776	42.305	12.178	6396	<b>30,1%</b>
<b>2018</b>	1084	56.561	5869	4550	<b>45,3%</b>
<b>2019</b>	722	83.333	15.152	1944	<b>71,3%</b>
<b>2020</b>	677	20.283	26.969	1365	<b>39,3%</b>
<b>2021</b>	8160	20.572	61.735	1092	<b>45,7%</b>
<b>2022</b>	6373	43.906	144.197	696	<b>58,8%</b>
<b>2023</b>	5824	61.092	99.041	-	<b>43,6%</b>
<b>2024</b>	17.001	69.436	21.520	-	<b>45,2 %</b>
<b>2025 (Jan.-Nov.)</b>	10.456	46.158	11.862	-	<b>~ 30 %</b>

Table 2: European irregular migration data between 2014 and 2025 relating to the routes affected by border fences and their proportion in relation to the pan-European figures (based on Risk Analysis published by FRONTEX).

If we compare the percentages in the last column of the table with the other routes without fences (the Central Mediterranean Route, the Western Mediterranean Route, and the Western African Route), using the 100% rate, the proportions of routes affected by fences and not affected by them are clearly

visible. However, given the fact that fence constructions accelerated after 2015, the relevant data in this table are for the years between 2016 and 2025:

<b>Year</b>	<b>pan-European rate on fenced routes</b>	<b>pan-European rate on unfenced routes</b>
<b>2016</b>	<b>62,3%</b>	<b>38,7%</b>
<b>2017</b>	<b>30,1%</b>	<b>69,9 %</b>
<b>2018</b>	<b>45,3%</b>	<b>54,7%</b>
<b>2019</b>	<b>71,3%</b>	<b>28,7%</b>
<b>2020</b>	<b>39,3%</b>	<b>60,7%</b>
<b>2021</b>	<b>45,7%</b>	<b>54,3%</b>
<b>2022</b>	<b>58,8%</b>	<b>41,2%</b>
<b>2023</b>	<b>43,6%</b>	<b>56,4%</b>
<b>2024</b>	<b>45,2 %</b>	<b>54,8%</b>
<b>2025 (Jan.- Nov.)</b>	<b>~ 30%</b>	<b>~ 70%</b>

Table 3: pan-European percentages between 2016 and 2025.

Basically, the data shows that following the 2015 crisis, irregular migration pressure on the EU fell dramatically. Foreign policy factors also played a role in this, e.g., the EU-Turkey Agreement, the Covid lockdown, or the war in Ukraine, but the construction of border fences also had an impact on irregular migration data. This is particularly true of traffic on the Balkan route in 2016, after Hungary closed its borders. The data show that the routes affected by the fence were only under greater pressure in 2019 and in 2022 after 2016. After 2016, however, despite minor fluctuations, on average, 40-43% of the total irregular migration pressure on the EU took place on these routes, with the focus shifting to sea routes. It can also be seen that, owing to the partial completion and acceleration of the construction of the eastern border fences after 2016, the eastern Member States have been affected by less than 50% of the migratory pressure on the EU in all except two years. At the same time, it is very important to stress that the evolution of the figures has also been influenced by international policy developments and the pandemic situation. While the sharp decline along the Western Balkan route post-2016 correlates chronologically with the fortification of the Hungarian border, attributing this shift solely to the physical barrier would oversimplify a complex operational reality. The deterrence or diversionary effect of land fences is fundamentally constrained by the geographical characteristics of the routes. For instance, the Eastern Mediterranean route includes major maritime sections where land-based fences exert negligible influence. Therefore, the statistical evidence supports conclusions regarding regional shifts and route-diversion rather than strong, isolated causal claims about the systemic efficacy of fences.

### 3.3. Functions and potential impacts of border fences

In the 20th century, walls and fences usually served to protect and prevent irregular border crossings, but they can also serve several other purposes. They can be used to freeze a conflict (Israel/Palestine), to separate populations living in the same area, such as the fence between the two Koreas or, formerly, the Berlin Wall (Sorel, 2014), to control migration, to prevent cross-border crime such as drug or arms trafficking, human smuggling, and human trafficking, or to combat terrorism. Nowadays, the construction of border fences is the most widely followed form of border protection because the states, by their use, can give a rapid response to the increase in spontaneous international migration. Concerns about mass migration and the impact of large migratory flows on public budgets, employment, and social cohesion have made border walls attractive to leaders in key destination and transit countries. For some, border fences are a tangible solution to deter unauthorized entry and a symbolic sign that governments are taking strong action to protect borders (Reese, 2016). The function of fences as a symbol of sovereignty and control is to distinguish the inside from the outside, and from the “Other” (Korte, 2023), and border fences are considered as “theatre pieces for national populations” (Brown, 2010).

