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Pressure and support to frontline Member States

Section 2.3.2 External borders

In 2023, the external borders of the EU continued experiencing increased pressure, with the highest number of irregular border crossings since 2016. According to data collected by Frontex, 385,000 irregular border crossings were detected at the EU's external borders, representing an increase of 18% compared 2022.90**The Central Mediterranean route** was the most frequently used with 158,000 detections, accounting for 41% of all irregular entries in 2023. The second-most frequently used route into the EU, representing 26% of all irregular border crossings, was the **Western Balkan route** with 99,000 detections, a 31% decrease compared to the year before.

The **Eastern Mediterranean route** experienced a significant increase of 55% with around 60,000 detections in 2023 and was the third-most used route into the EU. The number of detections also increased in the **Western Mediterranean** (16,900) and **Western Africa** routes, with the latter experiencing a remarkable increase of 161% and its highest annual figure to date (40,400). Finally, throughout 2023 the number of detections in the **Eastern Land Border** kept declining, with the 5,600 detections representing a decrease of 12%. 91

To help address the situation at the external borders and to support Member States, the European Commission continued to provide financial and operational assistance in coordination with EU agencies, international organisations and other relevant stakeholders. As in previous years, assistance was provided in managing arrivals; improving reception structures; implementing relocations and other transfer mechanisms at the EU level; ensuring efficient asylum and return procedures; improving border management; protecting unaccompanied minors and other groups with vulnerabilities; implementing integration policies for legally-residing, third-country nationals; and creating partnerships against human trafficking networks. 92A Task Force on Migration Management, which was set up within the European Commission's Directorate General for Migration and Home Affairs (DG HOME), covers a wide range of coordination and support activities for Member States, both in the eastern and southern external borders.93

The Voluntary Solidarity Mechanism continued to provide assistance to Member States which are the most affected by migratory flows, albeit not at the desired pace in terms of relocation numbers. Pending agreement on the legislative instruments included in the Pact on Migration and Asylum, and in particular the Asylum and Migration Management Regulation which foresees a permanent relocation mechanism, the Voluntary Solidarity Mechanism served as a forum for practical cooperation among Member States and provided useful lessons for the permanent mechanism. The EUAA actively supported the functioning of the mechanism, for example by identifying and proposing candidates for relocation.

Addressing pressures across key migration routes

Overall, in 2023 the EU made significant efforts to address migratory pressures across different routes and optimise the management of external borders through a combination of ad hoc measures and long-term initiatives. In September 2023, the President of the European Commission, Ursula von der Leyen, and the European Commissioner for Home Affairs, Ylva Johansson, visited Lampedusa, the Italian island that experienced a rapid increase in the number of arrivals in 2023. To alleviate the pressure, they presented a 10-point plan to reduce irregular migration and provide immediate EU assistance to the Italian authorities, in accordance with fundamental rights and international conventions. The plan foresees:

- reinforced support to Italy by the EUAA and Frontex;
- support in transferring arriving migrants out of Lampedusa;
- efficient returns of people not in need of protection;
- the establishment of operational partnerships on anti-smuggling with countries of origin and transit to decrease arrivals;
- stepping up surveillance at sea and in the air, including through Frontex and by exploring options to expand naval missions in the Mediterranean Sea;
- measures to limit the use of unseaworthy vessels and actions against people-smugglers;
- increasing operational support provided by the EUAA to apply swift asylum and return procedures;
- increasing awareness and communication campaigns to disincentivise dangerous crossings, while continuing to offer alternative pathways to the EU;
- stepping up cooperation with UNHCR and the IOM; and
- supporting the implementation of the Memorandum of Understanding between the EU and Tunisia that was signed in July 2023 (*see Section 2.4*).94

To address ongoing needs along the Central Mediterranean and Western Balkan routes, the implementation of the respective action plans, introduced at the end of 2022, proceeded. The Action Plan for the Central Mediterranean comprises measures to reduce irregular and unsafe migration, provides solutions to emerging challenges in the area of search and rescue activities and fosters solidarity balanced against responsibility among Member States.95 The Action Plan for Western Balkans includes operational measures to strengthen cooperation on migration and border management between the EU and Western Balkan countries, which have a unique status as countries in the EU accession process.96

To complement these existing initiatives and provide a holistic approach, in 2023 two more action plans were presented by the European Commission to address the Western Mediterranean, Atlantic[97] and Eastern Mediterranean routes.[98]The Action Plan on the Western Mediterranean and Atlantic routes comprises 18 targeted operational measures to help Member States enhance migration management along these routes, working closely with key partner countries.[99]

The Action Plan for the Eastern Mediterranean route came at the request of the European Council to alleviate the pressure on the most affected Member States along this route and effectively prevent irregular arrivals by strengthening the EU's partnership with key countries of origin and transit.[100]This Action Plan includes 29 operational measures to combat migrant smuggling, reinforce border management, strengthen cooperation on returns and readmission, and improve asylum and reception systems in partner countries.[101]

