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Andrew & Renata Kaldor Centre for International Refugee Law

Research Brief

EUROPEAN RESPONSES TO FORCED MIGRATION: 2015 – JUNE 2018

Last update: December 2018

This Research Brief provides a high-level overview of the key components of regional European law and policy responses to forced migration between 2015 and June 2018.

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Kaldor Centre for International Refugee Law

Introduction

In 2015, conflict, poverty and persecution drove global displacement to record highs, with the Office of the UN High Commissioner for Refugees (UNHCR) reporting that 65.3 million people had been forcibly displaced worldwide.[1] António Guterres, then UN High Commissioner for Refugees, warned that the world was 'witnessing a paradigm change, an unchecked slide into an era in which the scale of global forced displacement as well as the response required is now clearly dwarfing anything seen before'.[2] As part of this global displacement, more than 1 million asylum seekers and migrants entered Europe irregularly via various routes over land and sea. Around half of them were Syrians escaping war in their country,[3] including many who had initially fled to Turkey, Jordan and Lebanon.

This large-scale influx placed considerable pressure on 'frontline' European States such as Greece and Italy, exposed critical weaknesses in Europe's existing processes for responding to forced migration at the national and regional levels, and exacerbated the strain on other States hosting large numbers of displaced people, including Turkey, Lebanon and Jordan. It also brought new urgency and attention to the question of how Europe should manage large-scale 'irregular migration' as a region.

Following two mass drownings in which more than 1200 asylum seekers and migrants died in a week off the coast of Libya in April 2015,[4] the European Council held a special meeting to discuss how to respond to the increased number of people seeking to enter Europe and the loss of life in the Mediterranean.[5] EU leaders agreed to mobilise all efforts to prevent further deaths and address the root causes of migration, deciding on four priority areas for action: strengthening their presence at sea, fighting trafficking and smuggling networks, preventing 'irregular migration' and reinforcing internal solidarity and responsibility.

Subsequently, in May 2015, the European Commission (Commission) adopted the European Agenda on Migration, which sought to address the shortcomings that had been revealed in Europe's common policies on 'irregular migration' and establish the foundations for a new, comprehensive approach to migration management based on greater responsibility sharing between European Union (EU) Member States.[6] It '[brought] together the different steps the European Union should take now, and in the coming years, to build up a coherent and comprehensive approach to reap the benefits and address the challenges deriving from migration',[7] with the short term priorities including immediate action to prevent loss of life at sea, target smuggling networks and alleviate pressure on frontline States where reception and processing facilities were stretched beyond capacity. Longer term priorities included reducing incentives for movement and strengthening common European asylum policies.

European responses since this time have been characterised by a complex and continually-shifting policy environment, accompanied by increasingly acute tensions between regional approaches proposed by EU institutions on the one hand, the policy positions of various blocs of likeminded States (such as the Visegrád Group), and unilateral responses by individual EU Member States.

The Commission has released various proposals to give effect to the European Agenda on Migration, including two implementation packages of proposals (in May and September 2015), two packages of proposals on reforming the Common European Asylum System (CEAS) (in May and July 2016), and a range of other proposals on matters such as resettlement and partnerships with third countries.[8] While some of these proposals have been implemented, others have only been adopted in part, or have failed to receive approval from EU Member States at all.[9] By December 2017, EU leaders noted that Member States were 'gradually restoring control' after the unprecedented migratory pressures of 2015, but that '[a] crisis situation can reoccur and so in order to prepare ourselves, we need to categorically strengthen our migration policy'.[10] Having agreed to 'consolidate our comprehensive approach and make it more sustainable with secure external borders and the prevention of mass arrivals as a corner stone', they set a deadline of June 2018 by when to reach consensus on reform of the European asylum system.[11] However, while certain agreements were reached at the June 2018 meeting, comprehensive reform of the CEAS remained an unresolved issue.[12]

This Research Brief comprises five parts:

Part I	Common European Asylum System and proposals for reform
Part II	Managing the movement of people within Europe's borders
Part III	Reinforcing Europe's external borders
Part IV	Specific measures to address flight by sea
Part V	Creating safe and legal pathways to protection in Europe

It provides a high-level overview of some of the key components of European law and policy responses to forced migration at the regional level between 2015 and June 2018. Because of the speed, complexity and shifting nature of these approaches, it does not seek to offer a comprehensive analysis of all the ways in which Europe has responded to the arrival of asylum seekers and migrants, but rather to provide a snapshot of the most relevant developments in this period to demonstrate the range of approaches taken and some of the challenges they have presented.

I Common European Asylum System and proposals for reform

The Common European Asylum System (CEAS)

The EU has one of the world's most developed regional frameworks for cooperation on asylum and migration issues. Since the 1980s, European countries progressively adopted a range of measures with the intention of creating a harmonised EU-wide approach to migration, leading to the creation of the Common European Asylum System (CEAS) in 1999. The CEAS establishes EU-wide rules and common standards for matters such as visas, refugee status determination (RSD), the treatment of asylum seekers, and security at the EU's external borders. Its aim is to ensure that asylum procedures are as fair, consistent and effective as possible throughout the EU, and that asylum seekers receive equal treatment no

matter the country in which they apply for asylum. It is based on the full and inclusive application of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

In the first phase of its development (1999 – 2005), the CEAS comprised a series of legislative measures establishing common minimum standards for protection and asylum procedures in Europe. Its second phase (2008 – 2013) led to the adoption of:

- the 'Dublin Regulation' (also known as the 'Dublin III Regulation'), which determines the EU Member State responsible for examining each asylum seeker's application for international protection on the basis of a hierarchy of criteria.[13] This 'Dublin system' allocates responsibility for examining claims on the basis of family ties in Europe, any visas or residence permits granted to asylum seekers by EU Member States, or the place where asylum seekers entered the EU from a non-EU State;

- EURODAC, a centralised EU database for storing asylum seekers' fingerprints used to assist in determining which EU Member State is responsible for examining an application for international protection under the Dublin system;[14]

- the 'Qualification Directive', which seeks to harmonise eligibility criteria for protection across the EU by establishing common standards for who qualifies as a beneficiary of international protection and the content of that protection;[15]

- the 'Asylum Procedures Directive', which seeks to ensure fairer, quicker and better-quality asylum decision making by setting common procedures for granting (or withdrawing) international protection in EU Member States;[16] and

- the 'Reception Conditions Directive', which sets out common minimum standards for reception conditions for asylum seekers across the EU. It establishes rules relating to housing, food, health care and employment, and detailed common rules governing the limited circumstances in which asylum seekers can be detained.[17]

Proposals for reform of the CEAS

On 6 April 2016, the European Commission launched a process for further reform of the CEAS,[18] followed by two packages of reform proposals in May and July 2016 which sought to revise and replace the existing asylum legislation.[19] These packages included proposals for:

- a new version of the Dublin Regulation to simplify and enhance its application, including by introducing a 'corrective allocation mechanism' which would be activated automatically whenever a Member State was confronted with 'a disproportionate number' of asylum applications for which it would otherwise be responsible;[20]

- proposals for new versions of the Qualification, Asylum Procedures and Reception Conditions Directives, to address issues in the existing legislation and promote further harmonisation of standards and procedures across the EU;[21] and

- the introduction of an EU Resettlement Framework, a common European policy on resettlement to ensure orderly and safe pathways to Europe for persons in need of international protection (see below).

Despite broad agreement among EU leaders on the need for some reform of the CEAS, progress towards adopting the Commission's proposals or otherwise reforming the CEAS has been slow, and agreement on these reforms was still elusive by the time of the European Council meeting in June 2018 (although the Council did 'underlin[e] the need to find a speedy solution' to the package of reform proposals and encouraged the Council to continue its work with a view to concluding the reform as soon as possible).[22]

Some of the Commission's proposals for reform have also met with criticism and opposition from civil society, international organisations and other stakeholders.[23] For example, the International Commission of Jurists, Human Rights Watch and the Jesuit Refugee Service have expressed concern about various matters, such as the short time-limits that the proposals would impose on asylum seekers to make their cases the introduction of measures that would have a punitive effect on asylum applicants.[24] These concerns have been echoed by UNHCR, which also expressed the view that the proposal to allow Member States to impose various administrative sanctions on applicants (including children) who do not comply with certain new obligations, such as providing their biometric data, is 'too vague' and 'falls short of setting the necessary fundamental rights safeguards'.[25]

II Managing the movement of people within Europe's borders

Re-establishing (temporary) border controls at internal EU borders

Introduction

On 14 June 1985, France, Germany, Belgium, Luxemburg and the Netherlands signed the Schengen Agreement with the aim of gradually abolishing border controls between their countries. The agreement was codified into an implementing Convention in 1990 and later incorporated into EU law by the Treaty of Amsterdam, which entered into force in 1999. The 'Schengen Area', a zone in which internal border controls have been abolished to allow the free movement of people and goods, now comprises 26 Member States: 22 of the 28 EU Member States[26] together with the four States 'associated' to the Dublin Regulation (Iceland, Liechtenstein, Norway, and Switzerland).

Temporary reintroduction of border controls

The Schengen Borders Code, which establishes the main rules governing the movement of people within the Schengen Area, authorises participating States to reintroduce border controls at internal borders on an exceptional and time-limited basis, in circumstances where there is 'a serious threat to public policy or internal security'.[27] These controls should only be reintroduced as a last resort, and States are required to notify the Commission and other Member States at least four weeks before their reintroduction unless the serious threat

requires immediate action on an exceptional basis.[28] Their scope and duration should 'not exceed what is strictly necessary to respond to the serious threat'.[29]

In 2013, the Council of the EU also established an 'evaluation and monitoring mechanism' to verify the application of the Schengen Agreement, ensure high uniform standards in its application, and maintain a high level of mutual trust between Member States without controls at internal borders.[30] If an evaluation identifies 'serious deficiencies in the carrying out of external border control' by a Member State, the Schengen Borders Code authorises the Commission to recommend that the evaluated State take certain specific measures.[31] Where the evaluation report concludes that the Member State is 'seriously neglecting its obligations', and after a three month period the Commission finds that the situation persists, it may trigger a procedure that allows the Council to recommend the reintroduction of internal border controls 'as a last resort and as a measure to protect the common interests within the area without internal border control, where all other measures … are ineffective in mitigating the serious threat identified'.[32] Controls may be reintroduced for a period of up to six months, which can be extended no more than three times for further periods of up to six months.[33]

Evaluation of Greece

In November 2015, a Commission-led team carried out unannounced visits to the Greek-Turkish land border and two Greek Islands (Chios and Samos) to evaluate the application of the Schengen Agreement.[34] On the basis of the team's report, the Council of the EU concluded in February 2016 that '[t]he overall functioning of the Schengen area is at serious risk' and proposing various remedial actions Greece should take to address serious deficiencies in its management of the EU's external borders.[35] It acknowledged that the EU was 'facing an unprecedented migratory and refugee crisis following a sharp increase of mixed migratory flows in 2015'; that Greece was particularly affected by these developments (mainly due to its geography); and that the rate of arrival of asylum seekers and migrants was 'of a nature that would put the external border control of any Member State under severe pressure.'[36] Nevertheless, it concluded that special efforts were needed to improve registration procedures, sea border surveillance, border check procedures, risk analyses, human resources and training, infrastructure, equipment and international cooperation. The Commission proposed specific measures Greece should take to ensure compliance with the Council's recommendations.[37]

Greece provided the Commission with an Action Plan to remedy the deficiencies identified in its Evaluation Report and periodic progress reports for assessment. By February 2017, Greece reported that it had made 'every possible effort' to implement the recommendations put to it by the Council in February 2016 and, while the remaining issues remained a top priority for Greek authorities, invited the Commission and the Council to take steps to close the November 2015 evaluation.[38]

Reintroduction of internal border controls in the Schengen Area

While Greece was working to regain control over the arrival of asylum seekers and migrants at its external borders, a number of other States in the Schengen Area – namely Austria,

Belgium, Denmark, Germany, Hungary, Slovenia, Sweden and Norway – reintroduced internal border controls in late 2015 and early 2016, purportedly in accordance with the Schengen Borders Code.[39] Slovenia and Hungary lifted their controls after 30 and 10 days respectively, while the other six countries prolonged them.[40]

In response to these developments, in March 2016, the Commission presented a 'Back to Schengen' roadmap, intended 'to bring the Schengen system of border management back to normality'.[41] The roadmap included three steps: (i) remedying the serious deficiencies that were identified in Greece's management of external borders; (ii) ensuring all EU Member States met their responsibilities and complied with EU law, both in terms of granting access to asylum procedures for persons requesting protection, and refusing entry at the border to persons who did not satisfy the entry conditions; and (iii) replacing the 'current patchwork of unilateral decisions on the reintroduction of border controls' with a coordinated approach, with the aim of subsequently lifting all internal border controls as quickly as possible.[42]

By May 2016, the Council of the EU noted that Greece had 'made significant progress in addressing many of the deficiencies in its external border management' identified in November 2015.[43] It also reported that this progress, together with various other efforts (such as the implementation of the EU-Turkey Statement), had 'led to a sharp decrease in the number of irregular migrants and asylum seekers crossing from Turkey' into Greece, enabling Greece 'to significantly improve the registration of newly arriving irregular migrants and asylum seekers'.[44] However, the Council concluded that serious deficiencies in Greece's external border controls persisted, causing the overall functioning of the Schengen Area to continue to be at risk. Accordingly, the Council triggered the procedure provided for in the Schengen Borders Code and recommended that Austria, Germany, Denmark, Sweden and Norway maintain their internal border controls for a further period of six months.[45]

Greece opposed this prolongation of internal border controls, challenging the factual basis of assertions that secondary movements from its territory into other EU Member States posed a serious threat to public policy and internal security. Greece further emphasised its efforts to implement all of the recommendations to improve its external border controls since November 2015.[46] Slovenia and Hungary also voiced strong opposition to the prolongation of internal borders controls, deeming them not justified, necessary, proportionate or temporary.[47]

Despite this opposition, the Council made further recommendations supporting the prolongation of controls in November 2016, and February and May 2017.[48] After this third prolongation, the final one permitted under the Schengen Borders Code, it was expected that internal border controls would be phased out over the following six months by 11 November 2017.[49] Instead, Austria, Germany, Denmark, Sweden and Norway notified the Commission of their intentions to maintain controls until at least November 2018.[50]

In September 2017, the Commission noted that internal borders controls had been reintroduced and prolonged in the Schengen Area 50 times since September 2015, as compared to 36 times in the period 2006 to 2015, and concluded that there was 'a need to

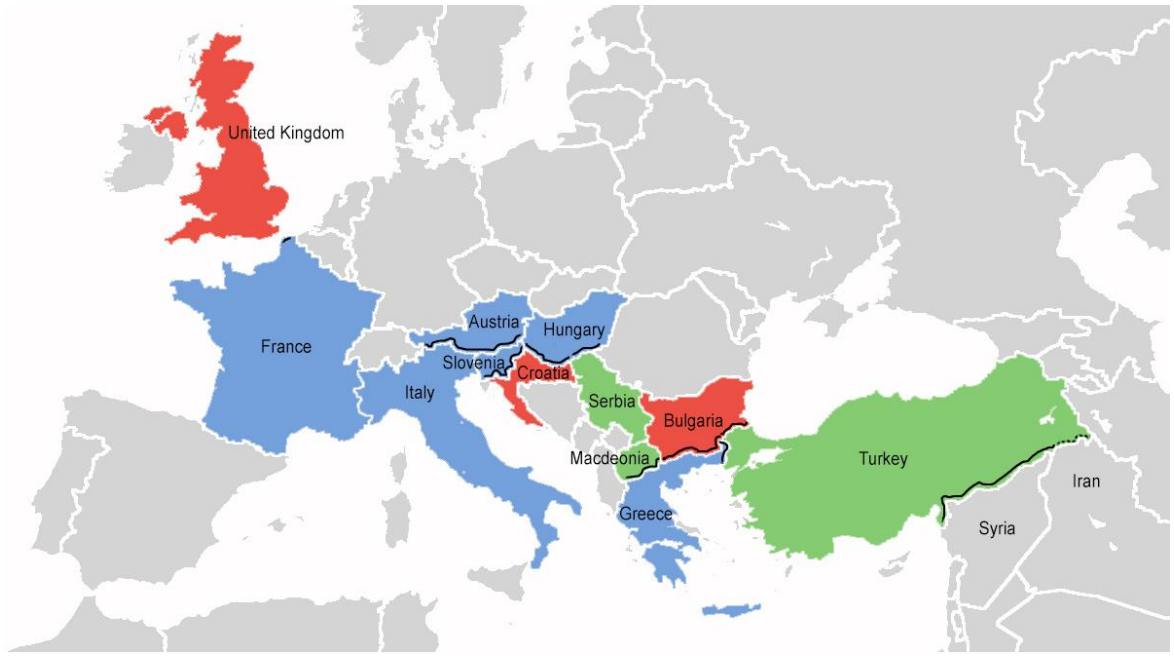
update the rules concerning the temporary reintroduction of border control at internal borders'.[51] It proposed an amendment to the Schengen Borders Code which would allow Member States to reintroduce internal border controls where there is a serious threat to public policy or internal security for a period of possibly up to three or five years. The amendment would also introduce procedural safeguards such as a requirement for Member States to prepare risk assessments affirming that border controls are a measure of last resort.[52] Progress on this proposal was slow, however in June 2018 EU leaders finally agreed that the Council should begin negotiations with the European Parliament on a proposal amending the Schengen Borders Code as regards temporary reintroduction of controls at internal borders.[53]

Erecting physical barriers at national borders

As a corollary to the reintroduction of border controls, a number of EU Member States erected fences along their borders in an attempt to stop or control the movement of asylum seekers and migrants into their territories (see **Graphic 1**). Between 2015 and 2018, fences were erected both within the Schengen Area (for example, by Austria along its borders with Slovenia and Italy), and along the external borders of the Schengen Area (for example, by Hungary and Slovenia along their borders with Croatia, Bulgaria along its border with Greece, and France and the UK near Calais in northern France).[54]

Fences have also been erected at the EU's external borders, including by Bulgaria along its border with Turkey, Hungary along its border with Serbia, and Macedonia (which is not an EU Member State) along its border with Greece.[55] A fence built by Greece along its border with Turkey in 2012 also continues to block entry into Europe. Additionally, Turkey has constructed a fence along its border with Syria, and is constructing a wall along its border with Iran to prevent people from moving through its territory towards Europe.[56]

Graphic 1 Fences erected along national borders in Europe 2015 – 2018



Some EU leaders have claimed that these fences are a way of diverting asylum seekers and migrants towards controlled entry points where they can apply for asylum, rather than measures to prevent access to territory entirely.[57] However UNHCR has warned that:

> In many places, fences and barriers may result in denying access to protection to people fleeing conflict or human rights violations. As a result of such restrictions, people seeking international protection increasingly rely on smugglers or use more dangerous routes thus putting their safety even more at risk.[58]

Relocating asylum seekers between European countries

At its Special Meeting in April 2015, the European Council committed to 'reinforcing internal solidarity and responsibility' in Europe, including by increasing emergency aid to frontline Member States and considering options for 'organising emergency relocation between all Member States on a voluntary basis'.[59] This commitment was reinforced by the European Parliament, which passed a resolution calling on the Commission 'to establish a binding quota for the distribution of asylum seekers among all the Member States'.[60] In May, the Commission responded by proposing twin measures in the European Agenda on Migration:

- an emergency relocation scheme involving the distribution of people in need of international protection and already in Europe between Member States; and
- a permanent and mandatory relocation system, to be established by legislation and automatically triggered in the event of a mass influx.[61]

Emergency relocation scheme

The emergency relocation scheme was established pursuant to Article 78(3) of the Treaty on the Functioning of the European Union, which provides that the Council may, on a proposal from the Commission, adopt 'provisional measures' to help Member States that are experiencing an 'emergency situation' from a 'sudden inflow' of third country nationals. In May 2015, the Commission presented its proposal for the relocation of 40,000 people in need of international protection from Italy and Greece, where asylum systems had become particularly strained. According to the Commission, 40,000 people:

> corresponds to approximately 40% of the total number of persons in clear need of international protection who have entered irregularly in these two countries in 2014. Thus, the relocation measure proposed in this Decision constitutes fair burden sharing between Italy and Greece on the one hand and the other Member States on the other hand.[62]

On 14 September 2015, the Council agreed to establish the proposed relocation mechanism.[63] However, in the intervening period, the number of migrants and refugees entering Europe more than doubled and Hungary also experienced a large number of arrivals. In response, the Commission issued a further proposal for a Council decision,[64] which the Council adopted on 22 September,[65] bringing the total number of people to be relocated by September 2017 to 160,000.

