

NEWS & NOTES

Selected Developments related to Migration: Update from Europe¹

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This is a compilation of news and notes of relevance on political developments in European refugee law and policies.

1. Activities of the EU Institutions for an “Integrated European Border Management” and for the “Reform” of the CEAS

1.1 The EU Commission’s Position for the “Trialogue”

Politically, the reporting period at the EU level was marked by the preparation of the meeting of Interior Ministers on 08/09 June 2023. At the meeting on 9 February 2023, the EU Council already pointed out the importance of effective control of the EU's external land and sea borders as part of a comprehensive approach to migration and called on the Commission to rapidly finalise the strategy for integrated European border management.

The Commission followed this up with its Communication of 14 March 2023 on “establishing the multiannual strategic policy for European integrated border management” (COM [2023] 146 final - link to the official version of 20 June 2023 after adoption in the Council: EUR-Lex-52023DC0146-EN-EUR-Lex). The Communication serves as a political framework for action and orientation for the implementation of “effective integrated European border management” from 2023 to 2027, ideally pursuing different objectives simultaneously: Facilitating legal border crossings and increasing the effectiveness of the EU's return policy; ensuring effective prevention of unauthorised border crossings at the external borders; preventing and detecting serious crime with a cross-border dimension, such as migrant smuggling, terrorism, trafficking in human beings, arms and drugs; cooperating effectively with third countries; and ensuring rapid registration and care for persons in need of or seeking international protection. As the Commission states in its Communication, integrated European border management is supposed to contribute to a high level of internal security in the Union, while fully respecting fundamental rights and the free movement of persons.

The overarching goal is to increase the number of actual returns. To achieve this, Member States (MS) must request and use the support available through Frontex at all stages of the return process. This concerns, in particular, the support of return operations through Frontex, support by Frontex for the digitalisation of national return case management

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systems based on the system developed by Frontex, support for training and deployment of Frontex return experts, and participation in Frontex joint reintegration services. The Commission Recommendation on mutual recognition of return decisions and acceleration of the return procedure, presented at the same time as this Communication, is an important step towards a common EU return system. The aim is to achieve greater convergence between MS in migration management and to facilitate and accelerate returns.

The implementation would be the joint responsibility of the MS authorities responsible for border management, return, and Frontex. Frontex, in close cooperation with the MS and the Commission, would have to develop a new technical and operational strategy for integrated European border management. The technical and operational strategy should be adopted by the Frontex Management Board within six months of the adoption of the Communication, i.e. by the end of 2023. The border management authorities of the MS would still have the main responsibility for their respective external border sections, while the members of the European Border and Coast Guard Agency would have a duty of loyal cooperation and exchange of information within the community. The basis is a “four-tier access control model”, which includes measures in third countries, measures of cooperation with neighbouring third countries, control measures at the external borders as well as measures within the Schengen area and in the area of return. Frontex and the MS should take and adapt measures at all levels on the basis of risk analyses (including “near-real-time situation monitoring”).

The EU's financial instruments are crucial for the effective implementation of the strategy. This applies, in particular, to the "Border Management and Visa Instrument" (BMVI) and the "Asylum, Migration and Integration Fund" (AMIF). Activities within the framework of integrated European border management are supported by EU funds at both the EU and national level.

Frontex activities are financed through its budgetary resources from the general budget of the EU. Support to third countries is provided through the "Neighbourhood, Development and International Cooperation Instrument – Global Europe" (NDICI-GE) and the "Instrument for Pre-Accession Assistance" (IPA III), complemented by relevant measures under the BMVI and AMIF. Furthermore, certain key external borders will be strengthened through targeted Union actions, including the mobilisation of EU funds to support MS in developing border management capabilities and infrastructure, surveillance means and equipment, and bilateral funding. Through the instrument for "technical assistance", MS can apply for support to implement the relevant components of the national strategy for integrated European border management. It has not been explicitly written, but what is meant by this is, among other things: Poland may have border fortifications financed by the EU – something that was still very controversial until 2022.

1.2 Decisions of the EU Ministers of the Interior of 08 June 2023

The European Commission published its Communication on establishing the multiannual strategic policy for European integrated border management on 14 March 2023, and the European Parliament published its Communication in April 2023. On 8 June 2023, the EU interior ministers (MIs) then concretised their negotiating positions in the Council and agreed on their positions for the so-called "trialogue" with the European Parliament (EP) and the Commission. The main contents of this agreement:

Above all, the MIs agreed on a 178-page labyrinth of complex, probably hardly practicable procedural rules aimed at further limiting the number of people receiving international protection in Europe. The main point: the agreements lower protection standards. Whether the proclaimed goals of deterrence, rapid repatriation, and a reduction in "secondary migration" will be achieved remains to be seen.

The Dublin rules remain largely untouched, the rules on jurisdiction remain the same, and the principle of the responsibility of the State through which the first entry was made continues to apply. Improvements proposed by the Commission, such as a broader family definition to allow family reunification with siblings, were rejected.

As before, all those seeking protection in the EU should be registered, without exception, at the place where they first set foot on EU soil. Those who have a good chance of being recognised as having protection status should go through a regular asylum procedure. A second group is made up of those whose chances of recognition are slim. The fast-track procedure applies to them. In particular, these are currently protection seekers from the Maghreb States (Morocco, Algeria, Tunisia). They have to wait for their case to be processed under conditions similar to detention. Strictly secured reception centres are also planned for families with children, contrary to what the German Federal Government wanted. Will this be compatible with the ECtHR's previous ruling on Articles 3, 8, and 5? So far, it is not. On the contrary, with regard to minors, the ECtHR clearly rejects detention-like placements; with regard to families with minor children, they must be limited to what is absolutely necessary – generally shorter than three months.