Furthermore, border fences function as a means of externalization, “the set of legal, political, and operational mechanisms whereby a state projects its border enforcement beyond its own territory, to forestall access to asylum and shift protection responsibilities elsewhere” (Moreno-Lax, 2020). Externalization can be enacted through financing border control in third countries, migration management agreements with other countries, or maritime pushbacks. The phenomenon of externalization is closely linked to and, in many cases, goes hand in hand with non-entrée policies. The aim of the non-entrée policies is “to keep most refugees from accessing [states’] jurisdiction and thus being in a position to assert [the refugees’] entitlement to the benefits of refugee law” (Hathaway & Gammeltoft-Hansen, 2015). Border fences physically enforce the non-entrée, and these are supplemented by various administrative measures such as special visa regulations, advanced passenger information systems, or carrier sanctions. Finally, deterrence is also an important function, which refers to the ability of border fences to prevent or reduce irregular border crossings. Fences can have a rapid deterrent effect at the local level, meaning that once they are erected, the number of irregular crossings at that section of the border falls almost immediately. However, there are doubts about their long-term deterrent effect. On the one hand, riskier routes increase the amount of money paid to human smugglers and heighten dependence on them. On the other hand, when border fences encourage migrants to take increasingly dangerous routes to reach their destination, this leads to an increase in the number of deaths. For example, in 2015, when EU member states reinforced borders, a record 3,771 deaths were reported at EU borders (Reese, 2016). The statistical data described in section 3.2. did not prove the long-term deterrent effect.

### 3.4. The legality of border protection by means of fencing – a short analysis from the perspective of the European border-protection law

Border fences were highly criticised by politicians, human rights organizations, and the scientific literature (Gulina, 2022). They have been described as an inhumane, barbaric form of border protection. These critical viewpoints mainly focus on legal and ethical issues (Błaszczuk et al., 2024), human rights, political, social, and refugee rights (Koca, 2019). In this section, we assess the legality of constructing fences as an instrument of border protection.

While the legitimacy of border fences is rooted in state sovereignty and the residual power to maintain public order, it must be strictly balanced against shared EU competences in migration policy and fundamental rights obligations.

The state's right to self-defence is based on its sovereignty. States, if their international commitments do not limit it, can decide on how to protect their territories from persons who seek to enter them in an irregular way. At the same time, the protection of borders is not only a right of the state that comes from sovereignty, but also an obligation towards its citizens. The European common rules were built on these perspectives. According to Article 3-4 of the Treaty on European Union and Treaty on Functioning of the European Union (hereinafter: Treaty), border-protection does not belong to the exclusive competence of the Union or the shared competence. However, as a clear aim of the Union, the Treaty declares the importance of prevention and the fight against any form of irregular migration.

For a long time, the law of the European Union has not *expressis verbis* mentioned border fences; it has neither permitted nor prohibited them. However, their establishment and use must comply with EU law, with the so-called Schengen Borders Code (Regulation (EU) 2016/399), the fundamental legal obligations deriving from the EU membership, and the EU funding rules on borders and migration (Dumbrava, 2022). In this context, the Schengen Borders Code plays the most important role since this regulation establishes the relevant common rules on border control and surveillance, which apply both at the external borders of the Schengen area and at the other external borders of the EU. The Code states in par. (6) of its Preamble that border control by the Member States at the external borders must contribute both to combating irregular immigration and trafficking in human beings and to the internal security, public policy, and public health of each Member State. In Article 5 paragraph (3) the Code deals with the protection of the external borders as an important task at the Member State level, in accordance with the fundamental objectives set out in the Preamble. Therefore, the Member States should introduce in their national law sufficiently effective, proportionate, and dissuasive sanctions for unauthorized crossing of external borders at places other than border crossing points or at times other than the fixed opening hours.