The key features of the relocation scheme approved by the Council in its two decisions of September 2015 were that:

- of the 160,000 people to be relocated, 34,953 would be relocated from Italy and 63,302 would be relocated from Greece over a period of 24 months, totalling 98,255 places. The Commission originally envisioned that a further 54,000 places would be used for relocation from Hungary. However, after Hungary declined to participate in the scheme,[66] these places were to be proportionally reallocated between Greece and Italy, unless the Commission proposed an alternative allocation (see below). 7,745 places were left unallocated;
- people would only be eligible for relocation from these countries if they:
    - arrived in Italy or Greece between 15 August 2015 and 17 September 2017 (under the first decision) or 24 March 2015 and 26 September 2017 (under the second decision);
    - had lodged an application for international protection in Italy or Greece, and those countries would otherwise be responsible for considering it; and

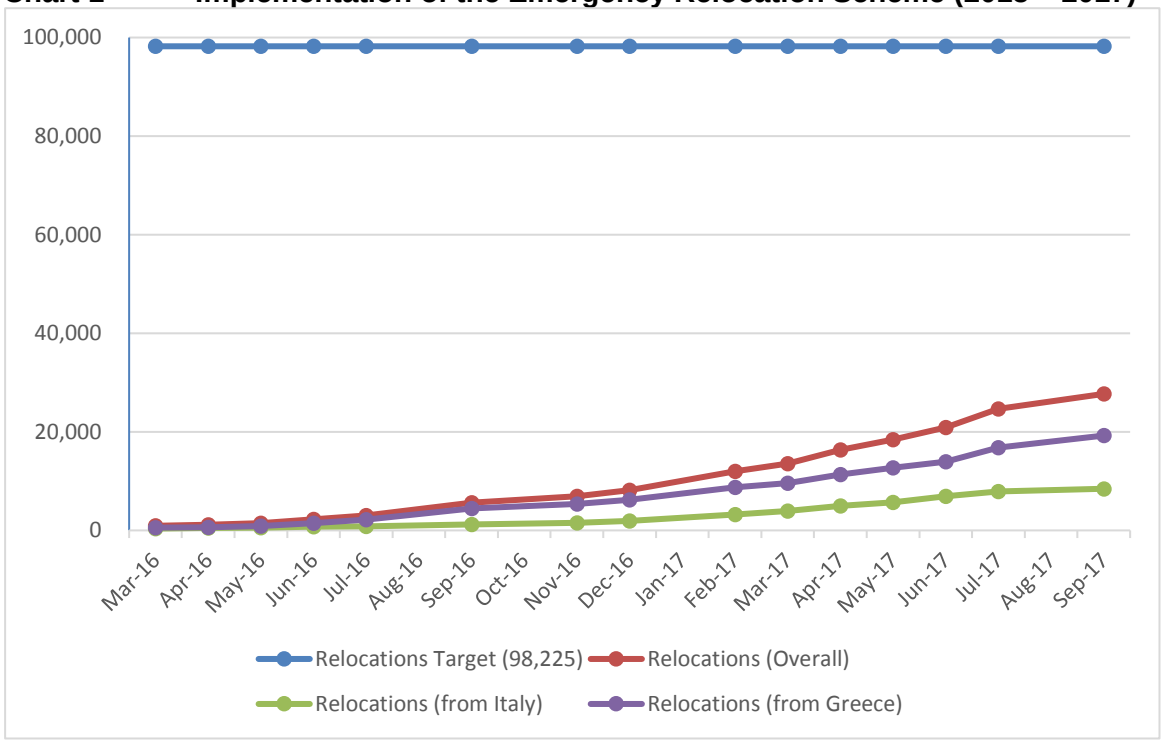
- were *prima facie* in clear need of international protection, defined as belonging to a nationality (or, being stateless, coming from a country of former habitual residence) for which the EU average recognition rate at first instance was 75% or more, based on quarterly Eurostat data (meaning eligibility could change every three months)[67];

- these relocations would constitute a partial and temporary derogation from the Dublin system in respect of eligible applicants;
- Member States accepting relocated asylum seekers would receive €6,000 for each person from the European Asylum, Migration and Integration Fund;
- relocation would be determined on the basis of a 'distribution key' taking into account each receiving Member State's GDP, population size, unemployment rate, and the number of other asylum seekers and refugees already supported;[68] and
- other measures of support would be provided to Italy and Greece, such as assistance with screening and implementing the relocation procedure.

In September 2016, the Council adopted an amending Decision, on the recommendation of the Commission, permitting Member States to choose whether to meet their share of the 54,000 places originally planned for Hungary by relocating people from Italy and Greece, or by admitting Syrian nationals in Turkey (separately from the resettlement scheme set up by the Council on 20 July 2015).[69]

The first groups of asylum seekers were relocated from Italy in October and from Greece in November 2015,[70] but subsequent progress was slow (see **Chart 1**).

Chart 1 Implementation of the Emergency Relocation Scheme (2015 – 2017)



Source: *European Commission*[71]

In December 2015, Riccardo Mattei, Coordinator of the Italian Support Group for Relocation, warned that 'at this rate it will take until the end of this century to relocate all 40,000 refugees' (provided for in the first Council decision of September 2015).[72] By the projected end of the relocation scheme on 26 September 2017, only 29,401 people had been relocated in the previous 24 months (20,323 from Greece and 9,078 from Italy).[73] By July 2018, this number had only risen to 34,693 (21,999 from Greece and 12,694 from Italy).[74] Although the scheme was not renewed, relocations under the previous allocations were expected to continue.

Despite these low figures and some reports that the relocation scheme had been an 'utter failure',[75] or 'at best a partial success',[76] the Commission reported in March 2018 that it had 'proved to be a success', with over 96% of all eligible applicants registered for relocation by Italy and Greece having been relocated.[77] This figure suggests that the remaining applicants for international protection in Italy and Greece may not have come from countries with an average EU recognition rate of 75% or higher according to relevant Eurostat data.

Throughout its implementation, the relocation program proved controversial and divisive, with the greatest opposition to relocation coming from Eastern Europe. Whereas the first Council decision of 14 September 2015 was unanimous, the subsequent decision of 22 September 2015 (setting out specific quotas for each Member State to relocate) was adopted by a qualified majority vote, in which the Czech Republic, Hungary, Romania, and Slovakia voted against and Finland abstained.[78] The BBC reported at the time that it was 'highly unusual for an issue like this – which involves national sovereignty – to be decided by majority vote rather than unanimous decision'.[79]

Although it voted in favour of the decision, Austria also opposed the imposition of relocation quotas, calling the plan 'wrong' and 'completely unrealistic'.[80] It requested, and in March 2016 was granted, a one year suspension of the relocation of 30% of the applicants allocated it under the scheme on the basis that it faced 'an emergency situation characterised by a sudden inflow of nationals of third countries into its territory' causing 'a significant strain on the Austrian asylum system'.[81] After the expiry of the exemption Austria sought a further suspension of its obligations and continued to refuse to participate in the relocation scheme,[82] but subsequently pledged to take 50 refugees from Italy.[83] By the end of September 2017, Austria had relocated only 15 people in need of international protection (from Italy).[84]

Despite initially receiving asylum seekers relocated from Italy and Greece, by the end of 2015 Sweden faced a sharp increase in the number of applications for international protection made in its territory, and so also requested a temporary suspension of its relocation obligations. In June 2016, Sweden was granted an exemption from participation in the relocation scheme until June 2017,[85] after which time it resumed its involvement. By the end of September 2017, Sweden had relocated 2,276 people from Italy and Greece of the 3,766 allocated to it, rising to 3,048 as at July 2018.[86]

In December 2015, Hungary and Slovakia (supported by Poland intervening) commenced proceedings before the Court of Justice of the EU seeking annulment of the second Council decision of September 2015 establishing the relocation quotas, arguing *inter alia* that it breached various provisions of the Treaty on European Union and the Treaty on the Functioning of the European Union. In September 2017, the Court dismissed the proceedings in their entirety.[87] Hungarian Prime Minister Viktor Orban promised to continue to fight against the relocation scheme despite the Court's ruling,[88] while Germany threatened legal action against any Member State which failed to take their allotted share of refugees.[89]

In June 2017, the Commission launched formal infringement procedures against the Czech Republic, Hungary and Poland for failing to comply with their obligations under the relocation agreement, and in December 2017 referred them to the Court of Justice of the EU.[90] If the Court finds these States to have failed to fulfil their obligations it may make orders requiring them to do so, and impose financial penalties if they refuse. Despite these proceedings, however, Hungary and Poland remained the only two Member States not to have relocated any of the people allocated to theme under the scheme by the end of September 2017, while Slovakia and the Czech Republic had relocated only 16 and 12 of the 902 and 2,691 people allocated to them respectively.[91] As at July 2018 these figures had not changed.[92]

A permanent, mandatory and automatically-triggered relocation system

On 9 September 2015, the Commission presented a proposal for the establishment of a permanent 'crisis relocation mechanism' which:

> should be rapidly triggered in respect of any Member State that experiences crisis situations of such a magnitude as to put under significant strain even well prepared and functioning asylum systems, also taking into account the size of the Member State concerned. The proposed relocation mechanism aims, on the one hand, to ensure, in situations of crisis, a fair sharing of responsibilities between Member States for large numbers of applicants in clear need of international protection, and, on the other hand, the proper application of the Dublin system including the full protection of the rights of applicants for international protection.[93]

The Commission distinguished this proposal from the emergency relocation scheme set out above. Whereas the latter was provisional and for the benefit of particular Member States confronted with a sudden inflow of third country nationals, the permanent crisis relocation mechanism would involve a broader change to the ordinary operation of the Dublin system for specified limited periods.

The Commission's proposal had not progressed very far when, in April 2016, it was subsumed by a broader process for reform of the CEAS. According to the Commission, '[t]he Dublin system was not designed to ensure a sustainable sharing of responsibility for asylum applicants across the EU, a shortcoming that has been highlighted by the current crisis'.[94] In order to establish a more sustainable and fair system for determining which Member State is responsible for processing an asylum seeker's claim, the Commission proposed either:

1. preserving the current criteria for allocation responsibility under the Dublin system, but supplementing it with a 'corrective fairness mechanism' based on a distribution key, which would allow for adjustments in the allocation of responsibility in certain circumstances; or
2. replacing the Dublin system with an entirely new procedure for allocating responsibility for considering asylum applications in the EU, whereby responsibility would no longer be linked to the place of first application or irregular entry but rather by a distribution key reflecting the relative size, wealth and absorption capacities of Member States.[95]

Both of these proposals would involve the establishment of a new internal relocation mechanism as a permanent feature of the CEAS. However, by mid-2018, there had been no substantial progress towards either proposal.

III Reinforcing Europe's external borders

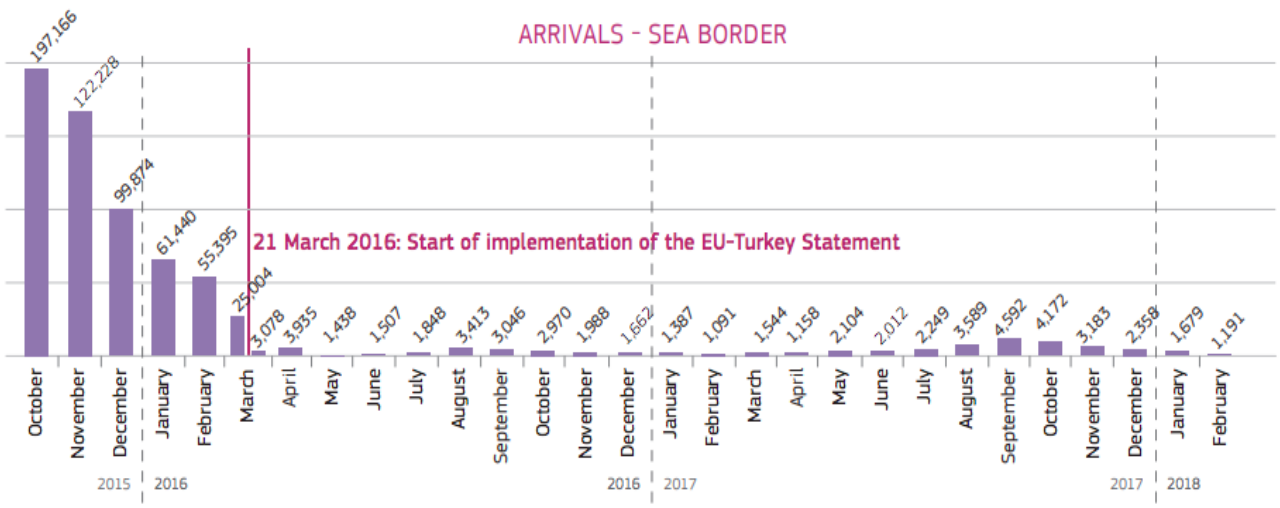
Cooperation with Turkey to prevent movement by sea to Europe

The EU-Turkey Statement

At its Special Meeting in April 2015, the European Council called for Europe to 'step up cooperation with Turkey in view of the situation in Syria and Iraq'.[96] Over the following months, European leaders worked closely with Turkey to develop strategies to stem the flow of asylum seekers and refugees through Turkey into Europe, leading to the adoption of a Joint Action Plan in late 2015.[97] The two priorities of this plan were supporting Syrians receiving temporary protection in Turkey, and strengthening cooperation to prevent 'irregular migration' flows to the EU from Turkey.

These efforts proved insufficient to stop such movement, and by October 2015 the International Organisation for Migration (IOM) reported that the number of people arriving on the Greek islands from Turkey had surged to about 7,000 per day.[98] While the rate of arrivals did drop from this peak, Greece was still estimated to be receiving between 2,000 and 3,000 new arrivals every day throughout late 2015 and early 2016, almost all from Turkey (see **Chart 2**).[99] To address the escalating crisis, EU leaders and Turkey reached a new agreement on 18 March 2016, known as the 'EU-Turkey Statement', which was published in the form of a press release on the website shared by the European Council and the Council of the EU.[100]

Chart 2 Number of arrivals in Greece from Turkey (October 2015 – February 2018)



Source: European Commission[101]

This new agreement provided that all 'new irregular migrants' crossing from Turkey into Europe via the Greek islands from 20 March 2016 'will be returned to Turkey'. However, it also provided that all migrants would be 'protected in accordance with the relevant international standards and in respect of the principle of *non-refoulement,* that they would be registered on arrival in Greece, and that any applications for asylum would be processed by the Greek authorities in accordance with EU law. Accordingly, only those people who did not apply for asylum on arrival in Greece, or whose applications were deemed to be 'unfounded or inadmissible' under the Asylum Procedures Directive, would be returned to Turkey.

The EU-Turkey Statement also provided that:

- one Syrian refugee in Turkey would be resettled for every Syrian returned from Greece, with priority to those who had not previously tried to enter the EU irregularly;
- Turkey would take 'any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU'; and
- once irregular crossings between Turkey and the EU ended or were 'substantially and sustainably reduced', a Voluntary Humanitarian Admission Scheme would be activated for Syrian refugees in Turkey in place of the initial one-for-one 'swapping' mechanism.[102]

In exchange for Turkey's cooperation, the EU agreed to accelerate efforts to lift visa requirements for Turkish citizens in Europe, and 're-energise' the process of Turkey's accession to the EU. The EU also agreed to speed up the disbursement of funds under the Facility for Refugees in Turkey, a mechanism to coordinate the mobilisation of EU funds and assistance to refugees in Turkey, which had been established with an initial budget of €3 billion in November 2015.[103]

Other readmission agreements

The EU-Turkey Statement built on two pre-existing readmission agreements with Turkey: a 2001 bilateral readmission protocol between Greece and Turkey, and a 2013 readmission agreement between Turkey and the EU.

The readmission protocol between Greece and Turkey was signed in 2001, providing a legal framework for returns of Turkish citizens and third-country nationals who transited through Turkey to Greece.[104] In practice most returns from Europe took place directly to countries of origin, and the agreement was only implemented in a limited way by Turkey.[105] From April 2016 it operated alongside the EU-Turkey Statement until, in June 2018, Turkey announced that it was suspending the protocol following a Greek court's decision to release from custody some Turkish soldiers who fled to Greece and sought asylum there after a failed coup in July 2016.[106] This suspension did not affect the continued operation of the EU-Turkey Statement.[107]

The EU also concluded a readmission agreement with Turkey in December 2013 under which Turkey committed to readmitting from EU Member States its own nationals and, in certain circumstances, third-country nationals and stateless persons who entered Europe through Turkey.[108] The provisions regarding third-country nationals and stateless persons were initially scheduled to apply from October 2017,[109] however a decision was subsequently made to advance the entry into force of these provisions to 1 June 2016.[110] By April 2018 the Commission reported that while Turkey 'remained committed' to implementing the EU-Turkey Statement, it was refusing to implement the provisions of the EU-Turkey readmission agreement relating to third-country nationals until the visa restrictions on Turkish citizens traveling to the Schengen Area for short stays were lifted.[111]

Implementation of the EU-Turkey Statement

The first returns from Greece to Turkey occurred on 4 April 2016, and 1,487 people were returned to Turkey in the first eleven months.[112] By the first anniversary of the EU-Turkey Statement the Commission reported that it was continuing 'to deliver proof of its effectiveness on a daily basis', noting that 'irregular maritime arrivals' from Turkey had dropped by 97% down to an average of around 43 people per day, and that the number of deaths in the Aegean had decreased from 1,145 in the year before the Statement to 80 in the year which followed.[113] However, the number of people being returned remained much lower than the number of arrivals,[114] which the Commission attributed to 'the accumulated backlog in the processing of all stages of asylum applications on the Greek islands and difficulties in locating migrants at various stages of their asylum and return procedures'.[115] This situation also added pressure on the 'hotspot' facilities on the Greek islands.