The MIs essentially pursue two goals: "secondary migration", which arises because Italy and Greece feel overburdened instead of registering arriving people as the current rules already provide, is to be curbed, and the number of migrants arriving in the EU is to be reduced in general. The central terms for this are "responsibility" and "solidarity".

Responsibility: The States at the external borders should initially hold 30,000 places for fast-track procedures at the borders and register refugees there (as a reminder: in 2022, 880,000 initial applications for asylum were filed in all EU States combined). Asylum seekers who come from countries where the EU-wide recognition rate is below 20% are to be held there until a decision is made on their application. The procedure is to last a maximum of twelve weeks, and rejected asylum seekers are to be deported within a further twelve weeks. In return, the other EU states undertake to accept a certain number of asylum seekers. Italy is to take the lead in setting up and running the asylum centres at the external borders. In return, it will receive money from the EU – exactly how much is still unclear.

Solidarity: There are to be fixed rules on how asylum seekers are to be distributed among the MS. Solidarity is obligatory but flexible, i.e. all countries have to contribute but can choose whether to take responsibility for people by offering resettlement, capacity building, or a financial contribution. 30,000 people are to be resettled per year in the EU. The adequate capacity of each MS (minimum number or target for border procedures) is to be determined by a formula based on the total capacity and the number of "irregular" entries (i.e. people entering to seek protection). For Germany, according to the key worked out by the Commission, this means taking in about 6,000 persons. Apart from Germany and France, it is foreseeable that not many other states will initially participate in the redistribution. The others will wait and see whether the new procedures will reduce the

number of asylum seekers in their countries. In return, they can buy their way out with €20,000 per asylum seeker they do not take in against their quota. The money flows into a European fund to fight the causes of flight.

A new idea in the Council Decision are so-called "responsibility offsets" - a kind of complementary form of solidarity. For example, instead of accepting refugees from Greece on a quota basis, Germany could suspend transfers back to Greece. However, it is uncertain what exactly has been agreed to with regard to these "offsets" for solidarity obligations (reduction of the solidarity obligations of one country towards others), e.g. in the case of the offer of transfer places and offsets for solidarity payments (reduction of the solidarity claims of a country under pressure) in the case of non-acceptance of Dublin transfers.

The definition of "migratory pressure" and whether this includes "instrumentalisation" and search and rescue (SAR) situations also remained open. A separate SAR mechanism proposed by the EU Commission was rejected.

The period during which the country of arrival should be responsible for applicants varies:

- two years for persons entering via the external border;
- 15 months after a rejection in the border procedure – to give States an incentive to use the border procedure;
- 12 months for people rescued at sea – to give States an incentive to stop watching people drown.

All available data is to be centrally recorded and stored upon arrival in the EU – as has actually been the case up to now, except that Greece and Italy do not practice it. The aim is to facilitate the return of rejected asylum seekers to "safe third countries". The EU is to draw up a list of such countries, but the MS can also independently declare third countries as safe. Germany has so far only listed Norway and Switzerland. Spain lists Morocco and most Latin American countries. Greece also considers Turkey a safe third country for refugees from Syria and other countries.

What is new is that the requirements by which third countries can be declared safe will be significantly lowered. In the future, this will also be permissible for parts of a State and for States that have not signed the Refugee Convention. For example, Italy could declare parts of Libya a safe third country. The States of the Western Balkans could also be classified as safe third countries. However, these changes do nothing to increase the likelihood that these States will be willing to take in "returnees" without significant financial contributions from the EU.

Art. 43a of the Asylum Procedures Regulation, as adopted by the Council, states that a "safe third country" does not have to have signed the Refugee Convention (also applies to states that have signed the Refugee Convention only with a geographical reservation, such as Turkey), rather it is sufficient if

- "effective protection is guaranteed". This is already fulfilled if the persons concerned can "remain" in this State (i.e. no claim to legal residence),
- there are sufficient means of subsistence,
- emergency medical care is guaranteed,
- access to "primary education" exists.

There was a controversial discussion on what kind of connection there had to be between the person seeking protection in the EU and the "safe third country". BMI Faeser argued that mere transit was not sufficient. Rather, there must be a "connection" between the asylum seeker and the country to which he or she is deported, for example through relatives. She failed with her demand, especially due to Italy's resistance, which rejects such a link element. It was decided that there must be a connection that makes a reference to protection in the third country seem "reasonable" (this is already the wording of the current asylum procedure directive). Since it was clear that without Italy there would be no agreement, it was decided that each country could apply the "link element" as it saw fit – e.g. transit through Niger would suffice for a return to that country. In the text, the explanatory recital states that MS decide what counts as such a link. Only after Italy accepted this compromise did other States also vote in favour. BMI Faeser hopes that improvements can still be achieved in the triad.

Hardliners, like the Austrian MI Karner, demanded the "Rwanda model", i.e. to be able to deport asylum seekers to a third country regardless of whether the person had ever entered it before. Such a model is ruled out by the "connection demand", but "deals" with States on the flight routes (such as the EU-Turkey Deal) are still possible.

It remains unclear what is to happen to people whose asylum application is rejected in the fast-track border procedure. Should their country of origin not take them back, according to most, they should be able to be sent to any other State. For African refugees, for example, Niger was explicitly mentioned (Note: On 25 July 2023, the military staged a coup against the president in this "strategic partner state" and "anchor of stability", where among others about 100 soldiers of the German armed forces are stationed. Whether a State with such insecure domestic politics can be assessed as "suitable for repatriation" and whether there is a willingness to accept people to be deported is open to question.