Calibrating a European Integrated Border Management

In conjunction with the four action plans, the European Commission launched other initiatives to ensure effective control of the EU's external land and sea borders as part of a comprehensive approach to migration and asylum, as well as a way to safeguard the functioning of the Schengen area. A key precondition for having a Schengen area without internal borders is, indeed, the effective management of the EU's external borders.[102]In response to pressures experienced over the past years, the EU has upgraded existing information systems on borders and security, while ensuring their interconnection and interoperability. The key objective has been to address any existing information gaps about third-country nationals arriving or staying in the EU as a means to combat irregular migration.[103]

To this end, on 7 March 2023, the upgraded Schengen Information System (SIS) entered into operation which was enhanced to include new features and functionalities and catalyse effective coordination among relevant authorities. Together with the Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS), it is a key part of the interoperability architecture. More complete and reliable information will allow national authorities to enhance security and border management, while protecting vulnerable persons and deterring irregular migration.[104]

The application of data protection rules within SIS is supervised by respective national authorities, and the European Data Protection Supervisor monitors the application of protection rules in the central system.[105]

Following extensive consultations with the European Parliament and the Council, on 14 March 2023 the European Commission adopted a communication establishing a multiannual strategic policy for European Integrated Border Management (EIBM).[106] The communication set out the first 5-year strategic policy cycle of European integrated border management and provides the framework for steering the daily work of national border authorities and Frontex.
Key priority areas in this framework include:

- Border control, supported through large-scale IT and inter-agency cooperation to enhance migration governance and crisis preparedness;

- Improved coordination and timely and full information-sharing in the area of search and rescue activities;
- A common EU system for returns with better coordination between national authorities and European agencies;
- Cooperation with third countries to build operational capacities in the areas of border control, risk analysis, return and readmission, and anti-smuggling; and
- Full respect for fundamental rights, while protecting the EU's borders.[107]

Along with the 5-year plan, the European Commission also presented a recommendation on the mutual recognition of return decisions, after changes to SIS came into force.[108]With the upgrade of SIS, Member States have immediate knowledge of a return decision issued in another Member State, enabling swift implementation from anywhere in Europe. The recommendation followed a policy document presented by the European Commission earlier in January 2023, which emphasised the importance of a unified, comprehensive and effective EU system on returns and an efficient, streamlined process for their implementation.[109]An IT return case management system will allow for closer links between asylum and return authorities. The recommendation also provides guidance on preventing absconding and alternative measures to detention. It also offers guidance on different measures and structures Member States can put in place to incentivise voluntary returns, including through return counselling. Frontex provides operational support for the implementation of the recommendations , while the European Commission works closely with Member States to support the practical implementation.[110]

In alignment with the above initiatives toward effective border management and acknowledging that an estimated 90% of people who cross the external EU borders irregularly do so with the assistance of migrant smugglers,[111]in November 2023 the European Commission presented new legislative proposals to prevent and fight migrant smuggling. First, a proposed directive aims to lay down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the EU.[112]The five objectives of the proposed directive include:

- To effectively prosecute organised criminal networks, with a clearer definition of what the smuggling offence includes;
- To increase and harmonise penalties reflecting the seriousness of the offence;
- To improve and extend the jurisdictional reach of Member States to more effectively target criminal networks, while saving lives;
- To reinforce resourcing for and capacities of Member State; and
- To improve data collection and reporting.[113]

In addition to the directive, the European Commission proposed a regulation to reinforce Europol's role and inter-agency cooperation in the fight against migrant smuggling and trafficking in human beings.[114]The Europol Centre against Migrant Smuggling will be elevated to the European Centre against Migrant Smuggling to monitor trends in migrant smuggling and trafficking in human beings, produce analytical and strategic outputs, conduct threat assessments and offer situational updates, as well as perform investigative and operational actions. The centre, which will have reinforced financial and human resources, will be supported by Member States, Eurojust, Frontex and the European Commission. The regulation also expands the possibilities and modalities for Europol deployments to provide operational support,

including in third countries.115

To supplement these initiatives the European Commission held a high-level conference in November 2023 to strengthen international cooperation against migrant smuggling.116At the conference, the European Commission launched a call to action on a Global Alliance to Counter Migrant Smuggling, sketching out a series of actions for governments, international organisations and online platform providers to form a strong, united and global response to address the phenomenon.117Earlier in June 2023, the European Commission had also presented a toolbox addressing the use of commercial means of transport to facilitate irregular migration to the EU. The toolbox is meant to help Member States counter the progressively increasing phenomenon of criminal networks using commercial means of transport for migrant smuggling activities.118

Search and rescue operations and fundamental rights at external borders

The effective management of external borders should also allow for safe and effective access to territory and the asylum procedure. The IOM has estimated that from 2014 to January 2024 close to 29,000 people have died or went missing while attempting to cross the Mediterranean Sea to reach Europe in pursuit of safety or a better life.119Protecting and saving lives at the EU's external border is a priority for the EU and an integral part of border management.