By July 2018, a total of 2,224 people had been returned from Greece to Turkey since 21 March 2016 (1,624 pursuant to the EU-Turkey Statement and 600 under the readmission protocol between Greece and Turkey).[116]

The implementation of the EU-Turkey Statement proved highly controversial from the outset. Immediately after it was published, UNHCR, Médecins Sans Frontières (MSF), the International Rescue Committee, the Norwegian Refugee Council and Save the Children announced that they would not be involved in its implementation.[117] In announcing its decision, MSF said: 'We will not allow our assistance to be instrumentalized for a mass expulsion operation and we refuse to be part of a system that has no regard for the humanitarian or protection needs of asylum seekers and migrants.'[118] The UN Commissioner for Human Rights, Zeid Ra'ad Al Hussein, expressed 'serious concerns' about the EU-Turkey Statement, pointing to the 'contradiction at the heart of the agreement' between its declared aim of returning all 'irregular migrants' and the assurances about safeguards and individual assessments.[119]

The implementation of the agreement also became a source of increasing diplomatic tension between the EU and Turkey.[120] Writing about the EU-Turkey Statement on its first anniversary, Laura Batalla Adam, Secretary General of the European Parliament Turkey Forum, described the arrangement as one '[i]ntended as a way to reinvigorate ties' but which 'instead pushed EU and Turkey farther apart'.[121] A stalemate over visa liberalisation talks, Europe's concern about Turkey's anti-terror laws, a perceived lack of support of Turkey after the attempted coup in July 2016 and the deterioration of Turkey's relationships with Germany and the Netherlands (two of the driving European powers behind the EU-Turkey Statement) reportedly undermined the implementation of the agreement.[122]

Though the significant drop in the number of people entering Greece from Turkey was portrayed by the Commission as evidence of the deal's success, other factors may have been behind the drop,[123] and some commentators consider the EU-Turkey Statement 'a dangerous precedent for EU cooperation with third countries on migration and asylum, due to its controversial legal nature and the lack of proper procedural safeguards.'[124] The European Council on Refugees and Exiles (ECRE) expressed concern that it paved the way for 'increasingly wide definitions of safety being mooted' with respect to transfer of migrants to 'safe' third countries.[125]

Legal challenges to the EU-Turkey statement

In April 2016, the same month as the first returns from Greece to Turkey, three asylum seekers launched a legal challenge to the EU-Turkey Statement in the General Court of the European Union, claiming that it was an international agreement concluded by the European Council on behalf of the EU and in breach of the Treaty on the Functioning of the European Union. In February 2017, the Court concluded that it was in fact the EU Member States represented by their Heads of State or Government, not the European Council, which had concluded the agreement with Turkey. As such, the Court declared that it lacked jurisdiction to hear and determine the actions brought by the three asylum seekers, and dismissed them.[126]

While this case was proceeding, the EU-Turkey Statement also faced various legal challenges within Greece. In May 2016, an independent appeals committee on the Greek

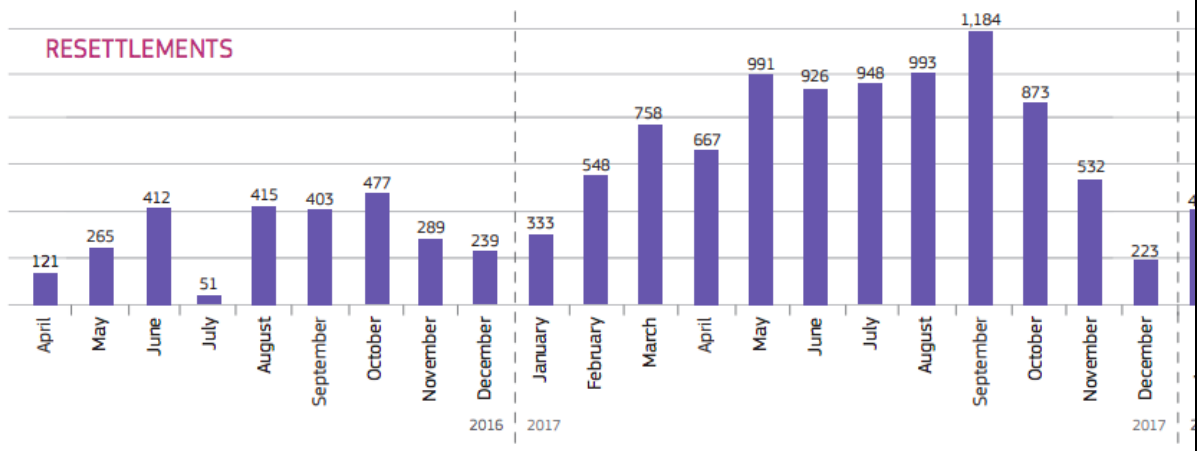
island of Lesbos overturned a Syrian refugee's deportation order and ruled against sending him back to Turkey, on the basis that 'the temporary protection which could be offered by Turkey to the applicant, as a Syrian citizen, does not offer him rights equivalent to those required by the [Refugee Convention]'.[127] In June 2016 a further nine Syrian refugees facing deportation were allowed to remain in Greece following an appeals committee decision in Lesbos which found Turkey was not safe enough for their return.[128]

In September 2016, two Syrian asylum seekers who received negative decisions from appeals committees and faced deportation lodged an application with Greece's highest administrative court, the Council of State, seeking annulment of those decisions and their deportation orders.[129] In September 2017, the Council of State ruled that the two men could be returned to Turkey and rejected their arguments that it was not a safe destination for them.[130] By a narrow majority of 13 votes to 12, the Council of State also decided not to refer the cases to the European Court of Justice for determination of the question of whether Turkey can be considered a 'safe third country' generally.[131]

Resettlement from Turkey under the EU-Turkey Statement

The EU-Turkey Statement provided for two resettlement mechanisms: the initial one-for-one 'swapping' mechanism, and the Voluntary Humanitarian Admission Scheme to be activated once irregular crossings between Turkey and the EU had ended or were 'substantially and sustainably reduced'. In practice, however, resettlement to the EU under the first mechanism was not strictly contingent on the number and rate of returns to Turkey (and indeed resettlement was significantly higher than the rate of returns, see **Chart 3**).

Chart 3 Resettlement of Syrians from Turkey to the EU



Source: European Commission[132]

Instead, resettlement occurred on the basis of State pledges to two EU-led programmes. First, as noted above, some Member States began resettling Syrians from Turkey after September 2016 to meet their share of the 54,000 places made available for this purpose under the emergency relocation scheme.[133]

Second, as noted below, a number of the resettlement places Member States had already pledged under the common EU resettlement scheme were used for resettlement under the EU-Turkey Statement. By July 2018, a total of 15,114 refugees had been resettled from Turkey to 18 EU countries since April 2016.[134]Standard Operating Procedures for the Voluntary Humanitarian Admission Scheme were endorsed by EU Member States in December 2017,[135] but by July 2018 it was yet to be activated.

Establishing 'hotspots' within frontline European countries

In May 2015, the European Agenda on Migration envisioned the establishment of 'hotspots' at various parts of the EU's external border 'as a means of providing emergency assistance to frontline Member States that were faced with the arrival of disproportionate numbers of migrants'.[136] Hotspot locations were identified and established throughout southern Italy and the eastern Aegean islands in Greece (see **Graphic 2**).[137] Operational support and experts on registering, identifying, fingerprinting and interview asylum seekers from throughout the EU (including the European Asylum Support Office, Frontex and Europol) were sent to these locations to facilitate registration and initial screening, speed up processing, assist with the return of people found not to engage Europe's protection obligations, and gather data about migration and smuggling routes.[138]

Graphic 2 Map of hotspots in Greece and Italy as of February 2018

Source: European Union Agency for Fundamental Rights[139]

Following the EU-Turkey Statement in March 2016, the Greek hotspot facilities were transformed into closed detention centres and '[a]fter 20 March 2016, people arriving on the Aegean islands were detained on hotspot premises, to facilitate their re-admittance to Turkey in cases where they did not apply for international protection or their applications were rejected'.[140] UNHCR reported that it would no longer be transporting people to or performing some activities at these locations (although it would continue to maintain a presence to carry out protection monitoring and provide asylum seekers with information about their rights).[141] A highly-critical report from the Parliamentary Assembly's Committee on Migration, Refugees and Displaced Persons also highlighted serious human rights issues arising from the use of hotspots in Greece and that 'detention in the hotspots seems to be universal and automatic' with 'no individual assessment of the necessity of detention, or consideration of less coercive alternatives'.[142]

By 2017, the European Court of Auditors reported that the hotspot approach had 'contributed towards an improved management of the migration flows' in Italy and Greece, noting that in both countries 'the hotspot approach ensured that, in 2016, most of the arriving migrants were properly identified, registered and fingerprinted and that their data were checked against relevant security databases'.[143] However, the report also noted issues with overcrowding and a lack of access to asylum procedures in hotspots.[144] These concerns were echoed in extensive criticism of the 'hotspot approach' by the UN, civil society groups and European agencies throughout the first years of its operation, including in relation to poor conditions, prolonged detention and lack of security for people detained in hotspots.[145]

At its meeting in June 2018, the European Council called on the Council and the Commission to explore the concept of two complementary measures: the establishment of regional disembarkation platforms in Europe and elsewhere for people rescued in the Mediterranean, and the creation of 'controlled centres' in EU Member States where 'rapid and secure processing' would occur to distinguish between irregular migrants (who would be returned to their countries of origin) and people in need of international protection (who would receive it in Europe in accordance with 'the principle of solidarity').[146] In developing this concept further, the Commission envisioned that people entering these 'controlled centres' would be identified, undergo security screening, be categorised by the likely success of their asylum claims and, in some cases, undergo an assessment of their claims.[147] The Commission proposed that these centres would be 'managed by the volunteering Member State', with support from the EU and other Member States.[148] At the time of publication no EU Member States have volunteered to host such a centre in its territory, regional disembarkation platforms are yet to be identified, and it remains unclear how these proposals would interact with (and overcome the problems faced by[149]) the existing hotspots.

Expansion of Frontex's mandate

In 2004, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (commonly referred to as 'Frontex') was established to improve the management of the EU's external borders.[150] In

2015, the Commission recommended that Frontex's mandate be reinforced and strengthened to meet the challenges facing the EU at that time,[151] and in October 2016 it was renamed the European Border and Coast Guard Agency with a significantly expanded mandate.[152] The expansion was intended to address some of Frontex's previous limitations, including that 'it did not have its own operational staff and relied on Member State contributions and was unable to carry out its own return or border management operations without the prior request of a Member State'.[153]

The expansion of Frontex's resources and mandate included:

- the grant of a stand-alone and increased budget, and the right to acquire technical equipment itself;
- an increase in its permanent staff and the establishment of an additional 'rapid reaction pool' of at least 1,500 border guards who can be deployed within 3 days for EU border operations;
- an extended mandate to monitor migratory flows towards and within the EU, and identify trends and other possible challenges at the EU's external borders;
- a mandate to perform vulnerability assessments at the EU's external borders in order to identify deficiencies in the ability of Member States to manage their borders and to propose solutions;
- a reinforced mandate to conduct joint operations with Member States and rapid border interventions, including the right to intervene (in accordance with a decision of the Council) 'where control of the external borders is rendered ineffective to such an extent that it risks jeopardising the functioning of the Schengen area'[154] because a Member State has not taken certain measures or requested sufficient support;
- a bigger role in the hotspots, including responsibility for screening, debriefing, identifying and fingerprinting asylum seekers;
- a reinforced mandate in relation to returns, including the establishment of 'return intervention teams' composed of escorts, monitors and return specialists who will work to return people determined not to be in need of international protection to their countries of origin; and
- a mandate to work in third countries and a greater role in coordinating cooperation on border management between Member States and third countries.[155]

The strengthening of Frontex's mandate and resources is expected to continue, with European Commission President Jean-Claude Juncker announcing in June 2018 further plans to deploy 10,000 Frontex border guards at the EU's external borders by 2020.[156]

Returning 'failed' asylum seekers and other third-country nationals to countries of origin or transit

Introduction to the EU's policy on return

The EU 'Return Directive' imposes a legal obligation on the States bound by it to issue return decisions in relation to 'illegally staying third-country nationals' (including people whose

asylum applications have been refused) and, where necessary, to take steps to enforce those decisions.[157] It establishes common standards and procedures for return to countries of origin and certain transit countries, sets out how coercive measures and detention may be used for the purpose of removal, specifies procedural safeguards in relation to return decisions and provides 'illegally staying third-country nationals' with a minimum set of basic rights. The Return Directive is supplemented by 17 'readmission agreements' between the EU and non-EU countries of origin and transit which set out procedures and provide the basis for cooperation to enforce return decisions made under the Return Directive.[158] The Cotonou Agreement between the EU and 79 countries from Africa, the Caribbean and the Pacific (ACP) also provides for the return and readmission of nationals from each of the State Parties.[159]

Proposals for reform

Reflecting on the EU's policy on return in the European Agenda on Migration, the Commission stated that:

> One of the incentives for irregular migrants is the knowledge that the EU's return system – meant to return irregular migrants or those whose asylum applications are refused – works imperfectly. Smuggling networks often play on the fact that relatively few return decisions are enforced – only 39.2% of return decisions issued in 2013 were effectively enforced.[160]

The Commission proposed three steps to increase the enforcement rate of return decisions: ensuring that third countries meet their commitments to readmit their own nationals residing irregularly in Europe, ensuring that EU Member States fully implement the Return Directive, and increasing Frontex's capacity to provide operational assistance in relation to returns.

EU Action Plans on Return

In September 2015, the Commission responded to an invitation by the European Council to set up 'a dedicated European Return Programme'[161] with the announcement of an initial EU Action Plan on Return.[162] The 2015 Action Plan included 36 concrete actions intended to improve the efficiency of the European Union's return system while ensuring compliance with human rights standards and the principle of *non-refoulement,* as guaranteed in the relevant international and EU law. These actions were based on two broad objectives:

1. Increasing the effectiveness of the EU system for returning 'irregular migrants', including by enhancing voluntary return, strengthening enforcement of the Return Directive by Member States, encouraging better information-sharing, strengthening the role and mandate of Frontex in enhancing practical cooperation on return, and developing an integrated system of return management by connecting all EU-funded networks and programmes focusing on return and readmission; and

2. Enhancing cooperation on readmission with countries of origin and transit, including by ensuring the implementation of existing readmission agreements, concluding new

agreements with States in North Africa providing for readmission of third country nationals who transited through those States, engaging in high-level dialogues with countries of origin and transit, supporting the reintegration of returnees and enhancing the capacity of accepting States to readmit them, and increasing the EU's leverage on readmission through a balance of pressure on and incentives for partner countries of origin and transit.

The Action Plan was accompanied by the release of a Return Handbook containing common guidelines, best practices and recommendations for States to implement return standards and procedures in a uniform way.[163]

While most of the actions identified in the 2015 Action Plan were commenced or fully implemented over the following 18 months, by March 2017 the Commission reported that 'the overall impact on the return track record across the European Union remained limited, showing that more resolute action is needed to bring measurable results in returning irregular migrants'.[164] The Commission noted that the number of 'irregular migrants' being ordered to leave the EU each year had increased, and that Member States could have more than 1 million people to return once the asylum applications of the people who arrived in 2015 and 2016 alone had been processed.[165] Accordingly, it adopted a Renewed Action Plan on Return with additional actions to be implemented in parallel to those launched under the 2015 Action Plan.

Like the 2015 Action Plan, the Renewed Action Plan on Return focused on increasing the effectiveness of the EU system for return and enhancing cooperation on readmission with third countries. The Commission also updated the Return Handbook that it had originally published in 2015.[166]

In terms of action to be taken at the EU end, the Commission adopted a Recommendation on making returns more effective when implementing the Return Directive[167] and urged all Member States to take immediate action in accordance with the guidance in that Recommendation.[168] It also emphasised the importance of addressing abuses of EU asylum procedures and noted the link between return procedures and rapid and effective asylum decision making processes, which were essential to ensuring that clearly unfounded claims did not add further heavy burdens to EU asylum systems.[169] Other recommendations related to further improvements in information-sharing and cooperation on return, promoting voluntary return and ensuring a coherent approach to reintegration assistance, and building on Frontex's expanded mandate in relation to return.[170]

In terms of overcoming the challenges of readmission, the Commission committed to continuing its work monitoring the implementation of the EU's readmission agreements and negotiating new agreements with States in North Africa.[171] It also stated that the EU and its Member States 'will, within the Partnership Framework, employ their collective leverage in a coordinated and effective manner to agree with third countries tailor-made approaches to jointly manage migration and further improve cooperation on return and readmission'.[172]

At its meeting in June 2018, the European Council welcomed the Commission's intention to make legislative proposals for a more effective and coherent European return policy.[173]

Cooperation with Africa to prevent movement by sea to Europe

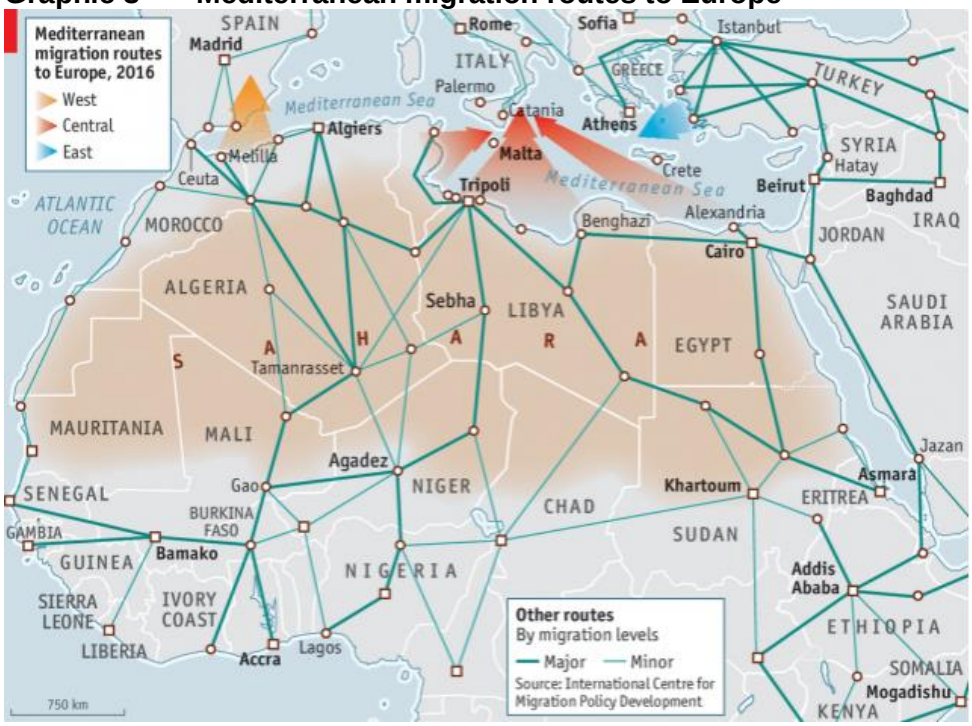
Introduction

The 'Central Mediterranean route' is the name given to the maritime route used by asylum seekers and migrants travelling between North Africa and Europe (primarily from Libya to Italy and Malta). It is considered to be the deadliest migration route in the world,[174] and has been described as posing an 'even more troubling conundrum' than the Eastern Mediterranean route (from Turkey to Greece and Cyprus) since:

> The influx is almost impossible to stem. It originates in dozens of countries, and moves via shifting networks of people-smugglers. Most of those who make it to Europe will eventually be judged economic migrants, not refugees. But Libya, without a government since 2011, is so lawless that they cannot be sent back there. Nor is it always possible to send them home, as their governments often refuse to accept them.[175]

Between 2015 and 2017, in response to periodic spikes in the number of people attempting to reach Europe via the Central Mediterranean route, the EU sought to strengthen and expand cooperation with African States of origin and transit to deter unauthorised movement. These efforts involved particularly close cooperation with Libya as the country from which most migrants and asylum seekers departed for Europe. However, given the complexity of migratory routes to Europe through north Africa (see **Graphic 3**), the EU also sought to cooperate with other African States to stem the number of people on the move.

Graphic 3 Mediterranean migration routes to Europe



Source: *The Economist*[176]

The Valletta Summit on Migration

In 2015, following a rise in the number of people trying to reach Europe via the Central Mediterranean route (see **Graphic 4**), a series of mass drownings and the European Council's call for a summit with the African Union,[177] EU and African Heads of State or Government met in Malta at the Valletta Summit on Migration to discuss how to strengthen cooperation, tackle the causes of 'irregular migration' and combat the smuggling and trafficking of people along the Central Mediterranean route. Leaders from the two regions adopted a political declaration recording their shared concern about the sharp increase in movements of refugees, asylum seekers and irregular migrants from Africa to Europe,[178] and reached agreement on a Joint Action Plan with five priorities:

- addressing the root causes of irregular migration and forced displacement, including by investing in development and poverty eradication, and addressing instability and crises;
- enhancing cooperation on legal migration and mobility, including by promoting regular channels for migration between African and European countries;
- protecting refugees and other displaced persons, including by supporting integration and strengthening the reception capacities of countries of first asylum, transit and destination, and providing humanitarian assistance to countries most affected by forced displacement;

- preventing and fighting irregular migration, migrant smuggling and trafficking in human beings, including by developing legislative and institutional frameworks, improving intelligence gathering and sharing, fighting corruption, providing information about legal migration opportunities and the dangers of irregular migration, and improving border management systems at regional and national levels; and
- advancing the return, readmission and sustainable reintegration of irregular migrants not in need of international protection, from both European and African countries of transit and destination.[179]

These activities were to be pursued within the context of the EU's existing processes for cooperating with other States and regions on migration, including its Global Approach to Migration and Mobility (GAMM) (the 'overarching framework of the EU external migration and asylum policy' defining 'how the EU conducts its policy dialogues and cooperation with non-EU countries'[180]) and various dialogues such as:

- the Africa-EU Migration, Mobility and Employment (MME) Partnership, at the continental level;
- the Euro-African Dialogue on Migration and Development (Rabat Process) and the EU-Horn of Africa Migration Route Initiative (Khartoum Process), at the regional level; and
- bilateral Mobility Partnerships or Common Agendas on Migration and Mobility with various African states (such as Nigeria, Tunisia, Morocco and Cape Verde).[181]

Graphic 4 Irregular arrivals in Europe via the Central Mediterranean route (January 2015 – June 2018)

Source: European Union[182]

The EU Trust Fund for Africa

To support the implementation of the Joint Valletta Action Plan, an Emergency Trust Fund for stability and addressing root causes of 'irregular migration' and displaced persons in Africa (EU Trust Fund for Africa) was established to help foster stability and contribute to 'better migration management' in the African States deemed most fragile and affected by migration.[183] The Trust Fund pools together money from different parts of the EU budget and contributions from individual Member States to support programmes in four key areas: job creation and economic development, supporting basic services for local communities, migration management and conflict prevention.[184] As of July 2018, 164 programmes had been approved across the three regions of the Sahel and Lake Chad, the Horn of Africa and the North of Africa, totalling approximately €3.15 billion.[185] At its meeting in June 2018, the European Council agreed to bolster the EU Trust Fund for Africa and called on Member States to contribute further to the Fund.[186]