Hungary and Poland rejected all resolutions because they do not want a common asylum system for Europe. Bulgaria, Malta, Lithuania and Slovakia abstained, for different reasons. According to the current timetable, agreements should be reached by the end of 2023. Time plans of the EU institutions, however, have often been "smoke and mirrors" in the past. The reason for this haste could be that a new EU Parliament will be elected on 9 June 2024 and – if no agreement has been reached by then – the principle of discontinuity obliges a new start, especially since the EU Commission will also be newly appointed.

If there are no further delays and the EU Parliament still votes on a compromise in 2023, it can be assumed that a conservative majority will essentially agree to the rules agreed to in the Council. Then comes the implementation period, which, in this case, should take place two years before the restrictions take effect. Thus, amended rules will come into force at the earliest by the end of 2025 respectively the beginning of 2026.

Excursus on the German negotiating position: In the coalition agreement of 2021, it was still stated:

“We want to end illegal refoulement and the suffering at the external borders. We want better standards for protection seekers in asylum procedures and in integration in EU states. The asylum application of people who arrive in the EU or are already here must be examined thoroughly” [translation by the author].

When the German government presented its position on European refugee policy and reform plans to the Bundestag on 4 May 2023, it agreed in principle to the introduction of

mandatory border procedures, but wanted to limit their application: Unaccompanied minors and families with children should be exempted from fast-track procedures at external borders because they cannot be expected to live in camps under detention-like conditions. A compulsory solidarity mechanism regarding responsibility for asylum procedures could be introduced and, at the same time, the Dublin system could be tightened. In the end, MI Faeser succeeded with regard to the minors; but with regard to the families, the only action taken was a note in the minutes stating her concern. Other governments, on the other hand, argued that favourable treatment for families with children would invite "abuse".

The German government wanted a "minimum standard, essentially the standard guaranteed under the Refugee Convention" to apply to "safe third countries", i.e. access to studies/training, the labour market, and family reunification should also be included in the regulation. However, the resolution does not say this. The Federal Government did not explicitly demand that a "safe third country" must have signed the Refugee Convention, as provided for in the previous law.

On 17 May 2023, more than 50 organisations of the German civil society published a joint statement as an appeal to the German government on its position on the reform of the CEAS and demanded:

- no compromises at the expense of refugee protection;
- the German government should live up to its humanitarian responsibility and take its own coalition agreement seriously;
 - 1) for humane and fair asylum procedures: No compulsory border procedures at the EU's external borders!
 - 2) for refugee protection in the European Union: no lowering of the requirements for "safe third countries"!
 - 3) for real solidarity in the reception of refugees: no continuation of the failed Dublin system!

This appeal went unheard in the negotiations of the EU interior ministers.

The Federal Government Commissioner for Migration, Alabali-Radovan, defended the planned reform of EU asylum law. Germany and Europe must not shirk their responsibility, she told "Redaktionsnetzwerk Deutschland". Legal and secure access routes are an important part of this responsibility.

1.3 The EU Summit in Brussels – 29/30 June 2023

The meeting of the heads of government (European Council) ended without a joint declaration on migration policy. Poland and Hungary oppose the asylum law reform. Poland demanded that the EU's asylum plans be revised. The admission of refugees must remain voluntary and each MS must decide for itself how to support countries with high rates of migration. In the future, the consensus principle should apply exclusively in migration policy decision-making, instead of making decisions by majority vote. Hungary also rejects the planned distribution of refugees and compensation payments. The Polish head of government, Morawiecki, said he would present a new proposal on EU refugee policy in Brussels.

Chancellor Scholz, on the other hand, said the agreed solidarity mechanism was a major breakthrough. It meant that the States at the EU's external borders had to make a

contribution by registering the arrivals and giving them the opportunity to apply for asylum. At the same time, other states would have to take responsibility for some of the refugees so that the burden did not remain solely on the border states.

1.4 The Price of Cooperation

The financial incentives bargained for "cooperation" and accepting returns is currently shown by Tunisia: The State is in a severe economic crisis, and negotiations on a new loan from the IMF for \$1.9 billion are stalling because Tunisia's President calls the reforms ordered by the IMF demanding. According to the Italian MI, 53,800 migrants arriving from Tunisia from January to June 2023 were registered on Lampedusa and Sicily, doubling the amount in 2022. On 11 June, EU Commission President, Ursula von der Leyen, travelled to Tunis with the Dutch and Italian heads of government, Rutte and Meloni, to offer President Saied the following in return for Tunisia's willingness "through cooperation with the EU" to keep migrants out of Italy:

- Economic aid in the amount of 900 million Euros;
- 105 million Euros for border security (border, search and rescue operations; measures against smugglers and to repatriate migrants);
- 150 million Euros in support of the Tunisian State budget.

On 10 June 2023, one day before the visit, President Saied ruled out Tunisia acting "as a border police for Europe. If the agreement between Tunisia and the IMF is reached, Italy wants to add another 700 million Euros. On 16 July, the above-mentioned persons signed a Memorandum of Understanding to support Tunisia based on the above figures. BMI Faeser flew to Tunisia on 18 June, together with the French MI Darmanin, and offered so-called "talent partnerships" there: The aim was to offer young people professional opportunities in the EU. It remains to be seen whether, and if so, to what extent, use will be made of this.