However, when establishing sanctions, Member States should pay due regard to the exception referred to in Article 5 paragraph (2) of the Code and to the other international obligations, for example, the Geneva Convention. Examining these exceptions, it should be emphasized that individuals who attempt to bypass official border controls (for example, by illegally crossing or damaging the border barrier) typically do not qualify for these humanitarian exemptions, provided that legal channels for seeking asylum remain accessible at designated crossing points. The compatibility of physical barriers with international law hinges critically on the preservation of genuine access to asylum procedures and adherence to the principle of non-refoulement, as enshrined in Article 33 of the 1951 Geneva Convention and Article 19 of the EU Charter of Fundamental Rights. Fences do not absolve Member States of their obligation to assess individual protection claims. If a physical barrier dynamically prevents individuals from reaching border control posts without providing alternative, safe, and effective legal avenues to seek asylum, it risks triggering systematic violations of non-refoulement through de facto pushbacks. The legality of border fences should therefore be distinguished from the legality of the practices accompanying their operation. A physical barrier as such does not violate international refugee law. Legal concerns arise where border-management practices associated with the fence result in automatic returns, denial of access to asylum procedures, or the impossibility of obtaining an individual assessment of protection needs. Another important limitation derives from the prohibition of collective expulsion under Article 4 of Protocol No. 4 to the European Convention on Human Rights. Border-control measures cannot result in the automatic removal of groups of migrants without an examination of their individual circumstances. Accordingly, even where border fences are used as a legitimate instrument of border surveillance, Member States remain under an obligation to ensure access to procedures allowing for an individualized assessment of protection claims. The ECtHR has repeatedly emphasized these requirements in its case law. In *M.K. and Others v. Poland*, the Court stressed that states must ensure genuine access to asylum procedures at their borders and cannot rely on border-control considerations to circumvent their obligations under the Convention. Consequently, the decisive legal question is not whether a fence exists, but whether its operation remains compatible with the procedural guarantees required by international and European law. Therefore, the legality of border fences under European law must be assessed not only from the perspective of territorial sovereignty and border-management effectiveness, but also through the procedural safeguards guaranteeing access to international protection.

It is necessary to declare that the above-mentioned provisions of the Code, and its regulations concerning the official checking on external borders, do not prohibit the Member States from using an installed technical tool for border protection. This is also reinforced by the definition of the Code on border surveillance and its more detailed definition in Article 13 paragraph (1), which sets out the main objectives of border surveillance, namely “prevent or detect

irregular border crossings, to contribute to raising situational awareness, to counter cross-border criminality and to take measures against persons who have crossed the border illegally”. The border surveillance shall be carried out in such a way as to prevent and discourage persons from circumventing the checks at border crossing points. In conclusion, to achieve effective border surveillance, the Code grants Member States a degree of operational flexibility, meaning that while the objectives are strictly defined, the specific choice of technical tools and infrastructure is largely left to national discretion, provided they comply with fundamental rights.

Article 15 of the Code merely requires that the tools used shall ensure an efficient, high, and uniform level of border control. However, from the perspective of our topic, Article 13 par. (4) is particularly noteworthy, according to which surveillance may be carried out, in addition to physical checks, by ‘using technical means, including electronic means, equipment, surveillance systems and, where appropriate, all types of stationary and mobile infrastructure’. It is worth mentioning that the original version of Article 13 paragraph (4) of the Code did not list ‘all types of stationary or mobile infrastructure’ among the possible means; the article was amended and supplemented by Regulation (EU) 2024/1717. The preamble of the amending Regulation clarifies the provisions of the Code while stating that ‘technical means to prevent irregular crossings of the border could include modern technologies such as drones and motion sensors, as well as mobile units, and, where appropriate, all types of stationary and mobile infrastructure. The deployment of data-collecting technical tools and technologies must be grounded in, and exercised in accordance with, clearly defined provisions of national law.

Furthermore, any operational deployment of stationary infrastructure must satisfy the principle of proportionality under EU law. This requires balancing legitimate state security interests and public order against the fundamental rights of migrants. From the perspective of EU law, proportionality requires that border-protection measures be suitable for achieving a legitimate objective, necessary in the absence of less restrictive alternatives, and proportionate *stricto sensu*, meaning that the benefits of the measure must not be outweighed by the interference with fundamental rights. Therefore, even if a border fence contributes to the prevention of irregular border crossings, its operation must not impose excessive restrictions on the right to seek asylum or other rights guaranteed by the EU Charter. European jurisprudence has increasingly scrutinized these boundaries. In the landmark case of *N.D. and N.T. v. Spain* [2020] (Grand Chamber), the European Court of Human Rights (ECtHR) ruled that immediate returns at fenced borders (Melilla) did not violate the prohibition of collective expulsion, provided the applicants had genuine and effective access to legal entry procedures elsewhere.