Despite the support and economic development provided by the EU Trust Fund for Africa, it has met with criticism from groups citing concerns about its sustainability and transparency, the way in which it has been used to support various projects in Libya, its use as a 'political instrument designed to respond to a political emergency in Europe rather than development needs in partner countries',[187] and the way in which it shifts the focus of aid delivery from a State's need to its strategic position in relation to migration routes.[188]

The Partnership Framework with Third Countries

In June 2016, the European Commission set out plans for a new Partnership Framework under which the EU and its Member States would seek 'tailor made partnerships' (or 'compacts') with countries of origin, transit countries, and countries hosting large numbers of migrants and asylum seekers.[189] Asserting that 'external migratory pressure is the "new normal" both for the EU and for partner countries', the Commission sought to place new emphasis on return, readmission and reintegration by supporting countries of origin and transit to tackle the root causes of migration and forced displacement.[190] According to the Commission:

> The ultimate aim of the Partnership Framework is a coherent and tailored engagement where the Union and its Member States act in a coordinated manner putting together instruments, tools and leverage to reach comprehensive partnerships (compacts) with third countries to better manage migration in full respect of our humanitarian and human rights obligations.[191]

The Commission proposed that compliance with the compacts be rewarded with incentives, including development aid and trade deals, while non-compliance be met with unspecified 'negative incentives'.[192] The proposal sought to align EU policy on 'irregular migration' with its broader external relations and international development policies, stating that the use of incentives in relation to partner States 'should be governed by a clear understanding that the

overall relationship between the EU and that country will be guided in particular by the ability and willingness of the country to cooperate on migration management'.[193]

The Commission's first progress report on the Partnership Framework in October 2016 identified five priority countries: Niger, Nigeria, Senegal, Mali and Ethiopia.[194] Over the following year, efforts to tackle the root causes of displacement from or through these countries included:

- increased border controls;
- arrests of people involved in smuggling and trafficking operations;
- assisted voluntary returns of migrants to these countries from elsewhere (in Africa and in Europe), and from these countries to their countries of origin (with support through the EU Trust Fund for Africa); and
- efforts to stabilise border regions with deteriorating political and security situations.[195]

The Partnership Framework also included cooperation with partners beyond the five priority countries in Asia (including Bangladesh, Pakistan and Afghanistan), West Africa (including Guinea, Côte d'Ivoire and The Gambia) and the Middle East (including Egypt, Tunisia and Algeria).[196] By the time of its fifth progress report in September 2017, the Commission reported that there had been a reduction in the number of irregular crossings through the Central Mediterranean route (although arrivals along the Western Mediterranean route to Spain had increased), that 'significant progress' had been made in establishing migration partnerships with African States, but that a number of weaknesses remained, including stalled cooperation on readmission and return with some of the priority countries.[197]

Prior to its adoption, 124 non-governmental organisations (NGOs) issued a joint statement condemning the Partnership Framework, arguing that it 'risks cementing a shift towards a foreign policy that serves one single objective, to curb migration, at the expense of European credibility and leverage in defence of fundamental values and human rights'.[198] A year into its implementation, the Red Cross (EU Office) commented that although the Framework was designed to enhance cooperation with third countries with the primary objective of saving lives, 'in reality the partnership has so far largely focussed on preventing irregular migration by facilitating return measures and reinforcing border controls.'[199] In December 2017, the Migration Policy Institute assessed the Framework's progress to date, concluding that:

> the European Union's explicit goals of decreasing irregular arrivals and increasing returns of migrants without legal grounds to stay in Europe are at odds with the interests of many of its third-country partners. This misalignment of priorities can have unintended consequences. On top of this, by not engaging in a sufficiently robust and realistic assessment of the broader needs and capabilities of its partners, including their political and economic fragility and capacity to respond to shifting migration flows, the European Union may be settling unrealistic expectations or, at worst, compromising the very migration management goals it is pursuing.[200]

The Malta Declaration and subsequent developments

The EU-Turkey Statement in March 2016 resulted in a dramatic drop in the number of migrants and asylum seekers travelling to Greece from Turkey along the Eastern Mediterranean route. This drop was accompanied, however, by a concomitant rise in the number of migrants using the longer and more dangerous Central Mediterranean route.[201] Following a record high number of people attempting this crossing in 2016, the European Commission advised by January 2017 that it was once again the 'dominant route for migrants and refugees to reach Europe'.[202] In addition to the EU-Turkey Statement, the rise was attributed to a range of factors (including instability in Libya, violent conflicts and the economic situation in Sub-Saharan Africa) which were 'unlikely to fade away in the near future, resulting in sustained flows adding to the pressure borne by the most affected EU Member States, Italy and Malta'.[203] Quoting Maltese Prime Minister Joseph Muscat, the Commission warned that if no further action was taken frontline Member States would be unable to manage or absorb the new arrivals and 'the essence of the core principles of the European Union will be seriously tested'.[204]

To pre-empt such a result, EU leaders meeting at an informal summit in Malta adopted the 'Malta Declaration' on 3 February 2017, in which they agreed *inter alia* to:

- build the capacity of the Libyan Coast Guard, including through the provision of equipment, training programs and advice, and sharing information and assets;
- further efforts to disrupt the business model of smugglers;
- support host communities and work with UNHCR and IOM to ensure adequate reception capacities and conditions for migrants in Libya; and
- support the IOM in significantly stepping up assisted voluntary return activities. [205]

In August 2017, the Heads of State or Government of Chad, Niger, Libya, France, Germany, Italy and Spain, and the High Representative of the EU for Foreign Affairs and Security Policy, Federica Mogherini, built on these commitments at a 'mini summit on Africa' in Paris, France. These leaders adopted a joint declaration on 'Addressing the Challenge of Migration and Asylum' (Paris Declaration), which reaffirmed the Joint Valletta Action Plan and the importance of the EU Trust Fund for Africa.[206] The Paris Declaration proposed a comprehensive list of actions to be taken, including: addressing the root causes of irregular migration; better coordinating efforts to combat people-smuggling networks; improving programs for voluntary return and reintegration of migrants; supporting border control efforts in Chad and Niger; expanding resettlement opportunities, especially from Chad and Niger; promoting stability, resilience in communities along migration routes and vulnerable to trafficking, and border control efforts in Libya; and supporting UNHCR and IOM in ensuring humane facilities for refugees and migrants in Libya. European leaders also reaffirmed the importance of rescue at sea, and assisting Italy by stepping up relocations of people in need of international protection, and appropriately staffing Frontex and EASO. It was agreed that a coordination Task Force would be established to implement the joint actions set out in the Paris Declaration.

The UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, noted that the Paris Declaration acknowledged a shared responsibility to address the root causes of irregular migration and the human rights abuses faced by migrants, while protecting those in need of international protection.[207] However, he cautioned that these commitments 'do not disguise the fact that the plan is geared primarily towards stopping people *en route* to Europe', and that it was 'very thin on the protection of the human rights of migrants inside Libya and on the boats, and silent on the urgent need for alternatives to the arbitrary detention of vulnerable people.'[208]

Three months after the Paris mini summit, EU and African leaders gathered in Abidjan, Côte d'Ivoire for the 5th African Union – EU Summit took place on 29-30 November 2017. On the topic of mobility and migration, leaders adopted a joint statement on 'the migrant situation in Libya' stressing 'the imperative need to improve the conditions of migrants and refugees in Libya and to undertake all necessary action to provide them with the appropriate assistance and to facilitate their voluntary repatriation to their countries of origin as well as durable solutions for refugees'.[209] In the margins of the Summit, representatives of the EU and the AU, together with UN Secretary General Antonio Guterres, also agreed to establish a joint EU-AU-UN Task Force to: (i) save and protect lives of migrants and refugees, particularly inside Libya; (ii) accelerate assisted voluntary returns to countries of origin; and (iii) speed up the resettlement of those in need of international protection.[210] The work of the Task Force would be closely coordinated with the Libyan authorities.

The AU-EU-UN Tripartite Taskforce continued its work into 2018,[211] alongside other cooperative efforts between Africa and Europe. At its meeting in June 2018, the European Council affirmed that 'a partnership with Africa aiming at a substantial socio-economic transformation of the African continent' was at the 'core' of efforts to tackle irregular migration to Europe.[212]

IV Specific measures to address 'irregular migration' by sea

Introduction

As the previous sections illustrate, addressing 'irregular migration' by sea became an increasingly urgent priority for Europe from 2015 onwards, as large numbers of people attempted dangerous maritime journeys via the Central, Eastern and Western Mediterranean routes. These numbers spiked in 2015, before declining in subsequent years (see **Chart 4**). Nevertheless, preventing such migration by sea continued to be a critical priority for European policy. 2015 was also the deadliest year on record for migrants and refugees crossing the Mediterranean trying to reach Europe, with the IOM recording 3,771 deaths.[213] This record was eclipsed in 2016, with the fatality rate remaining high in subsequent years.[214]

Chart 4 Irregular arrivals by sea in Europe (2015 – July 2018)

Route	Country of arrival	2014	2015	2016	2017	2018 (to 1 August)
Central Mediterranean	Italy	170,100	153,842	181,436	119,310	18,645
	Malta	-	-	-	-	243
Eastern Mediterranean	Greece	34,442	853,650	173,561	29,595	16,114
	Cyprus	-	-	345	1,067	108
Western Mediterranean	Spain	-	-	8,162	21,663	23,048
TOTAL		**204,542**	**1,007,492**	**363,504**	**171,635**	**58,158**

Source: *IOM*[215]

Prior to 2015, one of the most important operations addressing migration across the Mediterranean was Operation Mare Nostrum, a search-and-rescue operation launched by Italy in October 2013 in response to an increase in the number of people trying to cross the Central Mediterranean and two shipwrecks off the Italian island of Lampedusa in which at least 387 migrants lost their lives.[216] The objectives of this 'military and humanitarian' operation were 'safeguarding human life at sea' and 'bringing to justice human traffickers and migrant smugglers'.[217] Mare Nostrum contributed to the rescue of around 150,000 people by the time it was terminated in October 2014.[218]

From late 2014, as the number of people crossing the Mediterranean increased, European States and various NGOs sought to address the critical gap left by the termination of Operation Mare Nostrum. Specific measures to address 'irregular migration' by sea were directed either at saving lives at sea or combatting the smuggling of migrants and trafficking of persons. From late 2017, European States' efforts began to shift to more controversial measures in support of the Libyan authorities and their work in preventing such movement. Some of these measures and operations are set out below.

Saving lives at sea

Joint Operation Triton

The termination of Italy's Operation Mare Nostrum at the end of October 2014 coincided with the launch of a new Frontex-led operation, Joint Operation Triton, which commenced operations in the Central Mediterranean on 1 November 2014. Triton was originally intended to support rather than replace Operation Mare Nostrum,[219] as it was primarily a border control and surveillance mission with a more limited search and rescue capacity, operating only up to 30 nautical miles from the Italian coastline. However, in May 2015, Triton's operational area was extended to 138 nautical miles from Sicily in Italy's south and its assets were substantially increased to include personnel, aircraft and vessels from 25 EU Member States.[220]

Joint Operations Poseidon Sea and Poseidon Rapid Intervention

Meanwhile, in the Eastern Mediterranean, Frontex-led Joint Operation Poseidon Sea (which preceded the increase in movements to Europe in 2015) continued to monitor the sea border between Greece and Turkey.[221] In December 2015, following a steep rise in the number of people arriving by boat and requests from Greece for further assistance, Frontex agreed to deploy Rapid Border Intervention Teams (RABIT) on the Greek Islands, and subsequently reached agreement with Greece on the operational plan for a new operation, Poseidon Rapid Intervention, to replace Joint Operation Poseidon Sea.[222] The new operation involved a larger number of officers and technical equipment to help strengthen Greece's border surveillance capacity, as well as its ability to save lives at sea and register and identify new arrivals.[223]

Search and rescue by NGOs in the Central Mediterranean

By early 2017, when the Central Mediterranean once more became the main route for irregular maritime migration to Europe, search and rescue had assumed even greater importance and involved a growing number of non-State actors alongside formal European efforts. Rescue vessels were operated by a range of charities and NGOs, including Migrant Offshore Aid Station (MOAS), MSF, SOS Méditerranée and Save the Children.

This increase in search and rescue capacity was met with mixed responses. According to the European Political Strategy Centre (EPSC), the institutionalisation of European maritime surveillance and rescue operations, and their increasing geographic proximity to Africa, 'fundamentally changed the business model of people smugglers'.[224] The EPSC reported that:

> As recently as 2014, people smugglers were still mainly making use of larger vessels – wooden boats, fishing vessels or decommissioned commercial vessels – that they manned themselves and that were, for the most part, able to reach Italian shores without having to rely on rescue operations. Since 2016, however, smugglers have switched to mainly placing people on cheap and completely unseaworthy inflatable dinghies that have no prospect of ever reaching the Italian shores. The smugglers themselves no longer embark on these boats, but leave it to those on board to navigate from the Libyan coast to a place where they can call for help via satellite phones and wait to be picked up.[225]

In relation to NGO rescue activities in particular, which were believed to account for as many as 22% of all rescues in the Central Mediterranean by 2016,[226] some commentators argued that they were necessary to fill the gap created when the focus of State efforts shifted from saving lives to border control.[227] By contrast, certain European and Libyan officials described NGO rescue vessels as 'migrant taxis', acting as a pull factor for 'irregular migration' and supporting smuggling and trafficking networks.[228] The EPSC described both NGO and State-led rescues as 'facilitating the work of the smugglers'.[229]

By mid-2017, NGO migrant rescue vessels were estimated to be responsible for approximately 41% of rescues in the Central Mediterranean,[230] and Italy began to take steps to limit their access to its ports. In July 2017, Italy drafted a code of conduct for NGOs undertaking migrant rescues in the Mediterranean, and threatened to deny port access to any organisation that did not sign it.[231] Several provisions proved controversial among rescue organisations, including those limiting the circumstances in which migrants could be transferred between rescue vessels at sea, and requiring organisations to permit police officers on board their vessels for the purpose of gathering evidence for possible prosecutions.[232] While some NGOs signed the Code of Conduct, others refused, saying it could impact their search and rescue capacity.[233] Organisations such as UNHCR, IOM, UNICEF, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Amnesty International and Human Rights Watch also raised concerns about the Code of Conduct and the likelihood of it putting more lives at risk.[234]

In the second half of 2017, NGO rescue operations in the Mediterranean became increasingly difficult as Italian and Libyan authorities exerted various pressures on them. In August, Italian authorities impounded the vessel of German NGO Jugend Rettet in Lampedusa on suspicion of facilitating illegal immigration.[235] There were also a series of incidents between rescue vessels and Libyan authorities, including one in which Spanish NGO Proactiva Open Arms said its ship had been seized in international waters for two hours by the Libyan Coast Guard, who ordered it to sail to Tripoli or risk being fired upon.[236] In another incident, the Libyan Coast Guard reportedly fired shots during a confrontation with German NGO Lifeline, and pressured the organisation to hand over the migrants on board its vessel.[237] By the end of 2017, several NGOs suspended their search and rescue operations in the Mediterranean, citing tensions with Libyan and/or Italian authorities as the reasons for their withdrawal.[238] By August 2018, the *Aquarius*, run by SOS Méditerranée and MSF, was reported to be the only remaining non-governmental search and rescue vessel in the Central Mediterranean.[239] In addition to the issues it faced with Libyan authorities, Italy and Malta repeatedly resisted allowing it to dock and unload rescued passengers (see below),[240] and Italy reportedly pressured Panama (the *Aquarius'* flag state) into revoking its flag and registration.[241]

Joint Operation Themis and the proposal for 'regional disembarkation platforms'

In January 2018, Frontex announced that Joint Operation Triton would be replaced by a new operation in the Central Mediterranean: Joint Operation Themis. The new operation, which began on 1 February 2018, continued the search and rescue functions of its predecessor but also had 'an enhanced law enforcement focus' and an extended operational area covering the stretches of water in which people might seek to reach Europe from Algeria, Tunisia, Libya, Egypt, Turkey and Albania.[242] Critically, Themis removed the requirement under Triton for rescued people to be brought to Italy, providing instead that the Maritime Rescue Coordination Centre (MRCC) involved in each rescue could decide which port to send boats to.[243]

During the following months, the question of where rescued people should be disembarked became increasingly critical, as Italy and Malta began to refuse to allow migrant rescue vessels to dock at their ports. These refusals triggered a series of emergency situations, which were only resolved after other EU Member States offered to take the people on board, or another State (such as Spain) offered to let vessels dock. These situations prompted renewed calls for a clearer and more predictable EU approach to disembarkation in the Mediterranean.[244]

At its meeting in June 2018, the European Council again raised the need 'to definitively break the business model of the smugglers' and called for 'a new approach based on shared or complementary actions among the Member States to the disembarkation of those who are saved in Search And Rescue operations'.[245] To do so, it called on the Council of the EU and the Commission 'to swiftly explore the concept of regional disembarkation platforms, in close cooperation with relevant third countries as well as UNHCR and IOM', which would operate in conjunction with the proposed 'controlled centres' for rapid processing in EU Member States.[246] The proposal to create regional disembarkation platforms was based on a joint UNHCR-IOM proposal for 'a regional cooperative arrangement ensuring predictable disembarkation and subsequent processing of persons rescued-at-sea'.[247] In line with this proposal, the Commission prepared some early suggestions on how the regional disembarkation platforms might operate.[248] Migrants and asylum seekers rescued in the Mediterranean either in international waters or the territorial waters of third countries, whether by EU-flagged or third country vessels, would be disembarked in third countries so long as those countries agreed to accept them, constituted 'places of safety' and would respect the principle of *non-refoulement* in line with international law. Processing would occur following disembarkation, with those found not to be in need of international protection returned to their countries of origin. Anyone with recognised protection needs might be resettled in Europe, but this outcome would not be available to all, meaning others would need to find solutions elsewhere. By the time of publication, no regional disembarkation platforms had yet been identified or established.

Combatting people smuggling and trafficking

Alongside the search and rescue efforts set out above, various EU Member States and organisations increased their commitments to combatting the smuggling of migrants and trafficking of people into Europe, both by sea and by land. These efforts were marked by a distinct militarisation, with a focus on intelligence gathering and targeting organised criminal groups. The following sections provide an overview of these efforts as they relate to smuggling and trafficking by sea across the Central and Eastern Mediterranean.

EUNAVFOR Med (Operation Sophia)

EUNAVFOR Med (now known as 'Operation Sophia') is the EU's main, military-led operation to combat smuggling networks in the Mediterranean Sea. It was launched in June 2015 with:

> a core mandate … to undertake systematic efforts to identify, capture and dispose of vessels and enabling assets used or suspected of being used by migrant smugglers or

> traffickers, in order to contribute to wider EU efforts to disrupt the business model of human smuggling and trafficking networks in the Southern Central Mediterranean and prevent the further loss of life at sea.[249]

The operation was designed to be conducted in four sequential phases.[250] It began in June 2015 with the detection and monitoring of migration networks through information gathering and patrols on the high seas,[251] before beginning phase two in October 2015 with the boarding, search, seizure and diversion on the high seas of vessels suspected of being used for human smuggling or trafficking.[252] In time, and depending on the terms of any relevant UN Security Council resolutions or State consent, it is anticipated that the operation will extend to taking operational measures against vessels and smugglers' assets inside coastal States' territories (phase three), before entering a final stage of withdrawal of forces (phase four).