2 On the Situation at the EU's External Borders – January to June 2023

2.1 Central Mediterranean Route

In a statement published on 16 June, Frontex noted that half of "irregular migration" to the EU takes place via the central Mediterranean route. Two days after the shipwreck off Pylos, Frontex announced that between January and June 2023, there had been more than 56,000 illegal crossings on the central Mediterranean route – double the number in 2022 and the highest increase since 2017. According to Italian figures, as many as 82,000 refugees had arrived there via this route by the end of June. According to figures released by IOM in mid-April 2023, the first three months of 2023 were the deadliest first quarter since 2017, with a total of 494 documented migrant deaths in the central Mediterranean. The IOM further pointed out that NGO-led SAR efforts had declined significantly.

"With more than 20,000 deaths recorded on this route since 2014, I fear that these deaths have been normalized. States must respond. Delays and gaps in State-led SAR are costing human lives,"

said IOM Director General Antonio Vitorino.

On 14 June, a ship with hundreds of people on board capsized off Pylos (for details: see section "Greece" below). It was sailing from Libya towards Italy. Only 104 people could be

rescued, 78 were recovered dead, the others were swept away by the ship. According to the NGO "AlarmPhone", 750 people were on board. Other sources report about 400 people – one of the biggest refugee tragedies in Europe.

UNHCR head, Türk, already stated on 13 April 2023:

“Delays in State-led rescues on the Central Mediterranean route were a factor in at least six incidents this year leading to the deaths of at least 127 people. The complete absence of response to a seventh case claimed the lives of at least 73 migrants.”

He called for concerted efforts to ensure swift rescue and "dignified, effective and thorough reception in a safe place":

“Experience teaches us that adopting a tougher line on curbing irregular migration will not prevent departures, but rather result in more human suffering and deaths at sea. Instead, it would be far better for countries to provide safe and regular pathways for migration and prevent unnecessary deaths.”

UNHCR reported at the end of July that in the first half of 2023, at least 289 minors died on refugee routes across the Mediterranean – double the number in 2022. It was likely even significantly more, UNHCR said, because many boat accidents were not registered.

The EP has adopted a resolution calling for a new and coordinated EU-wide search and rescue mission to be carried out by EU countries and for Frontex to end the "shame" in the Mediterranean. The EP condemns criminal smuggling and human trafficking and stresses that “safe and legal pathways are the best way of avoiding loss of life”. The Commission is called on to assess MS' current practices on SAR operations, to investigate shipwrecks, to help MS improve their capacity to save lives at sea, and to share data on EU and MS' funding of third countries such as Libya, Turkey, Egypt, Tunisia and Morocco, as well as to ask Frontex to improve the available information on its SAR operations. MS are urged to keep their nearest safe ports open to NGO vessels and not to criminalise those who help migrants in need. The Libyan authorities are specifically accused of taking apprehended migrants to detention centres where they are subjected to "torture and other ill-treatment, including rape."

Below are "pars pro toto" excerpts from ECRE's weekly bulletins, which show that deadly tragedies occur almost daily on the central Mediterranean route:

2.1.1 Italy

In early April, the Italian coast guard rescued 400 people who had passed through Malta's SAR zone. A day later, “AlarmPhone” reported: “100 people off the coast of Libya in urgent distress!” On the same day, the crew of the rescue organisation Sea-Watch International witnessed “two illegal returns” to Libya by the EU-funded so-called "Libyan coast guard". According to the IOM, more than 4,200 people had been intercepted by Italy and returned to Libya by 15 April, as well as 418 migrants between 18 and 24 June 2023 alone.

On 15/16 April, 600 people were rescued off Sicily by the Italian coast guard. On 16 April, the NGO "AlarmPhone" reported two ships in distress in the Maltese SAR zone with 60 people. After Malta had initially instructed passing merchant vessels not to intervene, they were eventually rescued by these merchant ships at the request of the Maltese authorities.

On 20 April, the NGO ship "Humanity1" rescued 69 people. The Italian authorities ordered Ravenna in northern Italy as the competent port, more than 1,600 km from the ship's position at the time of the rescue. "SOS Humanity" pointed out the dangers this posed to survivors who were exhausted and suffering from hypothermia, some in absolutely critical conditions. In a statement on 21 April, the NGO stressed that, on February 22 and February 23, rescue ships from the "Lifeline" and "Sea-Eye" missions had already been assigned to distant ports. It said the

"systematic assignment of distant ports by the Italian authorities since 12/22 does not comply with international maritime law, which states that a place of safety should be assigned 'with minimum deviation from the ship's voyage'."

SOS Humanity, together with the NGOs "Mission Lifeline" and "Sea-Eye", sued Italy before a court in Rome for "systematic illegitimate port policy".

On 11 July, the crew of the "Humanity1" rescued 204 people from distress at sea, including pregnant women and 50 unaccompanied minors, in four actions within a very short time. In the evening, two survivors and three relatives had to be evacuated by the Italian authorities for medical reasons. The organisation added that its crew stabilised two other boats with a total of about 100 people in distress and waited for the coast guard to rescue them. Instead of ensuring quick and safe disembarkation, the Italian authorities reassigned the port of Ancona, which requires three days of navigation.

Italy declared a six-month state of emergency with regard to immigration on 11 April. This allows the government to issue exemptions in "emergency situations" related to arrivals from the sea. After the state of emergency was declared, the Italian government requested EU funding to relocate migrants from the overcrowded island of Lampedusa to the mainland. EU Budget Commissioner, Hahn, said that the coasts of Lampedusa are EU coasts and that Italy is therefore the main recipient of European migration funding.