Conversely, the Court of Justice of the European Union (CJEU) has consistently scrutinized national border-management measures where they

undermine access to international protection. In *Commission v. Hungary* (Case C-808/18), the Court found that Hungary had failed to comply with several obligations under EU asylum and return law by restricting access to asylum procedures and maintaining practices incompatible with EU standards. Similarly, in *FMS and Others* (Joined Cases C-924/19 PPU and C-925/19 PPU), the Court held that the confinement of asylum seekers in the Hungarian transit zones amounted to detention and emphasized that access to asylum procedures must remain effective and subject to judicial safeguards. These judgments illustrate that border-control measures, including those associated with physical barriers, remain subject to strict review under EU law whenever they interfere with the practical exercise of the right to seek international protection.

Consequently, while a fence is legally permissible as a stationary surveillance tool under Article 13 of the Schengen Borders Code, its operational legitimacy is contingent upon the parallel maintenance of lawful and genuinely accessible entry and asylum procedures.

In summary, about the protection of the external borders, the relevant provisions of the Code require that: (1) Member States protect the external borders effectively and efficiently; (2) border surveillance activities shall be organized in such a way that can prevent irregular border crossings; (3) the Member States, when organizing their border surveillance activities, shall use that means which can meet the requirements of the Code at a high level; (4) the Member States shall regard exceptions provided by the Code, the fundamental rights, the refugee rights, the principle of non-refoulement and of the individual treatment of cases. Based on this cumulative set of requirements, according to our opinion, the technical border barrier installed at the external borders was not objectionable, even at the time of its construction (Bartko, 2020). Currently, the situation is that the effective provisions of the Code explicitly mention stationary infrastructures among the technical means necessary to prevent irregular border crossings, which undoubtedly include border fences. It means that their establishment is not contrary to and is even in line with the provisions of the Code, so the construction and maintenance of the fence itself is lawful.

#### 4. Conclusions

This study examined the emergence, legality, and effectiveness of physical border fences within the European Union as a response to irregular migration. Drawing on FRONTEX data from 2014 to 2025, the analysis confirms that the construction of border fences is not an isolated phenomenon in Europe. On the contrary, it has evolved into an institutionalized, technically diversified component of integrated border management, particularly accelerated by the 2015–2016 migration crisis and sustained by contemporary hybrid threats.

From a legal perspective, the baseline legitimacy of constructing stationary border infrastructure is now explicitly reflected in the EU legal framework, notably through the amendments introduced by Regulation (EU) 2024/1717 to the Schengen Borders Code. Nevertheless, European case law demonstrates that the legality of border fences cannot be assessed solely on the basis of their physical existence. As illustrated by the ECtHR's judgment in *N.D. and N.T. v. Spain* and the CJEU's ruling in *Commission v. Hungary* (Case C-808/18), the decisive legal question concerns the manner in which such barriers are operated and integrated into border-management and asylum procedures. Accordingly, a physical barrier may constitute a lawful instrument of border surveillance and migration management only where its operation remains compatible with the principles of proportionality and non-refoulement and where effective, genuine, and accessible procedures remain available for individuals seeking international protection.

Empirically, the statistical evaluation suggests that physical barriers may produce a significant short-term deterrent effect at specific land-border sections—contributing significantly to structural drops along specific routes like the Western Balkan path—they do not eliminate broader migratory pressures.

Instead, they function primarily as catalysts for route-diversion, shifting geographical flows toward complex maritime pathways or non-fortified sectors. Their long-term efficacy is fundamentally interlinked with, and often dependent upon, external variables such as third-country readmission agreements and broader geopolitical stability.

Furthermore, the rising trend of migrant instrumentalization poses a structural challenge to traditional border defense, necessitating nuanced legislative responses—such as the 2024 Crisis Regulation—that protect state security without dismantling the rule of law or human rights commitments. Future research should monitor the operational rollout of the EU Pact on Migration and Asylum from 2026 onwards, specifically focusing on how accelerated border procedures interact with stationary physical defenses to shape the future of "Fortress Europe. Accordingly, border fences should be understood neither as a comprehensive solution to irregular migration nor as an inherently unlawful instrument of border control, but rather as one element within a broader legal, political and operational framework of European border governance.

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