Between the beginning of phase two in October 2015 and May 2018, Operation Sophia contributed to the arrest and transfer to the Italian authorities of 143 suspected smugglers and traffickers, neutralised 545 vessels, and helped rescue 44,251 people.[253] It is not, however, without its critics. When military action against smuggling networks was first announced in early 2015, Human Rights Watch warned that it should not put the lives and rights of migrants and asylum seekers in jeopardy, stating:

> Smugglers and traffickers often show a complete disregard for human life and dignity, and they should be held to account, but military action could expose migrants and asylum seekers to serious risks. Saving lives at sea and bringing people at risk in the Mediterranean safely to EU shores should be the top priority.[254]

Michael Diedring, then Secretary General of the European Council on Refugees and Exiles (ECRE), also commented that:

> The most efficient method of shutting down smugglers – a goal we agree with – is to eliminate the need for their services by providing safe and legal channels to Europe. A military operation will lead to more deaths, either directly as collateral damage in this unwinnable "war" against smugglers or indirectly as desperate refugees take even more dangerous journeys when boats are destroyed.[255]

Criticism of Operation Sophia continued after its launch. In particular, a report by the UK House of Lords' EU Committee in July 2017 labelled it a 'failed mission', citing an increase in 'irregular migration' via the Central Mediterranean and the unintended consequence of smugglers adapting to law enforcement efforts by using unseaworthy vessels, leading to a rise in deaths at sea.[256]

In 2018 Italy began agitating for a change to Operation Sophia's operational mandate, insisting that Italy no longer be the place where migrant rescue ships dock.[257] While the outcome of this move is yet to be seen, the operation is expected to continue to at least December 2018.[258]

Increased cooperation with Libya to deter 'irregular migration' by sea

Cooperation between European and African States to curb movement across the Mediterranean pre-dated the increase in arrivals in 2015 and, as set out above, extends to a range of measures to address the root causes of displacement from source countries and onward movement through transit countries. However, the nature and scope of European cooperation with Libya in particular has expanded dramatically since 2016 onwards, as Libya became one of the main departure points to Europe. Notably:

- in June 2016, the Council of the EU decided to extend the mandate of Operation Sophia until July 2017 and add two supporting tasks: (i) capacity building and training the Libyan Coast Guard and navy; and (ii) contributing to information sharing and to the implementation of the UN arms embargo on the high seas off the coast of Libya;[259]
- on February 2017, Italy signed a Memorandum of Understanding with the Libyan Government of National Accord (GNA) on 'development, the fight against illegal immigration, human trafficking and fuel smuggling and … reinforcing the security of borders', pursuant to which Italy agreed to provide technical support and training to Libyan authorities involved in combatting irregular migration;[260]
- also in February 2017, the European Council adopted the Malta Declaration, with its strong focus on training, equipping and supporting the Libyan Coast Guard and reaffirming EU support to Italy in the implementation of its agreement with Libya;
- in July 2017, Operation Sophia's mandate was again extended and expanded to include establishment of a monitoring mechanism of Libyan Coast Guard trainees;[261]
- in August 2017, the Italian Parliament approved a new naval mission to deploy several ships in Libyan territorial waters 'with the stated aim to support the Libyan authorities in curbing migrant flows';[262]
- in October 2017, at a European Council meeting, Member States reaffirmed 'the significant contribution made by Italy on the Central Mediterranean route' and 'the importance of working with the Libyan authorities and all neighbours of Libya to enhance border management capacity and underscores the urgency of supporting the development of the local communities in Libya along the migratory routes';[263] and
- in 2018, Italy donated patrol vessels to the Libyan Coast Guard,[264] and the two countries reactivated a 2008 'friendship treaty' providing for significant Italian investment in Libya in exchange for Libya increasing its efforts to stop irregular migration to Europe from its territory.[265]

These efforts to prevent and deter movement from Libya have been coupled with some measures to improve the reception conditions and treatment of asylum seekers and migrants in that country. For example, in April 2017, the EU Trust Fund for Africa approved a €90 million programme to 'reinforce protection and resilience of migrants, refugees and host communities' and 'support improved migration management' in Libya.[266]

However, despite the European Council reaffirming at its meeting in June 2018 that the EU would 'continue to stand by Italy and other frontline Member States' in their efforts to stop

smugglers operating out of Libya and elsewhere, including by supporting the Libyan Coast Guard,[267] European cooperation with Libya has proven to be one of the more controversial aspects of the EU's asylum policies. Key concerns include:

- the possibility that Italian and EU funds may be used to fund armed groups and militias in Libya, who may themselves be involved in smuggling;
- reports of violence, threats and intimidation by the Libyan Coast Guard against asylum seekers, migrants, and people involved in rescues;
- the safety of people intercepted by, or handed back to, Libyan authorities – both while at sea and after returning to land; and
- the extent to which EU and Italian cooperation with Italy may have resulted in asylum seekers and migrants being trapped in dire conditions within Libya.

In October 2015, UNHCR published its position on returns to Libya, stating that Libya did not meet the criteria for being designated as a safe place for disembarkation following rescue at sea.[268] In December 2016, a joint report by the UN Support Mission in Libya and the Office of the High Commissioner for Human Rights (OHCHR) on human rights abuses against migrants in Libya stressed that Libya was not a safe country for return of migrants, and urged all States to suspend forcible returns until the security and human rights situation improved.[269]

Following Italy's decision to deploy vessels in Libyan territorial waters in August 2017, the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, published an opinion identifying the EU's commitment to supporting the Libyan Coast Guard as a 'moral – and legal – dilemma' because the Libyan authorities not only returned people to detention centres where they were 'held arbitrarily, and face torture, rape and other serious human rights violations [in] clear breach of the international law prohibition of "*non-refoulement*"', but had also shot at boats trying to rescue migrants in distress and, '[l]ike the militias onshore … also sometimes beat, rob and even shoot the migrants they intercept'.[270]

The deployment of Italian vessels in Libyan waters also caused the EU Commissioner for Human Rights, Nils Muižnieks, to write to the Italian Minister of the Interior asking him to clarify the kind of support operations the Italian government expected to provide to the Libyan authorities and 'what safeguards Italy has put in place to ensure that persons, should they be intercepted or rescued by Italian vessels in Libyan territorial waters, are not subsequently exposed to a situation in which they would face a real risk of treatment or punishment contrary to Article 3 of the [European Convention on Human Rights]'.[271] He advised that the findings of the European Court of Human Rights in *Hirsi Jamaa v Italy*,[272] although dealing with the return to Libya of people intercepted in international waters, 'continue, in my view, to be relevant also in the context of the situation which might arise from operations in Libyan territorial waters'.[273] He also noted that:

> In light of recent reports from the United Nations and various non-governmental organisations on the current human rights situation of migrants in Libya, which paint a picture that is, in my view, no less disturbing than in 2012, handing over individuals to

the Libyan authorities or other groups in Libya would expose them to a real risk of torture or inhuman or degrading treatment or punishment.[274]

A response from the Italian Minister of the Interior clarified that Italian ships would not be returning rescued asylum seekers and migrants to Libya directly.[275] Instead, Italy's support for Libya would focus on providing training, equipment and technical support to the Libyan Coast Guard to reinforce its operational autonomy, with the safeguarding of human rights in Libya an essential component of Italy's strategy. To this end, the letter drew attention to a recent meeting between Italy, Libya, UNHCR and IOM which had resulted in a plan of action aimed at ensuring respect for human rights in Libyan reception centres, resettling people in third countries and assisted voluntary repatriation of those not in need of international protection.

Despite these assurances, human rights organisations and NGOs continued to express concerns about the treatment of asylum seekers and migrants in Libya, and the human rights implications of European involvement in policies seeking to prevent people moving from Libya to Europe.[276] These concerns were heightened following reports in September 2017 that the Anas al-Dabbashi brigade (a powerful armed group allegedly involved in smuggling activities itself) had struck a deal with the Libyan Government of National Accord to stop the departure of boats for Italy in exchange for state security jobs,[277] and again in November 2017 following the release of video footage appearing to show African migrants being sold as slaves at a market in Libya.[278] The UN High Commissioner for Human Rights described the suffering of detained migrants in Libya as 'an outrage to the conscience of humanity' and warning that 'what was an already dire situation has now turned catastrophic'.[279] He cautioned that 'the international community cannot continue to turn a blind eye to the unimaginable horrors endured by migrants in Libya', and that 'the European Union's policy of assisting the Libyan Coast Guard to intercept and return migrants in the Mediterranean was inhuman'.[280]

It has been suggested that EU support for policies that involve returning rescued asylum seekers and migrants to Libya has led to a worsening of conditions in Libyan detention centres due to overcrowding,[281] and indeed may have contributed to a rising death toll in the Central Mediterranean[282] despite the total number of people crossing the Mediterranean to reach Europe in mid-2018 dropping to pre-2014 levels.[283]

NATO involvement in combatting smuggling and trafficking

In February 2016 the North Atlantic Treaty Organization (NATO) Defence Ministers agreed to deploy Standing NATO Maritime Group 2 to the Aegean Sea to 'conduct reconnaissance, monitoring and surveillance of illegal crossings', with NATO Secretary General Jens Stoltenberg stressing that the mission was 'not about stopping or pushing back refugee boats' but rather contributing 'critical information and surveillance to help counter human trafficking and criminal networks'.[284]' NATO's involvement reportedly came in response to a joint request from Greece, Turkey and Germany, after both Greece and Turkey previously rejected the possibility of the other's navy operating in their waters.[285] In March 2016,

NATO announced that it had expanded its mission into Greek and Turkish territorial waters, with the consent of and in collaboration with those States.[286] A further continuation of Standing NATO Maritime Group 2 patrols in the Aegean Sea was agreed to at a NATO summit in February 2017, despite objections from Turkey, with the Greece Defence Minister stating 'the prevention of refugee flows with NATO ships will continue as long as there are prospective illegal migrants or refugees on the other side of the Aegean'.[287]

Separately from these patrols in the Aegean by Standing NATO Maritime Group 2, NATO agreed at the Warsaw Summit in July 2016 to launch Operation Sea Guardian alongside Operation Sophia in the Central Mediterranean.[288] While the focus of Operation Sea Guardian's mission was enhancing maritime security in general rather than search and rescue or addressing forced migration, it did provide general maritime situational awareness to other EU operations in the area.[289]

V Creating safe and legal pathways to protection in Europe

Resettlement

A common EU resettlement scheme

At its Special Meeting in April 2015, the European Council committed to setting up an EU-wide 'voluntary pilot project on resettlement'.[290] The following month, the Commission picked up on the importance of resettlement in the European Agenda on Migration, noting the disparity in contributions to global resettlement by EU Member States and stating:

> In addition to the relocation of those already on EU soil, the EU has a duty to contribute its share in helping displaced persons in clear need of international protection. This is a joint responsibility of the international community, with the [UNHCR] given the task of identifying when people cannot stay safely in their own countries. Such vulnerable people cannot be left to resort to the criminal networks of smugglers and traffickers. There must be safe and legal ways for them to reach the EU.[291]

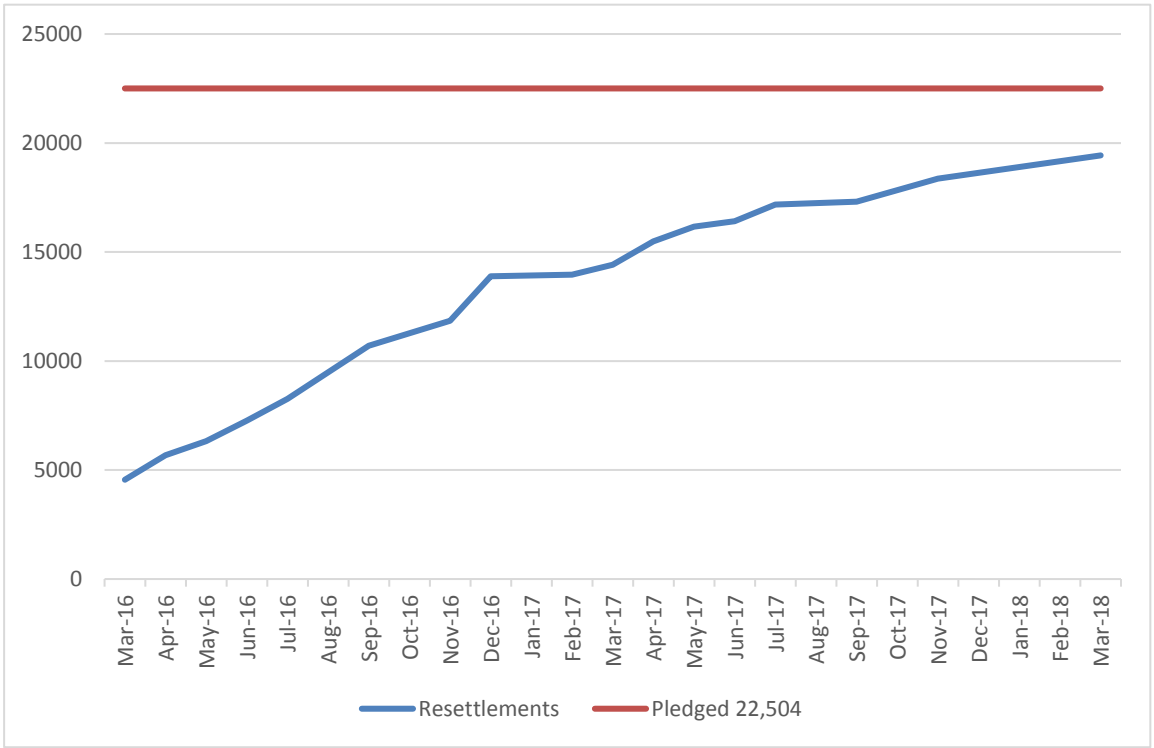
Subsequently, in June 2015, the Commission recommended the creation of a common EU resettlement scheme for 20,000 people in need of international protection over a two-year period.[292] On 20 July 2015, 27 of the 28 EU Member States (excluding Hungary), together with the four Dublin Associated States (Iceland, Liechtenstein, Norway, and Switzerland), voluntarily pledged to resettle 22,504 persons in clear need of protection and referred by UNHCR through multilateral and national schemes.[293] Priority regions for resettlement would include North Africa, the Middle East and the Horn of Africa, although in practice most States chose to focus on resettlement of Syrians in Jordan, Lebanon and Turkey. These pledges constituted the first common EU effort on resettlement and, for some States, their first experience with resettlement.[294] While the pledges of some States represented only part of their national resettlement quotas, others pledged their entire quotas or places on top of their

national quotas.[295] The scheme was supported by EU funds, with EU Member States eligible to receive a lump sum for each person they resettled.[296]

The resettlement scheme faced a number of early challenges, including reluctance by some Member States to resettle, delays in resettlement due to large numbers of people arriving in their territories in an irregular way, and a lack of reception facilities and resettlement capacity (especially in Member States new to resettlement).[297] The fact that the scheme comprised a loosely-coordinated compilation of national programmes (with substantial differences) rather than a clear resettlement framework with common rules and procedures, and had no timetable of periodic intervals according to which resettlement should have been progressing, also made it difficult for the Commission to monitor the scheme's implementation effectively.[298]

Nevertheless, by July 2017, just over three quarters of the pledged places had been filled, with 17,179 people resettled in 22 States (see **Chart 5**).[299] By March 2018 a further 2,253 places had been filled, bringing the total number of people resettled under the conclusions of 20 July 2015 to 19,432.[300] Six States that had pledged places in July 2015 had not yet resettled under the scheme by this time, and ten others had not yet completed filling their places.[301]

Chart 5 **Resettlement progress: March 2016 – March 2018**



Source: *European Commission*[302]

When the EU-Turkey Statement began to be applied in early April 2016, the Commission reported that it expected most of the approximately 16,800 (of 22,504) resettlement places yet to be filled at that time to be used for resettlement of Syrians from Turkey under the 'one-for-one' mechanism set out in the Statement.[303] However, by March 2018, only 4,449 of the 19,432 resettlement places that had been filled had been used for resettlement under the EU-Turkey Statement.[304]

As noted above, separately from this resettlement scheme and the arrangements envisioned under the EU-Turkey Statement, some States also began resettling Syrians from Turkey after September 2016 to meet their share of the 54,000 places made available for this purpose under the emergency relocation scheme.

Proposal for a Union Resettlement Framework

In July 2016, one year into the operation of the resettlement scheme set out above, the European Commission put forward a proposal to introduce a Union Resettlement Framework – a 'more structured, harmonised, and permanent framework' for resettlement across the EU with unified procedures, to complement existing national and multilateral resettlement initiatives.[305]

Key features of the proposed framework included that:

- the Council of the EU would adopt annual resettlement plans determining the maximum total number of people to be resettled, the number to be resettled by each Member State, and broad geographical priorities;
- the Commission would establish targeted resettlement schemes, consistent with the Council's annual resettlement plans, including the precise number of people to be resettled, the third countries or geographical regions from which resettlement should occur, descriptions of the target groups eligible for resettlement, the starting date and duration of each scheme, and the applicable resettlement procedure; and
- Member States would be entitled to receive EU funds of €10,000 per resettled person resettled (through the EU Asylum Migration and Integration Fund).[306]

The Commission's proposal included provisions on eligibility and exclusion, providing that:

- resettlement would be available not only to refugees and other people outside their countries of origin who would face a real risk of serious harm if they were to return, but also to people displaced within their own countries due to a well-founded fear of persecution or for whom there were substantial grounds for believing they would face a real risk of suffering serious harm;
- people falling into at least one of the specified 'vulnerability categories',[307] or with family ties to people legally residing in an EU Member State, would also be eligible for resettlement; and
- certain people would be excluded from resettlement, including anyone who:
    - had irregularly entered, irregularly stayed in, or attempted to irregularly enter a Member State during the past five years;

- had been resettled by another Member State under an existing EU resettlement initiative; and/or
- had been refused resettlement by a Member State during the past five years.[308]

The Commission's proposal also set out two common standard procedures for resettlement – an ordinary and an expedited resettlement procedure.[309] The ordinary procedure would reflect the existing resettlement practices usually followed by Member States, with full refugee status determination performed in the host country prior to referral for resettlement. By contrast, the expedited procedure would apply where 'specific humanitarian grounds or urgent legal or physical protection needs' warranted rapid admission. In such cases, only the person's eligibility for subsidiary protection would be assessed, although they would be permitted to apply for international protection in the relevant Member State after arrival.

As of July 2018, the proposal for a Union Resettlement Framework was still being debated.[310]

The '50,000' resettlement scheme: October 2017 – October 2019

In July 2017, the Commission invited EU Member States to continue the coordinated EU-level approach to resettlement by submitting new resettlement pledges for 2018, and in September 2017 it recommended that a further 50,000 resettlement places be pledged for fulfilment by 31 October 2019 'in order to bridge the transition between these schemes and the Union Resettlement Framework'.[311] The Commission advised that pledges should focus on resettlement of Syrians and other people displaced by the conflict in Syria currently being hosted in Turkey, Lebanon and Jordan, and on the 'stabilisation of the situation in the central Mediterranean' through resettlement from Libya, Niger, Chad, Egypt, Ethiopia and Sudan. €500 million of EU funds were made available through the Asylum Migration and Integration Fund for pledges under this recommendation, and the Commission affirmed it would review its implementation by 31 October 2018 to determine whether Member States should be invited to update their pledges.

By March 2018, 19 EU Member States had pledged almost 40,000 resettlement places (of which 27 000 were earmarked for Syrians in Turkey, Jordan and Lebanon, and around 7 000 for people along the Central Mediterranean route),[312] and 1,855 had already been filled.[313]

Establishing asylum processing centres outside the EU

The idea of establishing asylum processing centres outside European territory has been debated since the 1980s, but the legal and practical obstacles to such policies have long proven insurmountable.[314] Some commentators have also noted that while 'external' or 'regional' processing policies are raised in public debates and high-level EU discussions when the number of 'irregular migrants' and asylum seekers arriving in Europe is high, they tend to disappear from the agenda as soon as arrival rates return to normal levels.[315]

In late 2016 and early 2017, the prospect of establishing asylum processing centres outside the EU re-emerged as a result of Austrian proposals for the 'Australian model' to be adopted in Europe, including through the establishment of processing centres in countries such as Niger and Jordan.[316] Subsequently, in July 2017, French President Emmanuel Macron also made public statements appearing to support the creation of 'hotspots' in Libya 'with or without' EU support, where asylum claimants would be pre-screened 'to avoid people taking crazy risks when they are not all eligible for asylum'.[317] The suggestion triggered a strong backlash from aid organisations and certain other EU countries,[318] causing the French government to clarify that the proposal had been to establish 'missions' of the French Office for the Protection of Refugees and Stateless people (OFPRA) in African countries rather than 'hotspots'.[319]

The prospect of establishing asylum processing centres outside the EU was again raised in June 2018, this time by Italy, which proposed the establishment of 'reception and identification centres' in Libya and possible elsewhere in North Africa.[320] Libya immediately rejected these proposals,[321] as did other North African States.[322] However, the possibility of centres in North Africa did not disappear entirely, as the EU continued to debate the possibility of setting up regional disembarkation platforms which would likely necessitate the creation of processing and residence arrangements in some form in the countries where people were disembarked.

Madeline Gleeson with Rachel Chadwick

Endnotes

[1] UNHCR, *Global Trends: Forced Displacement in 2015*, 20 June 2016, 2.

[2] UNHCR, 'Worldwide displacement hits all-time high as war and persecution increase', 18 June 2015, http://www.unhcr.org/en-au/news/latest/2015/6/558193896/worldwide-displacement-hits-all-time-high-war-persecution-increase.html.

[3] UNHCR, 'A million refugees and migrants flee to Europe in 2015', 22 December 2015, http://www.unhcr.org/en-au/news/press/2015/12/567918556/million-refugees-migrants-flee-europe-2015.html.