"Sea-Watch International" said on 14 April that the state of emergency would allow authorities to "to quickly turn away people who reach the Italian coast alive". The Italian Bishops' Conference (CEI) also voiced criticism and called on the government to focus on the situation on the island of Lampedusa, where thousands of migrants live in an overcrowded hotspot with a capacity of only 400 people. Asylum seekers report prison-like conditions in the reception centres.

A French-inspired voluntary EU resettlement programme aimed at reducing arrival pressure following SAR actions resulted in about 300 transfers from Italy to Germany by May 2023.

2.1.2 Route Tunisia-Italy and Situation in Tunisia

More than 16,000 Tunisian nationals reached Italy by sea in 2022.

The total number of dead or missing people off the Tunisian coast rose to more than six hundred in the first half of 2023. Since May, there have been almost daily reports of operations by the Tunisian coastal watch. Already on 18 April, a boat with 19 people had sunk off the coast of Sfax, leaving 15 people missing. Sea-watch International reported that its "Seabird" aircraft had identified two boats in distress on 15 April. Responding to a distress call from the aircraft crew, the "NGO EMERGENCY" then rescued 55 people from an overcrowded inflatable boat. In a second operation, a further 221 people were rescued

off Lampedusa by the Italian coast guard. In early July, the "EMERGENCY" recovered the bodies of 13 migrants from sub-Saharan Africa and rescued 25 after their boat sank off the coast of Sfax on its way to Italy. On the same day, the "AlarmPhone" hotline reported 45 lives in danger off the coast of Tunisia. They were rescued from a fishing boat, but two people had fallen overboard and drowned. According to reports, a 4-year-old child, who was on a boat with her mother, also died. On 9 July, at least ten migrants went missing after their boat capsized off the Tunisian coast.

The number of push-backs by the Tunisian coast guard to Tunisia has increased significantly in recent years. In the first quarter of 2023 alone, 14,963 people were prevented from leaving Tunisia by sea and forcibly dragged back against their will.

Since spring 2023, the Italian government has been stepping up cooperation with Tunisia – a country that is becoming increasingly unsafe for people fleeing – instead of improving its own reception system. NGOs published a joint statement reminding the EU and MS like Italy, which provide significant funding for migration cooperation, that Tunisia is neither a safe country of origin, nor a safe third country:

“Given the Tunisian ongoing authoritarian state transformation and the extreme violence and persecution of the Black population in Tunisia, as well as of people on the move, political opponents and civil society actors, we urge authorities of the European Union and its member states to withdraw their migration control agreements with the Tunisian authorities.”

The EU and Tunisia signed a Memorandum of Understanding on 11 July to curb migration across the Mediterranean (for details of the agreement, see above 1.4). The aim is a "strategic and comprehensive partnership" between the two sides. EU Commission President, von der Leyen, subsequently spoke of a good package. She was joined at the meeting in Tunis by Tunisian President Saied, Italian Prime Minister Meloni, and Dutch Prime Minister Rutte. Saied said they were determined to implement the agreement as soon as possible. Rutte tweeted that together they wanted to fight the business of smugglers and curb illegal migration with more controls, registrations, and repatriations. Meloni stressed that she hoped for similar agreements with other North African countries.

The planned migration agreement between the EU and Tunisia, worth more than 1 billion euros, could lead to a strengthening of Tunisian security services and encourage European "front states" to send asylum seekers back to Tunisia. On 9 July, Green MEP's Strik therefore demanded of EU Commission President von der Leyen and the EU Council to watch the increasing number of migrants being deported to the Libyan border by President Saied, being trapped between an autocratic and a criminal regime, without water, food, shelter and medical care. Strik asked whether this was part of the deal or its consequence and urged to protect these people.

Deportations to the desert and incited violence against sub-Saharan migrants in Tunisia put the agreements between the EU and Tunisia to the test. There are increasing reports that groups of "sub-Saharan" migrants, in particular, have been taken by Tunisian authorities to the Libyan border or by bus from Sfax to the desert border with Algeria and left there without any help. In mid-July 2023, 191 migrants were rescued in the desert near the Tunisian-Libyan border, allegedly abandoned there by Tunisian security forces, according to IOM. The people were provided with food, clothing and temporary shelter by helpers and Libyan border guards. The NGO "Human Rights Watch" accused Tunisian security forces of sending the people towards the border. A few days before, the Tunisian

Red Crescent had already rescued more than 600 migrants from the desert. Footage distributed by "Human Rights Watch" showed the group begging for water and saying that people were dying. According to reports, Tunisian authorities had rounded up 800 to 1,000 people and abandoned them in the area without food or water. According to local relief organisations, 500 to 650 were later returned by the authorities to southern Tunisian towns. The expulsions followed riots in the coastal town of Sfax, where hostility and violence against people from sub-Saharan Africa erupted after the death of a local man on 3 July.

After the clashes in Sfax, Tunisian President, Saied, said:

"Tunisia is a country that accepts onto its territory only those that abide by the laws. It does not agree to be used as a transit zone or settlement territory for people coming from other African countries, nor does it agree to be the guardian of any borders other than its own. [...] These migrants are receiving humane treatment emanating from our values and traits, contrary to what colonial circles and their agents are circulating."

2.1.3 *Route Libya – Italy*

Despite mounting evidence of systematic human rights violations and criminal activities by the so-called Libyan coast guard, EU funds continue to flow there. On 6 July, Commissioner Johansson said:

"I also have to say some of the countries that are neighbouring and transit are more difficult than others, like Libya, where we also have clear indication of criminal groups being [...] infiltrating also in the coastguards."

A former Libyan police officer is quoted "The Libyan coast guard and smugglers are one together", adding "They are not under the law, they are above the law."