Throughout 2023, the EU and its Member States continued to render assistance through search and rescue operations to people and vessels in distress. It is estimated that between 2015 and April 2023 approximately 615,100 lives have been saved on the Mediterranean and Western African routes by EU naval operations, EU agencies and non-governmental organisations (NGOs). 120Frontex contributes to search and rescue operations in the Mediterranean Sea to save lives and combat migrant smuggling. The naval military operation Irini, the mandate of which was extended until March 2025, also contributes to the disruption of the business model of migrant smugglers on the high seas off the coast of Libya.121In a related case, in September 2023, the General Court of the CJEU rejected the action for damages brought by Syrian refugees against Frontex after they were returned from Greece to Türkiye. The court ruled that the role of Frontex is only to provide technical and operational support to the Member States in return operations. However, it is a Member State alone that is competent to assess the merits of return decisions and examine applications for international protection.

The European Integrated Border Management identifies search and rescue operations as a key policy priority and provides strategic guidelines to enhance cooperation among national authorities and with key third countries and international organisations. It identifies the European Contact Group on Search and Rescue as the forum to improve coordination and cooperation among relevant authorities.122The contact group convened three times in 2023 to discuss initiatives falling within the following areas: improving situational awareness, including a pilot project on the Mediterranean route; safety aspects relevant for search and rescue operations at sea; increased knowledge of and cooperation on existing laws and policies for private vessels carrying out search and rescue as a predominant activity; enhancing operational cooperation; and working with third countries on capacity-building and training activities in the field of search and rescue activities.123

Nevertheless, in 2023 the Mediterranean route continued to be the most dangerous migration route in the world with the highest fatality rate.[124]Tragedies like the capsizing of a boat carrying migrants off the coast of Greece on 14 June 2023, which resulted in the death of hundreds of people, highlighted the pressing need for a structural solution for search and rescue operations, including a regional disembarkation and redistribution mechanism. Following the tragedy, the EU Agency for Fundamental Rights (FRA) conducted a mission to Greece to gather information about the circumstances in which it occurred. Knowledge acquired through the mission fed into a set of recommendations on what the EU and its Member States can do to prevent and respond to deaths at sea, with concrete measures falling within six areas:

- Prompt, effective and independent investigations by Member States of incidents at the external borders;
- Improved search and rescue operations at sea;
- Clear disembarkation rules and solidarity in taking charge of rescued people;
- Better protection of shipwreck survivors (e.g. acknowledge survivors who apply for asylum as a category of applicants with special needs);
- Establish independent mechanisms to monitor respect for fundamental rights at the borders; and
- Increase legal pathways to the EU and make them more accessible.[125]

In addition, in October 2023 FRA published a review report of the European Border and Coast Guard Regulation (EU) 2019/1896 with the aim of improving the fundamental rights situation at the EU's external borders. The European Border and Coast Guard is composed of both Frontex and national authorities responsible for border management and returns. The FRA report highlights six key areas where evidence suggested that legislative amendments might be the most appropriate solution to address gaps in fundamental rights and enable the EU and its Member States to fully live up to the obligations of the Charter of Fundamental Rights of the EU.[126]

Throughout 2023, EU institutions and agencies, UNHCR, and international and civil society organisations scrutinised policies and practices in some EU+ countries – including the criminalisation of search and rescue operations by NGO vessels. They expressed concern about possible violations of fundamental rights at the EU's external borders and called on both national governments and the European Commission to ensure respect for fundamental rights and adherence to the principle of *non-refoulement*.[127]

An initiative, described as innovative and experimental by the Italian authorities, that sparked discussion in 2023 was the protocol on strengthening cooperation in migration matters between Italy and Albania. The protocol defines a mechanism and the conditions under which Italy would carry out the processing of asylum applications in designated areas of Albania for third-country nationals originating from the list of safe countries and who are rescued through search and rescue activities by Italian military vessels. Italian authorities stated that the protocol sets up a mechanism that is in respect of relevant legislation and guarantees for asylum seekers. The protocol raised questions among EU institutions,[128] international[129]and civil society organisations[130]about the applicable legal framework; the categories of people to whom it would apply; the details of the identification and screening phases; specific modalities of the procedure and ensuring effective access to fundamental rights; reception conditions; and the

freedom of movement. The European Commission stated during a press briefing that after a preliminary assessment it appeared that Italy fulfils its obligations under EU and international law and actions carried out outside of the territory of the Member State go beyond the scope of the EU asylum acquis (see *Section 3.1.2.1*).131

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per il rafforzamento della collaborazione in materia migratoria, fatto a Roma il 6 novembre 2023, nonché norme di coordinamento con l'ordinamento interno" [UNHCR's comments and recommendations on the Italian draft law of "Ratification and execution of the Protocol on strengthening cooperation in migration matters between the Government of the Republic of Italy and the Council of Ministers of the Republic of Albania, done in Rome on 6 November 2023, as well as coordination norms with the national legislation framework"]. https://www.unhcr.org/it/wp-content/uploads/sites/97/2024/01/Commenti-e-raccomandazioni-UNHCR_Protocollo-Italia-Albania_09.01.2024.pdf

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