[4] Steve Scherer and Gavin Jones, '400 migrants die in shipwreck off Libya, survivors say', *Reuters* (online), 15 April 2015, https://www.reuters.com/article/us-italy-migrant-shipwreck/400-migrants-die-in-shipwreck-off-libya-survivors-say-idUSKBN0N51Y120150414; Alessandra Bonomolo and Stephanie Kirchgaessner, 'UN says 800 migrants dead in boat disaster as Italy launches rescue of two more vessels', *The Guardian* (online), 21 April 2015, https://www.theguardian.com/world/2015/apr/20/italy-pm-matteo-renzi-migrant-shipwreck-crisis-srebrenica-massacre.

[5] European Council, *Special Meeting of the European Council – Statement,* 23 April 2015, http://www.consilium.europa.eu/en/press/press-releases/2015/04/23/special-euco-statement/.

[6] European Commission, *A European Agenda on Migration,* COM(2015) 240 final, 13 May 2015.

[7] ibid, 2.

[8] For more information see European Commission, 'European Agenda on Migration – Legislative documents', regularly updated, https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package_en.

[9] For more information see European Parliament, 'Legislative train schedule: towards a new policy on migration', regularly updated, http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration; European Parliament, 'Legislative train schedule: towards a new policy on migration: European Agenda on Migration', regularly updated, http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/package-european-agenda-on-migration.

[10] European Council, *Leaders' Agenda: Migration: way forward on the external and internal dimension,* December 2017, http://www.consilium.europa.eu//media/32083/en_leaders-agenda-note-on-migration_.pdf, 1.

[11] ibid, 1.

[12] European Council, *European Council conclusions*, 28 June 2016, http://www.consilium.europa.eu/en/press/press-releases/2018/06/29/20180628-euco-conclusions-final/.

[13] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [2013] OJ L 180/31. The Dublin Regulation applies in the 28 EU Member States plus four 'associated' States: Iceland, Liechtenstein, Norway and Switzerland.

[14] European Commission, 'Identification of applicants (EURODAC)', 8 August 2018, https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/identification-of-applicants_en.

[15] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) [2011] OJ L 337/9.

[16] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [2013] OJ L 180/60.

[17] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L 180/96.

[18] European Commission, 'Commission presents options for reforming the Common European Asylum System and developing safe and legal pathways to Europe', 6 April 2016, http://europa.eu/rapid/press-release_IP-16-1246_en.htm. See also European Commission, *Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe,* COM(2016) 197 final, 6 April 2016.

[19] European Commission, 'Towards a sustainable and fair Common European Asylum System', 4 May 2016, http://europa.eu/rapid/press-release_IP-16-1620_en.htm; European Commission, 'Completing the reform of the Common European Asylum System: towards an efficient, fair and humane asylum policy', 13 July 2016 http://europa.eu/rapid/press-release_IP-16-2433_en.htm.

[20] European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*, COM(2016) 270 final, 4 May 2016.

[21] European Commission, Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, COM(2016) 466 final, 13 July 2016; European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU*, COM(2016) 467 final, 13 July 2016; European Commission, *Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)*, COM(2016) 465 final, 13 July 2016.

[22] European Council, n 12, para 12.

[23] See Detelin Ivanov, 'Reform of the Dublin system', *European Parliamentary Research Service,* 10 March 2017, http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586639/EPRS_BRI%282016%29586639_EN.pdf, 6-8.

[24] International Commission of Jurists, "Procedural rights in the proposed Dublin IV Regulation": Comments of the International Commission of Jurists on specific procedural measures in the Recast of the Dublin Regulation, 27 September 2016, https://www.icj.org/wp-content/uploads/2016/09/EU-Dublin-IV-Regulation_Comment-Advocacy-Analysis-Brief-2016-ENG.pdf; Human Rights Watch, 'EU: Asylum Proposals Go in Wrong Direction', 8 April 2016, https://www.hrw.org/news/2016/04/08/eu-asylum-proposals-go-wrong-direction; Jesuit Refugee Service, *The CEAS reform package: the death of asylum by a thousand cuts?*, January 2017, https://en.jrs.net/assets/Regions/IOR/media/files/JRS-EuropeCEASreformWorkingPaper6.pdf.

[25] UNHCR, *Comment on the European Commission proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the member state responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) – COM (2016) 270*, December 2016, http://www.refworld.org/pdfid/585cdb094.pdf, 11.

[26] Of the EU Member States, Bulgaria, Croatia, Cyprus, Ireland, Romania and the United Kingdom have not joined the Schengen Area.

[27] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders [2016] OJ L 77/1 (Schengen Borders Code), art 25.

[28] ibid, arts 27-28.

[29] ibid, art 25(1).

[30] Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen [2013] OJ L 295/27.

[31] Schengen Borders Code, art 21.

[32] ibid, arts 21(3), 29.

[33] ibid, art 29(1).

[34] European Commission, 'Commission discusses draft Schengen Evaluation Report on Greece', 27 January 2016, http://europa.eu/rapid/press-release_IP-16-174_en.htm.

[35] Council Implementing Decision setting out a Recommendation on addressing the serious deficiencies identified in the 2015 evaluation of the application of the Schengen acquis in the field of management of the external borders by Greece, 5985/16, 12 February 2016.

[36] ibid, 2-3.

[37] European Commission, Commission Implementing Decision of 24.2.2016 setting out a recommendation on specific measures to be taken by the Hellenic Republic following the evaluation report of 2 February 2016, C(2016) 1219 final, 24 February 2016.

[38] Council of the European Union, Schengen evaluation of Greece – 3rd Follow-up report on the implementation of the Action Plan on addressing the "serious" deficiencies identified in the 2015 evaluation on the application of the Schengen acquis in the field of management of the external borders, 6311/17, 20 February 2017, 2-3.

[39] European Commission, *Back to Schengen – A Roadmap,* COM(2016) 120 final, 4 March 2016, 9-10.

[40] ibid, 10 (at n 19).

[41] ibid, 2.

[42] ibid.

[43] Council Implementing Decision (EU) 2016/894 of 12 May 2016 setting out a recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk [2016] OJ L 151/8, 9.

[44] ibid.

[45] ibid, 11.

[46] See eg Council of the European Union, *Monthly Summary of Council Acts – February 2017*, 11299/2/17 REV 2, 28 July 2017, 6; Council of the European Union, *Monthly Summary of Council Acts – May 2017*, 11472/17, 18 August 2017, 12.

[47] See eg Council of the European Union, 28 July 2017 (n 46), 7-8; Council of the European Union, 18 August 2017 (n 46), 13-14.

[48] Council Implementing Decision (EU) 2016/1989 of 11 November 2016 setting out a recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk [2016] OJ L 306/13; Council Implementing Decision (EU) 2017/246 of 7 February 2017 setting out a Recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk [2017] OJ L 36/59; Council Implementing Decision (EU) 2017/818 of 11 May 2017 setting out a Recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk [2017] OJ L 122/73.

[49] European Commission, *Communication from the Commission to the European Parliament and the Council* on *preserving and strengthening Schengen*, COM/2017 570 final, 27 September 2017, 4. See also: Schengen Borders Code [2016] OJ L 77/1, art 29(1).

[50] European Commission, 'Temporary reintroduction of border control', undated, https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control_en. See also: Jakub Jasiewicz, 'A not-so-temporary reinstatement of internal border controls?', *Leiden Law Blog,* 16 May 2018, http://leidenlawblog.nl/articles/a-not-so-temporary-reinstatement-of-internal-border-controls.

[51] European Commission, *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the rules applicable to the temporary reintroduction of border control at internal borders*, COM(2017) 571 final, 27 September 2017, 2-3.

[52] ibid, 11-17.

[53] Council of the EU, *Schengen internal border controls: Council agrees negotiating mandate on the amendment of the Schengen borders code,* 19 June 2018, http://www.consilium.europa.eu/en/press/press-releases/2018/06/19/schengen-internal-border-controls-council-agrees-negotiating-mandate-on-the-amendment-of-the-schengen-borders-code/pdf.

[54] Rick Lyman, 'Hungary Seals Border With Croatia in Migrant Crackdown', *New York Times* (online), 16 October 2015, https://www.nytimes.com/2015/10/17/world/europe/hungary-croatia-refugees-migrants.html; Vedran Pavlic, 'Barbed wire fence on border with Croatia still not removed', *Total Croatia New* (online), 8 November 2017, https://www.total-croatia-news.com/politics/23282-barbed-wire-on-slovenian-border-with-croatia-still-not-removed; Philip Chrysopoulos, 'Bulgaria raises new 30K fence on border with Greece and Turkey', *Greece Reporter* (online), 11 August 2016, http://greece.greekreporter.com/2016/08/11/bulgaria-raises-new-30km-fence-on-border-with-greece-and-turkey/; Matt Broomfield, 'Calais Jungle wall is completed two months after all the refugees were driven out', *Independent* (online), 13 December 2016, https://www.independent.co.uk/news/world/europe/calais-jungle-refugee-camp-wall-completed-emptied-two-months-cleared-a7472101.html.

[55] 'Construction of fence at Bulgaria-Turkey border completed: Tsvetan Tsvetanov', *BNR Radio Bulgaria* (online), 6 November 2017, http://bnr.bg/en/post/100840990/construction-of-fence-at-bulgaria-turkey-border-completed-tsvetan-tsvetanov; Alasdair Sandrod, 'Hungary completes new anti-migrant border fence with Serbia', *Euronews,* 28 April 2017, http://www.euronews.com/2017/04/28/hungary-completes-new-anti-migrant-border-fence-with-serbia; 'Austria begins erecting fence on border with Slovenia', *Deutsche Welle* (online), 7 December 2015, https://www.dw.com/en/austria-begins-erecting-fence-on-border-with-slovenia/a-18900764; 'Walls go up in Europe again: Austria raises "migrant fence"', *The Local (Italy)* (online), 11 April 2016, https://www.thelocal.it/20160411/austria-begins-building-anti-migrant-barrier-on-italy-boarder; 'Macedonia finishes fence at Greek border to stem flow of asylum seekers', *ABC News* (online), 30 November 2015, http://www.abc.net.au/news/2015-11-30/macedonia-finishes-fence-at-greek-border-to-stop-migrants/6984826.

[56] 'Turkey finishes construction of 764-km security wall on Syria border', *Daily Sabah* (online), 9 June 2018, https://www.dailysabah.com/war-on-terror/2018/06/09/turkey-finishes-construction-of-764-km-security-wall-on-syria-border; Orhan Coskun and Tuvan Gumrukcu, 'Turkey to complete wall on Iranian border by spring 2019', *Reuters* (online), 10 January 2018, https://uk.reuters.com/article/uk-turkey-construction-toki-interview/turkey-to-complete-wall-on-iranian-border-by-spring-2019-idUKKBN1EZ179.

[57] See, for example: Bostjan Sefic, State Secretary at the Slovenian Interior Ministry, quoted in Marja Novak, 'Slovenia putting up fence along border with Croatia to control migrant flow', *Reuters* (online), 11 November 2015, https://www.reuters.com/article/us-europe-migrants-slovenia/slovenia-putting-up-fence-along-border-with-croatia-to-control-migrant-flow-idUSKCN0T00I120151111; Dimitris Avramopoulos, EU Commissioner for Migration, Home Affairs and Citizenship, cited in Gabriela Baczynska and Sara Ledwith, 'How Europe built fences to keep people out', *Reuters* (online), 4 April 2016, https://www.reuters.com/article/us-europe-migrants-fences-insight/how-europe-built-fences-to-keep-people-out-idUSKCN0X10U7.

[58] UNHCR, 'Border fences and internal border controls in Europe', March 2017, https://data2.unhcr.org/fr/documents/download/55249.

[59] European Council (n 5), para (o).

[60] European Parliament resolution of 29 April 2015 on the latest tragedies in the Mediterranean and EU migration and asylum policies (2015/2660(RSP)) [2016] OJ C 346/47, para H(9).

[61] European Commission (n 6), 4.

[62] European Commission, Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece, COM(2015) 286 final, 27 May 2015, 5.

[63] Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece [2015] OJ L 239/146.

[64] European Commission, *Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy, Greece and Hungary*, COM(2015) 451 final, 9 September 2015.

[65] Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece [2015] OJ L 248/80.

[66] Eszter Zalan, 'Hungary rejects EU offer to take refugees', *EU Observer,* 11 September 2015, https://euobserver.com/migration/130217.

[67] The majority of eligible applicants were from Syria and Eritrea. Other countries that appeared on the relocation eligibility list at various times throughout this period included the Bahamas, Bahrain, Bhutan, Burundi, the Central African Republic, Costa Rica, Dominica, Iraq, Laos, the Maldives, Mozambique, Qatar, Saint Vincent and the Grenadines, Saudi Arabia, the Seychelles, Swaziland, the United Arab Emirates, Yemen and British overseas countries and territories.

[68] For the number of people allocated for relocation to each Member State, see European Commission, *Relocation: EU solidarity between Member States*, November 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20171114_relocation_eu_solidarity_between_member_states_en.pdf, 2.

[69] Council Decision (EU) 2016/1754 of 29 September 2016 amending Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece [2016] OJ L 268/82; European Commission, *Proposal for a Council Decision amending Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece*, COM(2016) 171 final, 21 March 2016.

[70] UNHCR, 'First group of asylum seekers relocated from Italy to Sweden', 9 October 2015, http://www.unhcr.org/5617cbaf6.html; UNHCR, 'First asylum-seekers relocate from Greece to Luxembourg', 4 November 2015, http://www.unhcr.org/en-au/news/latest/2015/11/563a3c736/first-asylum-seekers-relocate-greece-luxembourg.html.

[71] First to Fifteenth Reports on Relocation and Resettlement, available at European Commission, 'European Agenda on Migration – Legislative documents', regularly updated, https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package_en.

[72] Riccardo Mattei quoted in: Megan Williams, 'EU refugee relocation makes lethargic start', *Deutsche Welle* (online), 10 December 2015, https://www.dw.com/en/eu-refugee-relocation-makes-lethargic-start/a-18902376.

[73] UNHCR, 'EU Emergency Relocation Mechanism', 27 September 2017, https://data2.unhcr.org/en/documents/download/60076.

[74] European Commission, *Member States' Support to Emergency Relocation Mechanism (as of 9 July 2018*), 18 September 2018, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf.

[75] See eg Amnesty International, 'EU: Countries have fulfilled less than a third of their asylum relocation promises', 25 September 2017, https://www.amnesty.org/en/latest/news/2017/09/eu-countries-have-fulfilled-less-than-a-third-of-their-asylum-relocation-promises/.

[76] ECRE, *Relocation Not Procrastination,* 6 September 2017, https://www.ecre.org/wp-content/uploads/2017/09/Policy-Note-07.pdf, 2. See also UNHCR, 'UNHCR calls for the EU relocation scheme to continue', 26 September 2017, http://www.unhcr.org/en-au/news/press/2017/9/59ca64354/unhcr-calls-eu-relocation-scheme-continue.html.

[77] European Commission, *Progress report on the Implementation of the European Agenda on Migration*, COM(2018) 250 final, 14 March 2018, 19.

[78] Dominique Bauer, Gergő Hajzer and Dilyara Zeletdinova, 'Emergency relocation and the future of solidarity in the European Union – a fresh approach?', *Regional Academy on the United Nations,* December 2015, http://www.ra-un.org/uploads/4/7/5/4/47544571/emergency_relocation.pdf, 15.

[79] 'Migrant crisis: EU ministers approve disputed quota plan,' *BBC* (online), 22 September 2015, http://www.bbc.com/news/world-europe-34329825.

[80] 'Refugee quotas are wrong, says Austria's foreign minister', *EU Observer,* 3 October 2016, https://euobserver.com/tickers/135327.

[81] Council Implementing Decision (EU) 2016/408 of 10 March 2016 on the temporary suspension of the relocation of 30% of applicants allocated to Austria under Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece [2016] OJ L 74/36.

[82] 'Austria wants exemption from EU refugee relocation system', *Deutsche Welle* (online)*,* 28 March 2017, https://www.dw.com/en/austria-wants-exemption-from-eu-refugee-relocation-system/a-38163635; European Commission, *Tenth report on relocation and resettlement*, COM(2017) 202 final, 2 March 2017, 4.

[83] European Commission, 'Relocation and Resettlement: Commission calls on all Member States to deliver and meet obligations', 16 May 2017, http://europa.eu/rapid/press-release_IP-17-1302_en.htm.

[84] UNHCR (n 73)

[85] Council Decision (EU) 2016/946 of 9 June 2016 establishing provisional measures in the area of international protection for the benefit of Sweden in accordance with Article 9 of Decision (EU) 2015/1523 and Article 9 of Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece [2016] OJ L 157/23.

[86] UNHCR (n 73); European Commission (n 74).

[87] *Slovak Republic and Hungary v Council of the European Union* (joined cases C-643/15 and C-647/15), Court of Justice of the European Union, 6 September 2017. Summary of judgment available at https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-09/cp170091en.pdf.

[88] 'Hungary to fight EU migrant quotas despite setback,' *Al Jazeera* (online) 9 September 2017, http://www.aljazeera.com/news/2017/09/hungary-fight-eu-migrant-quotas-setback-170908153009948.html.

[89] Michael Sinner and Alastair Macdonald, 'EU refugee court ruling triggers new east-west feuding,' *Reuters* (online), 6 September 2017, https://www.reuters.com/article/us-europe-migrants-easteurope/eu-refugee-court-ruling-triggers-new-east-west-feuding-idUSKCN1BG35V.

[90] European Commission, 'Relocation: Commission launches infringement procedures against the Czech Republic, Hungary and Poland', 14 June 2017, http://europa.eu/rapid/press-release_IP-17-1607_en.htm; European Commission, 'Relocation: Commission refers the Czech Republic, Hungary and Poland to the Court of Justice', 7 December 2017, http://europa.eu/rapid/press-release_IP-17-5002_en.htm. See also ECRE, 'CJEU: Actions brought against Poland, Hungary and the Czech Republic for failing to fulfil relocation obligations', 30 March 2018, https://www.ecre.org/cjeu-actions-brought-against-poland-hungary-and-the-czech-republic-for-failing-to-fulfil-relocation-obligations/.

[91] UNHCR (n 73).

[92] European Council (n 74).

[93] European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person, COM(2015) 450 final, 2015/0208 (COD), 9 September 2015, 2.

[94] European Commission, *Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe*, COM(2016) 197 final*,* 6 April 2016, 4.

[95] ibid, 7-8. Long before this time, Italy and a number of other 'southern' EU Member States had argued for a revision of the Dublin system on the basis that it did not share responsibilities equitably, but this was resisted by 'northern' EU Member States.

[96] European Council (n 5), para (o).

[97] The European Commission and Turkey reached agreement on the Joint Action Plan at a meeting in Brussels on 15 October 2015. It was formally adopted at a meeting of the EU heads of state or government with Turkey on 29 November 2015: European Commission, 'EU-Turkey joint action plan', 15 October 2015, http://europa.eu/rapid/press-release_MEMO-15-5860_en.htm; Council of the European Union, 'Meeting of heads of state or government with Turkey – EU-Turkey statement', 29 November 2015, http://www.consilium.europa.eu/en/press/press-releases/2015/11/29/eu-turkey-meeting-statement/.

[98] 'Migrant arrivals in Greece 'surge' to 7,000 daily – IOM', *BBC News* (online), 9 October 2015, https://www.bbc.com/news/world-europe-34483681.

[99] 'Migrant flows 'still way too high,' EU tells Turkey', *Ekathimerini* (online), 11 January 2016, http://www.ekathimerini.com/204956/article/ekathimerini/news/migrant-flows-still-way-too-high-eu-tells-turkey.

[100] European Council and Council of the European Union, 'EU-Turkey statement', 18 March 2016, http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/.

[101] European Commission, 'EU-Turkey Statement: two years on', April 2018, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180314_eu-turkey-two-years-on_en.pdf.

[102] It was anticipated that this scheme would be in line with the recommendation of the European Commission from December the previous year: European Commission, 'Commission presents Recommendation for a Voluntary Humanitarian Admission Scheme with Turkey for refugees from Syria', 15 December 2015, http://europa.eu/rapid/press-release_IP-15-6330_en.htm.