Giorgia Jana Pintus, a researcher at "ARCI", an Italian NGO, estimates that the Libyan Coast Guard has received a total of about 100 million euros in aid from the EU and Italian authorities, but "[t]o this day, the majority of the funds located under the EU's trust fund programme is not traceable by the public," she said. "And we don't know how and with which criteria human rights monitoring and assessment was carried out."

According to the Frontex Consultative Forum's Annual Report 2022, half of Frontex's sightings resulted in either SAR operations or illegal returns by the so-called (EU-financed) Libyan Coast Guard from international waters as a result of the exchange of information between Frontex and Libyan authorities.

"It is reasonably foreseeable that intercepted/rescued survivors will suffer serious fundamental rights violations after their disembarkation in Libya, including murder, enslavement, arbitrary detention, torture and ill-treatment, trafficking, extortion, enforced disappearance and sexual violence,"

the report says. According to the IOM, a total of 418 migrants were intercepted and sent back to Libya from 18 to 24 June 2023, and almost 8,000 in total from January to June. A UN fact-finding mission warned of "arbitrary detention, murder, rape, enslavement, sexual slavery, extrajudicial killings, and enforced disappearances" in Libya. The EU is complicit in providing financial support to the Libyan Coast Guard and the Libyan Directorate for Combating Illegal Migration (DCIM).

On 18 April, refugees in Libya reported that security forces had raided homes of refugees and immigrants, claiming that people had been preparing for boat crossings. During the operations, 917 people had arbitrarily been detained."

On 7 July, the "Ocean Viking" operated by "SOS MEDITERRANEE" rescued 46 people, including four single women, a four-year-old girl travelling with her father, and more than ten unaccompanied minors from a fibreglass boat in distress drifting in international waters off Libya's coast. After rescuing them, the vessel received a distress call about a boat with 11 people on board and proceeded to evacuate them. After the evacuation, the so-called, EU-funded Libyan Coast Guard began a series of dangerous but unsurprising manoeuvres, first attempting to block the route of the two fast boats at an extremely high speed and then opening fire. The Libyan coastguard fired on the rescue ship during the "SOS Méditerranée" rescue operation. According to "EURACTIV", which was on the scene, the shots came from a vessel that the EU had donated to the Libyan coastguard in a ceremony on 22 June.

"During the operation, "@SOSMedIntl" crew & 11 survivors faced a security incident with a Libyan patrol vessel shooting in close range of our fast rescue boats."

"The shots were fired less than 100 meters from the rescue team and the survivors - including a woman and five unaccompanied children - who were trying to return to the Ocean Viking."

On 10 July, the ship *Seabird*, operated by the NGO "Sea-Watch", discovered about 250 people in distress being intercepted by the Libyan militia ship "Tariq Ben Zayed", even though Maltese authorities had urged the militia not to do so. The militia ship made fun of the crew of the *Seabird* when they said they would carry out the rescue operation.

Shortly after this incident, the Italian authorities initially ordered the "Ocean Viking" to proceed to the location of a distressed boat with more than 250 people on board in the Maltese search and rescue region. Later, it was ordered not to proceed, as the coordination of the distress at sea was supposedly taken over by Malta. However, the ship was forcibly intercepted by a Libyan Navy vessel, "Ocean Viking" reported. It is the third time since the beginning of the year that the crew of the "Ocean Viking" has been involved in a dangerous incident during a rescue operation. "IFRC" and "SOS Méditerranée" called on all governments to ensure that humanitarian workers can provide life-saving assistance at sea without risking their lives. The "Ocean Viking" disembarked 57 survivors on 11 July after a three-day voyage, after the Italian authorities had once again assigned a distant port. After disembarkation, the Italian authorities conducted a seven-hour inspection of the ship, which led to its indefinite detention because – according to "Ocean Viking" – "very few technical and administrative deficiencies" were found, which "have never been flagged during the 7 PSCs undergone by the Ocean Viking in the past four years."

2.2 Malta

The NGO "Sea-Watch" once again draws attention to the "criminal behaviour" of the Maltese authorities. Malta has acted in the central Mediterranean by lying, breaking the law and deliberately leaving people to drown, Sea-Watch said, referring to two incidents on 24 June. At first, Maltese authorities had instructed the merchant vessel "MANTA ZUHAL" to contact Libyan authorities about an emergency, resulting in the forced repatriation of 43 people to Libya by the merchant vessel. The second concerns a boat that was stranded at sea for three days without fuel, where one person fell overboard and

drowned, and Malta ignored the mayday call from the Seabird aircraft, even though it was almost 38 km from the drowned boat. Eventually, the merchant ship "LACONIA" arrived, but a Maltese speedboat ordered it to abandon ship. Malta refused to make a rescue, lied to the distressed people about Italy's geographical proximity, and only gave them fuel.

2.3 Atlantic Route in Spain

Between 1 January and 31 May 2023, 4,406 people arrived in the Canary Islands via the Atlantic route, compared to 8,268 in the same period in 2022. According to the IOM, about 1,500 people have died on this route since 2021. The NGO "Caminando Fronteras" assumes that the number is much higher. In 2022 alone, 1,784 people had lost their lives.

One year after the Melilla tragedy, victims and their families are still waiting for a thorough investigation by Spanish and Moroccan authorities, "Human Rights Watch" (HRW) said on 22 June. Both Spain and Morocco have exonerated their security forces following flawed or insufficient investigations into the violence at the border with the Melilla enclave. The lack of coordination between the two countries on SAR operations continues to cause deadly delays. While UN experts estimate at least 37 dead, according to the Moroccan NGO "Association for Human Rights - Nador", 77 people are missing.