[103] Commission Decision of 10 February 2016 on the Facility for Refugees in Turkey amending Commission Decision C(2015) 9500 of 24 November 2015 [2016] OJ C 60/3. For more information, see European Commission, *Second Annual Report on the Facility for Refugees in Turkey*, COM(2018) 91 final, 14 March 2018; European Commission, *The EU Facility for refugees in Turkey,* June 2018, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/frit_factsheet.pdf. In March 2018, the Commission decided to mobilise a second tranche of €3 billion for the Facility, as foreseen in the EU-Turkey Statement of 18 March 2016: Commission Decision of 14 March 2018 on the Facility for Refugees in Turkey amending Commission Decision C(2015) 9500 as regards the contribution to the Facility for Refugees in Turkey [2018] OJ C 106/4.

[104] Protocol on readmission between the Government of Turkey and the Government of the Hellenic Republic, signed 18 November 2001, entered into force April 2002.

[105] Danai Angeli, Angeliki Dimitriadi and Anna Triandafyllidou, *Assessing the Cost-effectiveness of Irregular Migration Control Policies in Greece*, October 2014, http://www.eliamep.gr/wp-content/uploads/2014/11/MIDAS-REPORT.pdf, 6-7; Anna Triandafyllidou, *Migration in Greece: Developments in 2013,* 13 November 2013, http://www.eliamep.gr/wp-content/uploads/2014/10/Migration-in-Greece-Recent-Developments-2013.pdf, 11-12; European Commission, *First Report on the progress made in the implementation of the EU-Turkey Statement*, COM(2016) 231 final, 20 April 2016, 4. See also: Tania Georgiopoulou, 'Migrant deal with Turkey not having much effect anyway', *Ekathimerini* (online), 8 June 2018, http://www.ekathimerini.com/229427/article/ekathimerini/news/migrant-deal-with-turkey-not-having-much-effect-anyway.

[106] 'Turkey suspends migrant readmission deal with Greece: Anadolu', *Reuters* (online), 7 June 2018, https://www.reuters.com/article/us-turkey-security-greece/turkey-suspends-migrant-readmission-deal-with-greece-hurriyet-idUSKCN1J31OO.

[107] Sevil Erkuş, 'Turkey to implement EU deal despite suspension of agreement with Greece: Diplomat', *Hurriyet Daily News* (online), 9 June 2018, http://www.hurriyetdailynews.com/turkey-to-implement-eu-deal-despite-suspension-of-agreement-with-greece-diplomat-133026.

[108] Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization [2014] OJ L 134/3, art 4. For more information, see Andrea Ott, *EU-Turkey Cooperation in Migration Matters:A Game Changer in a Multi-layered Relationship?,* Centre for the Law of EU External Relations, Paper 2017/4, 2017, http://www.asser.nl/media/4085/cleer17-4_web.pdf, 13-17.

[109] Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization [2014] OJ L 134/3, art 24(3).

[110] Council Decision (EU) 2016/551 of 23 March 2016 establishing the position to be taken on behalf of the European Union within the Joint Readmission Committee on a Decision of the Joint Readmission Committee on implementing arrangements for the application of Articles 4 and 6 of the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization from 1 June 2016 [2016]

OJ L 95/9. Despite this decision, it does not appear that the agreement entered into force as expected on this date: Nikolaj Nielsen, 'EU-Turkey readmission deal in doubt', *EU Observer*, 6 June 2016, https://euobserver.com/migration/133712.

[111] European Commission, *Turkey 2018 Report*, SWD(2018) 153 final, 17 April 2018, 41, 46.

[112] European Commission, *Fifth Report on the Progress made in the implementation of the EU-Turkey Statement,* COM(2017) 204 final, 2 March 2017, 5. According to the Commission: 'The returned persons had either received negative asylum decisions (including negative decisions at second-instance), had withdrawn their asylum applications or their applications for international protection, or had not applied for asylum in the first place.'

[113] European Commission, 'EU-Turkey Statement: one year on', 17 March 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/eu_turkey_statement_17032017_en.pdf.

[114] European Commission, First to Seventh Reports on the Progress made in the implementation of the EU-Turkey Statement, available at https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package_en.

[115] European Commission, *Fifth Report on the Progress made in the implementation of the EU-Turkey Statement,* COM(2017) 204 final, 2 March 2017, 5.

[116] European Commission, 'Operational implementation of the EU-Turkey Statement (as of 30 July 2018)', regularly updated, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_eu-turkey_en.pdf.

[117] Patrick Kingsley, 'Refugee crisis: key agencies refuse any role in 'mass expulsion', *The Guardian* (online), 23 March 2016, https://www.theguardian.com/world/2016/mar/23/refugee-crisis-aid-agencies-unhcr-refuse-role-mass-expulsion-greece-turkey.

[118] MSF, 'MSF ends activities inside the Lesvos hotspot', 22 March 2016, https://www.msf.org/greece-msf-ends-activities-inside-lesvos-hotspot.

[119] OHCHR, 'UN rights chief expresses serious concerns over EU-Turkey agreement', 24 March 2016, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18531&LangID=E.

[120] See eg 'Turkey renews threat to scrap EU migrant deal', *Ekathimerini* (online), 3 November 2016, http://www.ekathimerini.com/213374/article/ekathimerini/news/turkey-renews-threat-to-scrap-eu-migrant-deal; 'EU's Juncker says will be Turkey's fault if migrant deal fails', *Reuters* (online), 6 November 2016, https://www.reuters.com/article/us-europe-migrants-turkey-juncker-idUSKBN1300LV.

[121] Laura Batalla Adam, 'The EU-Turkey Deal One Year On: A Delicate Balancing Act,' (2017) 52(4) *The International Spectator: Italian Journal of International Affairs* 44, 51.

[122] ibid, 51-52.

[123] ibid, 46.

[124] ibid, 12-13.

[125] Catherine Woollard, 'More 'Safe' Third Country Concept: less safe world,' *European Council on Refugees and Exiles*, 10 November 2017, https://www.ecre.org/weekly-editorial-more-safe-third-country-concept-less-safe-world/.

[126] *NF, NG and NM v European Council* (T-192/16, T-193/16, T-257/16), Orders of 28 February 2017. A press release issued by the Court on these judgments is available at, https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-02/cp170019en.pdf.

[127] Apostolis Fotiadis, Helena Smith and Patrick Kingsley, 'Syrian refugee wins appeal against forced return to Turkey', *The Guardian* (online), 21 May 2016, https://www.theguardian.com/world/2016/may/20/syrian-refugee-wins-appeal-against-forced-return-to-turkey.

[128] Nikolaj Nielsen, 'Greek court halts Syrian deportations to 'unsafe' Turkey,' *EU Observer*, 3 June, https://euobserver.com/migration/133691.

[129] Asterios Kanavos, 'A critical approach of the concept of Turkey as a safe-third country under the scope of the EU-Turkey "Common Statement" as interpreted by the Greek Council of State and two different Independent Appeal Committees', *European Database of Asylum Law,* 10 July 2018, http://www.asylumlawdatabase.eu/en/journal/critical-approach-concept-turkey-safe-third-country-under-scope-eu-turkey-%E2%80%9Ccommon-statement%E2%80%9D.

[130] Fanis Karabatsakis, 'Greek Court Says Syrian Refugees Can be Returned to Turkey,' *US News* (online), 22 September 2017, https://www.usnews.com/news/world/articles/2017-09-22/greek-court-says-syrian-refugees-can-be-returned-to-turkey.

[131] For more information, see Kanavos (n 129); Amnesty International, 'Greece: Court decisions pave way for first forcible returns of asylum-seekers under EU-Turkey deal,' 22 September 2017, https://www.amnesty.org/en/latest/news/2017/09/greece-court-decisions-pave-way-for-first-forcible-returns-of-asylum-seekers-under-eu-turkey-deal/; Mariana Gkliati, 'The Application of the EU-Turkey Agreement: A Critical Analysis of the Decisions of the Greek Appeals Committee' (2017) 10 *European Journal of Legal Studies* 81.

[132] European Commission (n 101).

[133] Council Decision (EU) 2016/1754 of 29 September 2016 amending Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece [2016] OJ L 268/82; European Commission, *Proposal for a Council Decision amending Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece*, COM(2016) 171 final, 21 March 2016.

[134] European Commission (n 116).

[135] European Commission, *Progress report on the European Agenda on Migration*, COM(2017) 669 final, 15 November 2017.

[136] Maria Margarita Mentzelopoulou and Katrien Luyten, 'Hotspots at EU external borders: State of play', *European Parliamentary Research Service,* June 2018, http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/623563/EPRS_BRI(2018)623563_EN.pdf, 2.

[137] See also: European Commission, *Hotspot State of Play,* regularly updated, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_hotspots_en.pdf.

[138] European Court of Auditors, *EU response to the refugee crisis: the 'hotspot' approach,* 2017, https://www.eca.europa.eu/Lists/ECADocuments/SR17_6/SR_MIGRATION_HOTSPOTS_EN.pdf.

[139] European Union Agency for Fundamental Rights, 'FRA work in the "hotspots"', 2018, http://fra.europa.eu/en/theme/asylum-migration-borders/fra-work-hotspots.

[140] Mentzelopoulou and Luyten (n 136), 4.

[141] UNHCR, *UNHCR redefines role in Greece as EU-Turkey deal comes into effect,* 22 March 2016, http://www.unhcr.org/56f10d049.html. See also European Commission, *Implementing the EU-Turkey Agreement – Questions and Answers,* 4 April 2016, http://europa.eu/rapid/press-release_MEMO-16-1221_en.htm ('Greece has … transformed the hotspots into closed reception facilities to avoid irregular migrants absconding when they are subject to return decisions').

[142] Committee on Migration, Refugees and Displaced Persons, *The situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016,* 19 April 2016, http://www.refworld.org/docid/5836fb994.html, 6.

[143] European Court of Auditors, *EU response to the refugee crisis: the 'hotspot' approach,* 2017, https://www.eca.europa.eu/Lists/ECADocuments/SR17_6/SR_MIGRATION_HOTSPOTS_EN.pdf, 6.

[144] ibid, 40-43.

[145] See eg summary of stakeholders' concerns in Mentzelopoulou and Luyten (n 136), 5-6.

[146] European Council, *Conclusions,* 28 June 2018, http://www.consilium.europa.eu/en/press/press-releases/2018/06/29/20180628-euco-conclusions-final/, paras 5-6.

[147] European Commission, *Migration: 'Controlled Centres' in EU Member States,* 2018, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724_factsheet-controlled-centres-eu-member-states_en.pdf; European Commission, *Non-paper on "controlled centres" in the EU – interim framework*, 2018, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724_non-paper-controlled-centres-eu-member-states_en.pdf.

[148] European Commission, *Non-paper on "controlled centres" in the EU* (n 147)

[149] See eg Samantha Velluti, 'New migrant processing centres in EU must avoid inhumanity of 'hotspots' in Greece and Italy', *The Conversation,* 9 July 2018, https://theconversation.com/new-migrant-processing-centres-in-eu-must-avoid-inhumanity-of-hotspots-in-greece-and-italy-99161.

[150] Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union [2004] OJ L 349/1.

[151] European Commission (n 6), 3, 12.

[152] Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC [2016] OJ L 251/1.

[153] European Commission, *Securing Europe's External Borders: a European Border and Coast Guard,* June 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20170613_ebcg_en.pdf, 2.

[154] Regulation (EU) 2016/1624 (n 152), art 19.

[155] European Commission, *A European Border and Coast Guard to protect Europe's External Borders,* 15 December 2015, http://europa.eu/rapid/press-release_IP-15-6327_en.htm?locale=EN; Regulation (EU) 2016/1624 (n 152).

[156] 'EU's Frontex warns of new migrant route to Spain', *Deutsche Welle* (online), 7 June 2018, https://www.dw.com/en/eus-frontex-warns-of-new-migrant-route-to-spain/a-44563058.

[157] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals [2008] OJ L 348/98. The Return Directive is binding on all EU States except the UK and Ireland, plus the four Schengen associated countries (Iceland, Liechtenstein, Norway and Switzerland): European Commission, 'Return & Readmission', 7 August 2018, https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en.

[158] The full list of countries with which the EU has concluded readmission agreements is available at European Commission, 'Return & Readmission', 7 August 2018, https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en.

[159] Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 [2000] OJ L 317/3, art 13(5)(c).

[160] European Commission (n 6), 9.

[161] European Council, European Council meeting (25 and 26 June 2015) – Conclusions, 26 June 2015, https://www.consilium.europa.eu/media/21598/euco-conclusions-25-26-june-2015.pdf, para 5(g).

[162] European Commission, *EU Action Plan on Return,* COM(2015) 453 final, 9 September 2015.

[163] European Commission, *Return Handbook,* October 2015, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/return_handbook_en.pdf.

[164] European Commission, *Communication from the Commission to the European Parliament and the Council on a More Effective Return Policy in the European Union – A Renewed Action Plan*, COM(2017) 200 final, 2 March 2017, 2.

[165] ibid, 2.

[166] European Commission, *Annex to the Commission Recommendation establishing a common 'Return Handbook' to be used by Member States' competent authorities when carrying out return related tasks*, C(2017) 6505, 27 September 2017.

[167] Commission Recommendation (EU) 2017/432 of 7 March 2017 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council [2017] OJ L 66/15.

[168] European Commission (n 164), 4.

[169] ibid, 4-5.

[170] ibid, 5-12.

[171] ibid, 12-13.

[172] ibid, 13.

[173] European Council (n 146), para 10.

[174] IOM, *Fatal Journeys (Volume 3 Part 1): Improving Data on Missing Migrants,* 2017, https://publications.iom.int/system/files/pdf/fatal_journeys_volume_3_part_1.pdf, 64; IOM, *The Central Mediterranean Route: Migrant Fatalities – January 2014 – July 2017,* 2017, https://missingmigrants.iom.int/sites/default/files/c-med-fatalities-briefing-july-2017.pdf, 1; 'Mediterranean "world's deadliest border" for migrants, says UN', *Deutsche Welle* (online), 25 November 2017, https://www.dw.com/en/mediterranean-worlds-deadliest-border-for-migrants-says-un/a-41525468.

[175] 'Travelling in hope', *The Economist,* 22 October 2016, https://www.economist.com/news/international/21709019-flow-africans-libya-italy-now-europes-worst-migration-crisis-travelling.

[176] ibid.

[177] European Council (n 5).

[178] Valetta Summit Political Declaration, 11-12 November 2015, http://www.consilium.europa.eu/media/21841/political_decl_en.pdf.

[179] Valetta Summit Action Plan, 11-12 November 2015, https://www.consilium.europa.eu/media/21839/action_plan_en.pdf. These fell far short of what the European Council had hoped to see in the outcome document.

[180] European Commission, 'Global Approach to Migration and Mobility' (regularly updated) https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration_en.

[181] European Commission, 'Factsheet: The European Union's cooperation with Africa on migration', 9 November 2015, http://europa.eu/rapid/press-release_MEMO-15-6026_en.pdf; Catherine Woollard, Secretary-General of the European Council on Refugees and Exiles (ECRE), describes these various initiatives as a 'complicated patchwork of … agreements, usually with the Europeans emphasising the fight against smugglers … and the Africans stressing development money': Catherine Woollard, 'Paris mini-summit: Much ado about nothing? Or a cause for concern?', *ECRE,* 8 September 2017, https://www.ecre.org/weekly-editorial-paris-mini-summit-much-ado-about-nothing-or-a-cause-of-concern/.

[182] European Union, 'Infographic - Migration flows: Central Mediterranean route', 2018, http://www.consilium.europa.eu/en/infographics/irregular-arrivals-italy-06-2017/.

[183] European Commission, *A European Union Emergency Trust Fund for Africa*, 12 November 2015, https://ec.europa.eu/europeaid/sites/devco/files/factsheet-eu-agenda-for-migration-trust-fund_en_0.pdf. See also Agreement Establishing the European Union Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa, and its Internal Rules, November 2015, https://ec.europa.eu/trustfundforafrica/sites/euetfa/files/constitutive_agreement_en_plus_signatures_to_date_1.pdf.

[184] European Commission (n 183).

[185] European Commission, *EU Emergency Trust Fund for Africa,* 24 July 2018, https://ec.europa.eu/trustfundforafrica/sites/euetfa/files/eu_emergency_trust_fund_for_africa_24-07-2018.pdf

[186] European Council (n 146), para 7.

[187] Global Health Advocates, *Misplaced Trust: Diverting EU Aid to Stop Migration,* September 2017, http://www.ghadvocates.eu/wp-content/uploads/2017/09/Misplaced-Trust_FINAL-VERSION.pdf, 4.

[188] See eg ibid; Oxfam, *An Emergency for Whom? The EU Emergency Trust Fund for Africa – Migratory Routes and Development Aid in Africa,* November 2017, https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-emergency-for-whom-eutf-africa-migration-151117-en_1.pdf; CONCORD Europe and CINI, *Partnership or Conditionality? Monitoring the Migration Compacts and EU Trust Fund for Africa,* 2018, https://concordeurope.org/wp-content/uploads/2018/01/CONCORD_EUTrustFundReport_2018_online.pdf?ac636b&ac636b.

[189] European Commission, 'Commission announces New Migration Partnership Framework: reinforced cooperation with third countries to better manage migration', 7 June 2016, http://europa.eu/rapid/press-release_IP-16-2072_en.htm.

[190] European Commission, *Communication from the Commission to the European Parliament, the European Council and the European Investment Bank on establishing a new Partnership Framework with third countries under the European Agenda on Migration,* COM(2016) 385 final, 7 June 2016, 5.

[191] ibid, 6.

[192] ibid.

[193] ibid, 17.

[194] European Commission, *First Progress Report on the Partnership Framework with third countries under the European Agenda on Migration,* COM(2016) 700 final, 18 October 2016.

[195] European Commission, Fifth Progress Report on the Partnership Framework with third countries under the European Agenda on Migration, COM(2017) 471 final, 6 September 2017, 3-7.

[196] ibid, 7-10.

[197] ibid, 2.

[198] 'Joint NGO statement ahead of the European Council of 28-29 June 2016 NGOs strongly condemn new EU policies to contain migration', 27 June 2016, https://www.hrw.org/news/2016/06/27/joint-ngo-statement-ahead-european-council-28-29-june-2016-ngos-strongly-condemn-new.

[199] Red Cross, 'Time to consider refugee protection in partnerships with third countries', 20 June 2017, https://redcross.eu/latest-news/time-to-consider-refugee-protection-in-partnerships-with-third-countries.

[200] Elizabeth Collett and Aliyyah Ahad, *EU Migration Partnerships: A Work in Progress,* December 2017, https://reliefweb.int/sites/reliefweb.int/files/resources/TCM-EUMigrationPartnerships-FINAL.pdf, 1.

[201] IOM, *Fatal Journeys (Volume 3 Part 1): Improving Data on Missing Migrants,* 2017, https://publications.iom.int/system/files/pdf/fatal_journeys_volume_3_part_1.pdf, 64.

[202] European Commission, *Migration on the Central Mediterranean route: Managing flows, saving lives*, JOIN(2017) 4 final, 25 January 2017, 2.

[203] ibid.

[204] ibid, 3.

[205] Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route, 3 February 2017, http://www.consilium.europa.eu/en/press/press-releases/2017/02/03/malta-declaration/.

[206] Joint Statement addressing the Challenge of Migration and Asylum, Paris, 28 August 2017, https://m.bundesregierung.de/Content/DE/_Anlagen/2017/08/2017-08-28-statement-refugee-migration-english.pdf?__blob=publicationFile&v=1

[207] OHCHR, *Returned migrants are being robbed, raped and murdered in Libya: Opinion by Zeid Ra'ad Al Hussein, UN High Commissioner for Human Rights,* 8 September 2017, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22039.

[208] ibid.

[209] Joint Statement on the Migrant Situation in Libya, 29-30 November 2017, http://www.consilium.europa.eu/media/31871/33437-pr-libya20statement20283020nov2010.pdf.

[210] European Commission, 'Joint press release of the United Nations, the African Union and the European Union', 29 November 2017, http://europa.eu/rapid/press-release_STATEMENT-17-5029_en.htm.

[211] See eg African Union, 'AU-EU-UN Tripartite Taskforce holds meeting on the status of African Migrants in Libya', 3 May 2018, https://au.int/en/pressreleases/20180503/au-eu-un-tripartite-taskforce-holds-meeting-status-african-migrants-libya.

[212] European Council (n 146), para 8.

[213] IOM, 'IOM Counts 3,771 Migrant Fatalities in Mediterranean in 2015', 5 January 2016, https://www.iom.int/news/iom-counts-3771-migrant-fatalities-mediterranean-2015.

[214] IOM, 'Mediterranean Migrant Arrivals Top 363,348 in 2016; Deaths at Sea: 5,079', 6 January 2017, https://www.iom.int/news/mediterranean-migrant-arrivals-top-363348-2016-deaths-sea-5079. For more information, see http://missingmigrants.iom.int/region/mediterranean.