Route via the Canary Islands: On 13 July, "Salvamento Marítimo" rescued a boat with 22 persons from Algeria, including 2 women and 2 children. According to Spanish law, any stowaway who has not applied for asylum must be returned by the operator of the vessel to the port where the journey began. The Spanish coast guard rescued 86 men off the Canary Islands on 12 July while searching for three missing ships that left Senegal 18 days ago with a total of at least 300 people on board. On 14 July, the NGO "Walking Borders" reported 20 people had been found dead in a Senegalese canoe after being at sea for at least two weeks. 40 people survived.

2.4 Greece

On 14 June, a ship with hundreds of people on board capsized off the coast of Pylos. It was sailing from Libya towards Italy. Only 104 people could be rescued, 78 were recovered dead, and the others were swept away by the ship. According to the NGO "AlarmPhone", 750 people were on board, other sources report about 400 people. It is one of the biggest refugee tragedies in Europe. The Greek interim government declared three days of national mourning. State President, Katerina Sakellariopoulou, and other politicians went to Kalamata, where most of the 104 rescued people are being cared for, to show their solidarity with them. Government friendly Greek media stressed that it was all "the fault of the human traffickers." The refugees drowned because they were crammed into a completely dilapidated ship "by criminal human traffickers", wrote the daily newspaper *Apogevmatini*. The Greek government is thus deflecting attention from Greece's share of responsibility. According to Prime Minister Mitsotakis,

"[i]t is very unfair for countries such as Greece ... to be burdened with the task of managing this problem or be accused of actually not saving people at sea when this is what our coast guard does every day."

The Greek government has launched an investigation led by the attorney general, but serious concerns have been raised about neutrality and transparency.

The NGO "Refugee Support Aegan" (RSA) describes, in detail, how the survivors were treated after the shipwreck:

"During their stay in the Port of Kalamata, survivors were piled up in detention conditions in a warehouse, where they slept on the floor and were not allowed to go out even to contact their relatives/acquaintances who were arriving in shock from other countries."

The survivors were subjected to

"the demanding process of asylum interviews under extremely truncated procedures without sufficient time for preparation, legal assistance or appropriate psychosocial support."

These hearings did "not meet basic procedural guarantees for vulnerable persons."

New evidence from the BBC challenges the Greek coastguard's version of events and charges of manslaughter and people smuggling against nine Egyptian survivors. Two survivors told the BBC that the coastguard had instructed all survivors to say that the nine Egyptian men were responsible for people smuggling. A joint investigation by the Guardian, ARD/NDR/Funk, Solomon and research agency "Forensis" – based on numerous sources including distress signals, videos and photographs from the HCG (Hellenic Coast Guard), Frontex and nearby merchant vessels, as well as logs and witness statements – confirms a number of efforts by the HCG to distort and manipulate evidence relating to the incident and to suppress witness statements. All survivors of the wreck had their phones confiscated by members of the HCG. Those survivors said their phones had been protected in waterproof cases and contained videos they had taken immediately before the capsizing. None of these phones have yet been returned to their owners.

Furthermore, the investigation confirms:

"Nearby commercial vessels that were initially summoned by the HCG to provide assistance were subsequently ordered to leave after the ΠΠΛΣ 920 arrived on the scene. Likewise, repeated offers by Frontex, the European Border and Coast Guard Agency, to deploy aerial surveillance assets were ignored, and none of the several cameras onboard the ΠΠΛΣ 920 nor its AIS tracking system were activated that night as is required."

In the log of the vessel, it was documented that masked men attached a rope to the trawler, mentioning the involvement of a special operations team called "KEA". It is not unusual for "KEA" to be deployed in risky situations, but the presence of such a team suggests that the trawler should have been intercepted for safety and maritime security reasons alone. The captain reported to the Greek authorities that the "Adriana" was swaying dangerously. The BBC later confirmed the authenticity of the video, writing: "BBC Verify has confirmed the footage was filmed when the coastguard claimed the boat was not in need of rescue - and was in fact filmed by the coastguard itself."

Within a month of the disaster, there were at least 22 other incidents in the central Mediterranean (including bodies washed up on the Libyan coast) in which more than 50 people died or went missing, according to the IOM. Frontex has produced a "Serious Incident Report" to identify possible human rights violations. This allows details of incidents to be collected and passed on to other investigating authorities. Frontex itself does not have the legal power to investigate the incidents.

2.5 External Borders in the East of the EU

2.5.1 Lithuania

Lithuania, known for the de facto legalisation of push-backs, has stepped up the deployment of border guards on its border with Belarus in response to the alleged threat of “waves of migrants”. The commander of the Lithuanian Border Guard, Liubajevs, referred to an increase in “illegal migration” on the Belarusian border with Poland and Latvia.

2.5.2 Poland

In the last two years, at least 48 bodies have been recovered at the Polish border with Belarus, where hundreds of migrants are struggling to survive in the Białowieża Forest, hoping to reach Europe. An unknown number of people have died. Hundreds of people on the run are in danger. They are beaten by Polish border guards, bitten by dogs, their money is taken from them, and their phones are destroyed so they can no longer communicate. All this is done to stop them from entering the country. Both the ruling "PiS" and the opposition, led by the former president of the European Council, Tusk, are using anti-migration rhetoric in the run-up to the parliamentary elections in autumn.

Balkan Insight reports, the Polish opposition had taken up the challenge posed by the "PiS" government that started scaremongering about migration a few weeks ago. Donald Tusk, the leader of the largest opposition party, declared via video that “Poles must regain control of their country and its borders,” and accused the government of hypocrisy. Tusk's remarks – which triggered accusations of racism and Islamophobia from NGOs – came in the context of easing visa requirements for citizens of Muslim-majority countries to address labour market shortages. The Polish government has announced plans for a national referendum on the country's participation in the resettlement programme in accordance with the agreements of the EU interior ministers of 8 June. It is to take place in parallel with the parliamentary elections.

In 2021, the Polish parliament passed a law allowing border guards to immediately expel migrants who cross the border irregularly and reject asylum applications without examining them – de facto “legalising” push-backs. Poland erected a 186km steel wall in 2022 to prevent migrants from crossing the 416km border, but this has not stopped the attempts. While reports of serious attacks have been mounting for years, Polish border guards deny using force. “There are no complaints against Polish officials. If someone thinks that a Polish border guard used force, they should complain in court,” their spokeswoman said.

3 Great Britain: News on the "Rwanda Deal"

As a reminder, on 13 April 2022, the UK government entered into an agreement with the government of Rwanda on an “asylum partnership”. Under this agreement, asylum seekers whose applications had not previously been examined by the UK could be “resettled” in Rwanda. On 14 June 2022, in the case *K.N. v. UK* - No. 28774/22, the ECtHR ordered interim measures to stop threatened deportations to Rwanda. It took particular account of concerns expressed by the UNHCR that asylum seekers transferred from the UK to Rwanda would not have access to fair and efficient refugee status determination procedures. There is a risk of treatment that would violate CSF rights. As Rwanda is not

bound by the ECHR, there is no legally enforceable mechanism for return to the UK even after a successful legal challenge to the transfer decision.

The UK appeal concerned ten asylum seekers from Syria, Iraq, Iran, Vietnam, Sudan and Albania and the charity, Asylum Aid. They appealed against the decision (first instance) that the "Rwanda Deal" was not fundamentally unlawful, only that its implementation by the Home Office was flawed. The Ministry of the Interior did not want to examine the asylum applications of the individual applicants, but to deport them to Rwanda, where their applications were to be decided within the framework of the Rwandan asylum system according to the "Migration and Economic Development Partnership", which comprises a declaration of intent and several diplomatic verbal notes. The declaration includes the assurance that the Rwandan asylum system will be implemented in Rwanda. It includes assurances from the Rwandan government that will be used by the UK to classify Rwanda as a "safe third country".

On 29 June 2023, the Court of Appeal declared the government's Rwanda Plan unlawful. Rwanda was not a safe third country. There were valid reasons to believe that asylum seekers sent to Rwanda were at real risk of being mistreated there, in violation of Art. 3 ECHR. This was apparent from the history of Rwanda described by the UNHCR, the serious concerns expressed by the UNHCR itself, and the actual circumstances of the current asylum procedure in Rwanda. The Court of Appeal also pointed out that Rwanda could only comply with its assurances if it had control mechanisms and systems in place to enable it to do so. However, both history and the current situation showed that these mechanisms were not yet in place. Furthermore, asylum procedures are not monitored by third parties, so it is impossible to ensure that they are fair. In addition, appeals before the ministry and the court remain largely unexamined.

Furthermore, the Court of Appeal emphasised that the institutions responsible for asylum seekers arriving from the UK were precisely those that had committed violations in the past. The country was not safe, and the administration there was overburdened to carry out asylum procedures. The relocation of asylum seekers to Rwanda would result in their applications being examined under a system with serious deficiencies that have not been remedied, nor is there any prospect of this happening in the near future. Rather, there were valid reasons to believe that asylum seekers in Rwanda were at real risk of being turned back. This violates Art. 3 and Art. 6 of the ECHR. It could also not be ruled out that persons seeking protection from Rwanda would be deported to their countries of origin, even though they were entitled to asylum.

The Court of Appeal allowed an appeal to the Supreme Court. Prime Minister Sunak announced that he would file the appeal.

The press reported that the UK had not built up any capacity to receive migrants and had not signed a readmission agreement with EU states since Brexit. Many people are therefore accommodated in hotels, which results in high costs. However, plans to "transfer them" to Rwanda are estimated to cost just under £170,000 per person. According to a published Home Office document, this sum is made up of costs in Rwanda, for the work of the authorities, and for transport. The amount is significantly higher than that of accommodation in the UK. In addition, there is an agreed one-off payment of 140 million pounds to Rwanda to build up the infrastructure to receive the refugees.

The "Illegal Immigration Bill", which obliges the authorities to detain and deport refugees, was initially approved by the House of Commons, but met opposition in the House of Lords. It sent the bill back to the House of Commons with 20 amendments. The aim was to defuse the most stringent of the planned measures. However, the House of Lords can only demand amendments, but cannot ultimately block the law.

The British government weakened some parts of the law due to the criticism of the House of Lords. In particular, a clause was deleted that would have made it possible to deport people who had already entered the country before the law came into force. In addition, the period for which unaccompanied minors can be held in detention pending deportation was reduced from 28 to eight days. Although the law has now been passed by the House of Commons, it is currently blocked by the pending legal proceedings.

Resistance to the plans is also forming in Rwanda. Even if it is still unclear how many people the UK will actually be able to deport, there are already not enough jobs and natural resources for everyone in Rwanda – fears Frank Habineza, leader of the Green opposition party. Moreover, both Rwanda and the UK have signed the UN Refugee Convention, which obliges countries to deal with refugees appropriately and offer protection. It is questionable whether the agreement sufficiently respects these principles.