[215] IOM, 'Mediterranean Migration Update', 12 November 2015, https://www.iom.int/news/mediterranean-migration-update; IOM, 'Mediterranean Migrant Arrivals Top 363,348 in 2016; Deaths at Sea: 5,079', 6 January 2017, https://www.iom.int/news/mediterranean-migrant-arrivals-top-363348-2016-deaths-sea-5079; IOM, 'Mediterranean Migrant Arrivals Reached 171,635 in 2017; Deaths Reach 3,116', 5 January 2018, https://www.iom.int/news/mediterranean-migrant-arrivals-reached-171635-2017-deaths-reach-3116; IOM, 'Mediterranean Migrant Arrivals Reach 58,158 in 2018; Deaths Reach 1,514', 3 August 2018, https://www.iom.int/news/mediterranean-migrant-arrivals-reach-58158-2018-deaths-reach-1514.

[216] IOM, *Fatal Journeys (Volume 2): Identification and Tracing of Dead and Missing Migrants,* 2016, https://reliefweb.int/sites/reliefweb.int/files/resources/fataljourneys_vol2.pdf, 43.

[217] Ministero Della Difesa (Italy), 'Mare Nostrum Operation', undated http://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx.

[218] UNHCR, 'UNHCR concerned over ending of rescue operation in the Mediterranean', 17 October 2014, http://www.unhcr.org/en-au/news/briefing/2014/10/5440ffa16/unhcr-concerned-ending-rescue-operation-mediterranean.html.

[219] 'Triton to "complement" Italy's Mare Nostrum operation', *ANSA* (online)*,* 7 October 2014, http://www.ansa.it/english/news/2014/10/07/triton-to-complement-italys-mare-nostrum-operation_4fa9cc47-5745-4244-8521-c1d5f5555b49.html.

[220] European Commission, *First measures under the European Agenda on Migration: Questions and Answers*, 27 May 2015, http://europa.eu/rapid/press-release_MEMO-15-5038_en.htm; European Commission, *How does Frontex Joint Operation Triton support search and rescue operations?,* undated, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/frontex_triton_factsheet_en.pdf; European Commission, *EU Operations in the Mediterranean Sea,* 4 October 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/securing-eu-borders/fact-sheets/docs/20161006/eu_operations_in_the_mediterranean_sea_en.pdf.

[221] Joint Operation Poseidon was launched in 2006 to address irregular migration in south-eastern Europe. Although initially a sea-based operation patrolling the waters between Greece and Turkey, its activities along Greece's sea and land borders gradually expanded and were divided into Poseidon Sea and Poseidon Land respectively. See eg François Crépeau, 'Report of the Special Rapporteur on the human rights of migrants', UN Doc A/HRC/23/46/Add.4, 17 April 2013, paras 10, 27-30; 'Frontex Mission in Greece Turns Permanent, Expanded to Bulgaria-Turkey Border', *Novinite.com* (online), 3 March 2011, https://www.novinite.com/articles/125859/Frontex+Mission+in+Greece+Turns+Permanent,+Expanded+to+Bulgaria-Turkey+Border; European Commission, *Frontex and the RABIT operation at the Greek-Turkish border*, 2 March 2011, http://europa.eu/rapid/press-release_MEMO-11-130_en.htm.

[222] Fabian Willermain, 'The European Agenda on Migration, One Year On: The EU Response to the Crisis Has Produced Some Results, but Will Hardly Pass Another Solidarity Test' (2016) *IEMed Mediterranean Yearbook 2016,* 134 (available at http://www.egmontinstitute.be/content/uploads/2016/10/IEMed_MedYearBook2016_Europe-Migration-Agenda_Fabian_Willermain.pdf).

[223] 'Frontex and Greece agree on operational plan for Poseidon Rapid Intervention', 17 December 2015 (available from ReliefWeb at https://reliefweb.int/report/greece/frontex-and-greece-agree-operational-plan-poseidon-rapid-intervention).

[224] European Political Strategy Centre, *Irregular Migration via the Central Mediterranean: From Emergency Responses to Systemic Solutions*, EPSC Strategic Notes, Issue 22, 2 February 2017, https://ec.europa.eu/epsc/sites/epsc/files/strategic_note_issue_22_0.pdf, 7.

[225] ibid.

[226] ibid, 4.

[227] See eg Eugenio Cusumano, 'How NGOs took over migrant rescues in the Mediterranean', *EU Observer* (online), 1 September 2016, https://euobserver.com/opinion/134803.

[228] 'Sink NGO "migrant taxis" in Mediterranean, says Italian leader', *Business Standard* (online), 27 April 2017, https://www.business-standard.com/article/news-ians/sink-ngo-migrant-taxis-in-mediterranean-says-italian-leader-117042701510_1.html; Nick Squires, 'Libya claims NGO boats in the Mediterranean are "migrant taxis"', *Telegraph* (online), 12 June 2017, https://www.telegraph.co.uk/news/2017/06/12/libya-claims-ngo-boats-mediterranean-migrant-taxis/.

[229] European Political Strategy Centre (n 224), 7.

[230] Paolo Cuttitta, 'Pushing Migrants Back to Libya, Persecuting Rescue NGOs: The End of the Humanitarian Turn (Part I)', University of Oxford Faculty of Law (blog), 18 April 2018, https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/04/pushing-migrants; Teri Schultz, 'EU backs Italy in stand-off with NGOs over refugee rescue', *Deutsche Welle* (online), 4 July 2017, https://www.dw.com/en/eu-backs-italy-in-stand-off-with-ngos-over-refugee-rescue/a-39546570.

[231] Code of Conduct for NGOs Undertaking Activities in Migrants' Rescue Operations at Sea, 2017, https://www.avvenire.it/c/attualita/Documents/Codice%20ONG%20migranti%2028%20luglio%202017%20EN.pdf.

[232] MSF, 'MSF committed to saving lives on Mediterranean but will not sign the Italian "Code of Conduct"' (31 July 2017) http://www.msf.org/en/article/msf-committed-saving-lives-mediterranean-will-not-sign-italian-code-conduct; Isla Binnie and Antonio Denti, 'Aid groups split over Italy's new rules for migrant rescues', *Reuters* (online), 1 August 2017, https://uk.reuters.com/article/uk-europe-migrants-italy-ngo/aid-groups-split-over-italys-new-rules-for-migrant-rescues-idUKKBN1AG2FR; Lizzie Dearden, 'Italy's draft code of conduct for refugee rescue ships "threatens thousands of lives", charities warn', *Independent* (online), 15 July 2017, https://www.independent.co.uk/news/world/europe/refugee-crisis-ngo-rescue-ships-mediterranean-libya-smugglers-italy-code-of-conduct-threatens-lives-a7842966.html.

[233] Isla Binnie and Antonio Denti, 'Aid groups split over Italy's new rules for migrant rescues', *Reuters* (online), 1 August 2017, https://uk.reuters.com/article/uk-europe-migrants-italy-ngo/aid-groups-split-over-italys-new-rules-for-migrant-rescues-idUKKBN1AG2FR; SOS Méditerranée, 'SOS MEDITERRANEE signs amended version of the Code of Conduct during meeting in Rome', 11 August 2017, http://old.sosmediterranee.org/sos-mediterranee-signs-code-of-conduct/?lang=en.

[234] Isla Binnie and Antonio Denti, 'Aid groups split over Italy's new rules for migrant rescues', *Reuters* (online), 1 August 2017, https://uk.reuters.com/article/uk-europe-migrants-italy-ngo/aid-groups-split-over-italys-new-rules-for-migrant-rescues-idUKKBN1AG2FR; UNICEF, 'Mediterranean rescue vessels must not be prevented from saving refugee and migrant children at sea – UNICEF' (17 July 2017) https://www.unicef.org/media/media_96643.html; OHCHR, *Italy-EU search and rescue code could increase Mediterranean deaths, UN expert warns,* 15 August 2017, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21971&LangID=E; Human Rights Watch, 'EU: Draft Code for Sea Rescues Threatens Lives', 12 July 2017, https://www.hrw.org/news/2017/07/12/eu-draft-code-sea-rescues-threatens-lives. See also Eugenio Cusumano, 'Straightjacketing migrant rescuers? The code of conduct on maritime NGOs' (2017) *Mediterranean Politics* 1.

[235] 'Italy impounds German NGO migrant rescue ship, lawmakers boost support for Libyan coastguard', *DW,* 2 August 2017, http://www.dw.com/en/italy-impounds-german-ngo-migrant-rescue-ship-lawmakers-boost-support-for-libyan-coastguard/a-39940881.

[236] Abdulkader Assad, 'Spanish NGO's vessel seized by Libyan Coast Guard', *Libya Observer* (online), 16 August 2017, https://www.libyaobserver.ly/news/spanish-ngos-vessel-seized-libyan-coast-guard.

[237] Steve Scherer, 'Rescue ship says Libyan coast guard shot at and boarded it, seeking migrants', *Reuters* (online), 27 September 2017, https://www.reuters.com/article/us-europe-migrants-libya-ngo/rescue-ship-says-libyan-coast-guard-shot-at-and-boarded-it-seeking-migrants-idUSKCN1C12I4.

[238] Jon Henley and Angela Giuffrida, 'Three NGOs halt Mediterranean migrant rescues after Libyan hostility', *The Guardian* (online), 14 August 2017, https://www.theguardian.com/world/2017/aug/14/three-ngos-halt-mediterranean-migrant-rescues-after-libyan-hostility; 'MOAS suspends Mediterranean rescue operations', *ANSA* (online), 4 September 2017, http://www.ansa.it/english/news/2017/09/04/moas-suspends-mediterranean-rescue-operations_674b4bca-83a8-471a-bfbf-82ca4cfe8387.html.

[239] MSF, 'Mediterranean: MSF protests decision to revoke registration for rescue ship Aquarius', 24 September 2018, https://www.doctorswithoutborders.org/what-we-do/news-stories/news/mediterranean-msf-protests-decision-revoke-registration-rescue-ship.

[240] See eg 'Spain will accept migrant ship Aquarius after Italy and Malta refuse entry', *Deutsche Welle* (online), 11 June 2018, https://www.dw.com/en/spain-will-accept-migrant-ship-aquarius-after-italy-and-malta-refuse-entry/a-44150793; 'Political crisis between Italy and the rest of Europe': France's Macron slams Italian migrant policy', *The Local* (online), 26 September 2018, https://www.thelocal.it/20180926/theres-a-political-crisis-between-italy-and-the-rest-of-europe-france-macron-migrants.

[241] MSF, 'Italian government pressures Panama to stop Aquarius rescues on world's deadliest maritime route', 23 September 2018, https://www.msf.org/italian-government-pressures-panama-stop-aquarius-rescues-worlds-deadliest-maritime-route.

[242] Frontex, *Frontex launching new operation in Central Med,* 1 February 2018, https://frontex.europa.eu/media-centre/news-release/frontex-launching-new-operation-in-central-med-yKqSc7.

[243] 'New EU operation Themis responds to Italian appeal', *ANSA Med* (online), 1 February 2018, http://www.ansamed.info/ansamed/en/news/sections/politics/2018/02/01/new-eu-operation-themis-responds-to-italian-appeal_31aef67c-4c10-45b8-8dc8-fcfa611c6744.html; Steve Scherer, 'In new EU sea mission, ships not obliged to bring migrants to Italy', *Reuters* (online), 2 February 2018, https://www.reuters.com/article/us-europe-migrants-italy/in-new-eu-sea-mission-ships-not-obliged-to-bring-migrants-to-italy-idUSKBN1FL62M.

[244] UNHCR, *UNHCR welcomes Aquarius resolution, but stresses need for more predictable approach to disembarkation,* 15 August 2018, http://www.unhcr.org/news/press/2018/8/5b73d04f4/unhcr-welcomes-aquarius-resolution-stresses-need-predictable-approach-disembarkation.html.

[245] European Council (n 146), para 5.

[246] ibid, paras 5-6.

[247] UNHCR and IOM, *Proposal for a regional cooperative arrangement ensuring predictable disembarkation and subsequent processing of persons rescued-at-sea,* 27 June 2018, http://www.unhcr.org/en-au/partners/eu/5b35e60f4/proposal-regional-cooperative-arrangement-ensuring-predictable-disembarkation.html.

[248] European Commission, *Migration: Regional Disembarkation Arrangements,* 2018, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724_factsheet-regional-disembarkation-arrangements_en.pdf; European Commission, *Non-paper on regional disembarkation arrangements,* 2018, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724_non-paper-regional-disembarkation-arrangements_en.pdf.

[249] European Union, *European Union Naval Force – Mediterranean Operation Sophia,* 30 September 2016, http://eeas.europa.eu/archives/docs/csdp/missions-and-operations/eunavfor-med/pdf/factsheet_eunavfor_med_en.pdf.

[250] Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the southern Central Mediterranean (EUNAVFOR MED) [2015] OJ L 122/31, art 2.

[251] Council Decision (CFSP) 2015/972 of 22 June 2015 launching the European Union military operation in the southern Central Mediterranean (EUNAVFOR MED) [2015] OJ L 157/51.

[252] Political and Security Committee Decision (CFSP) 2015/1772 of 28 September 2015 concerning the transition by EUNAVFOR MED to the second phase of the operation, as laid down in point (b)(i) of Article 2(2) of Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED) (EUNAVFOR MED/2/2015) [2015] OJ L 258/5.

[253] Council of the European Union, *EUNAVFOR MED Operation Sophia: operation to contribute to better information sharing on crime in the Mediterranean,* 14 May 2018, http://www.consilium.europa.eu/en/press/press-releases/2018/05/14/eunavfor-med-operation-sophia-operation-to-contribute-to-better-information-sharing-on-crime-in-the-mediterranean/.

[254] Human Rights Watch, EU*: Don't Endanger Lives at Sea or Deny Protection*, 21 May 2015, https://www.hrw.org/news/2015/05/21/eu-dont-endanger-lives-sea-or-deny-protection.

[255] ECRE, 'EU starts the 'active phase' of a critical operation against human smugglers', 1 October 2015, https://www.ecre.org/eu-starts-the-active-phase-of-a-critical-operation-against-human-smugglers/.

[256] House of Lords European Union Committee, *Operation Sophia: a failed mission,* July 2017, https://publications.parliament.uk/pa/ld201719/ldselect/ldeucom/5/5.pdf.

[257] 'Italy wants Operation Sophia changed, but EU is divided', *ANSA Med* (online), 19 July 2018, http://www.ansamed.info/ansamed/en/news/sections/politics/2018/07/19/italy-wants-operation-sophia-changed-but-eu-is-divided_fda3f384-7e27-4ccd-bf23-4d166a7bece9.html.

[258] Council of the European Union, *EUNAVFOR MED Operation Sophia: mandate extended until 31 December 2018*, 25 July 2017, http://www.consilium.europa.eu/en/press/press-releases/2017/07/25/eunavformed-sophia-mandate-extended/.

[259] Council Decision (CFSP) 2016/993 of 20 June 2016 amending Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA) [2016] OJ L 162/18.

[260] Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic, 2 February 2017 (English translation available at https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf).

[261] Council Decision (CFSP) 2017/1385 of 25 July 2017 amending Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA) [2017] OJ L 194/61.

[262] Letter from Nils Muižnieks, EU Commissioner for Human Rights, to Marco Minniti, Minister of the Interior of Italy, 28 September 2017, http://www.europeanmigrationlaw.eu/documents/CoE-HRCommissioner-Letter%20to%20the%20Minister%20of%20Interior%20of%20Italy.pdf, 1; Tara John, 'Italy Has a Controversial New Plan to Stop Migrants Crossing the Mediterranean Sea', *Time* (online), 3 August 2017, http://time.com/4885415/italy-naval-mission-migrant-smuggling/.

[263] European Council, *Conclusions,* 19 October 2017, http://www.consilium.europa.eu/media/21620/19-euco-final-conclusions-en.pdf.

[264] 'Italy donates 12 migrant patrol boats to Libya', *EU Observer* (online), 8 August 2018, https://euobserver.com/tickers/142539.

[265] Daniel Bellamy, 'Italy promises billions of euros to Libya if it accepts the return of migrants', *Euronews* (online), 8 July 2018, http://www.euronews.com/2018/07/08/italy-promises-billions-of-euros-to-libya-if-it-accepts-the-return-of-migrants; 'How Libya holds the key to solving Europe's migration crisis', *BBC News* (online), 7 July 2018, https://www.bbc.com/news/world-africa-44709974.

[266] European Commission, 'EU Trust Fund for Africa adopts €90 million programme on protection of migrants and improved migration management in Libya', 12 April 2017, http://europa.eu/rapid/press-release_IP-17-951_en.htm.

[267] European Council (n 146), para 3.

[268] UNHCR, *UNHCR Position on Returns to Libya – Update I*, October 2015, http://www.refworld.org/docid/561cd8804.html.

[269] UN Support Mission in Libya and OHCHR, *'Detained and Dehumanised': Report on Human Rights Abuses against Migrants in Libya,* 13 December 2016, https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf.

[270] OHCHR (n 207).

[271] Letter from Nils Muižnieks (n 262), 2.

[272] *Hirsi Jamaa v Italy*, App no. 27765/09, European Court of Human Rights (Grand Chamber), 23 February 2012.

[273] Letter from Nils Muižnieks (n 262), 1

[274] ibid.

[275] Letter from Marco Minniti, Italian Minister of the Interior, to Nils Muižnieks, EU Commissioner for Human Rights, 11 October 2017, https://rm.coe.int/reply-of-the-minister-of-interior-to-the-commissioner-s-letter-regardi/168075dd2d (in Italian and French only).

[276] See eg Human Rights Watch, *Italy: Navy Support for Libya May Endanger Migrants*, 2 August 2017, https://www.hrw.org/news/2017/08/02/italy-navy-support-libya-may-endanger-migrants.

[277] Steve Scherer and Aidan Lewis, 'Armed group seeks legitimacy with Tripoli migrant deal, source says', *Reuters* (online), 21 September 2017, https://www.reuters.com/article/us-europe-migrants-libya/armed-group-seeks-legitimacy-with-tripoli-migrant-deal-source-says-idUSKCN1BW0HA?il=0&mc_cid=5ebc1ac536&mc_eid=748c110c1d.

[278] Lauren Said-Moorhouse, 'Libya opens investigation into slave auctions following CNN report', *CNN* (online), 17 November 2017, https://edition.cnn.com/2017/11/17/africa/libya-slave-auction-investigation/index.html.

[279] OHCHR, 'UN human rights chief: Suffering of migrants in Libya outrage to conscience of humanity', 14 November 2017, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22393&LangID=E.

[280] ibid.

[281] See eg MSF, *Stop arbitrary detention of refugees and migrants disembarked in Libya,* 24 July 2018, https://www.doctorswithoutborders.org/what-we-do/news-stories/news/stop-arbitrary-detention-refugees-and-migrants-disembarked-libya; Karen McVeigh, 'Libya migrant centres near breaking point after spike in arrivals', *The Guardian* (online), 18 July 2018, https://www.theguardian.com/global-development/2018/jul/18/libya-migrant-centres-close-to-breaking-point-spike-new-arrivals.

[282] Human Rights Watch, *EU/Italy/Libya: Disputes Over Rescues Put Lives at Risk,* 25 July 2018, https://www.hrw.org/news/2018/07/25/eu/italy/libya-disputes-over-rescues-put-lives-risk. See also 'Libyan coastguard accused of abandoning three migrants in sea', *The Guardian* (online), 18 July 2018, https://www.theguardian.com/world/2018/jul/18/libyan-coastguard-accused-of-abandoning-three-migrants-in-sea.

[283] UNHCR, *UNHCR sounds alarm as Mediterranean Sea deaths pass 1,500 mark*, 3 August 2018, http://www.unhcr.org/news/press/2018/8/5b6476bd4/unhcr-sounds-alarm-mediterranean-sea-deaths-pass-1500-mark.html.

[284] NATO, 'NATO Defence Ministers Agree on NATO support to assist with the Refugee and Migrant Crisis', 11 February 2016, https://www.nato.int/cps/en/natohq/news_127981.htm.

[285] Ewen MacAskill, 'Nato sends patrol to eastern Med to combat people smuggling', *The Guardian* (online), 11 February 2016, https://www.theguardian.com/world/2016/feb/11/nato-tasks-naval-patrol-with-combatting-people-smuggling-in-the-mediterranean.

[286] NATO, 'NATO Secretary General welcomes expansion of NATO deployment in the Aegean Sea', 6 March 2016, https://www.nato.int/cps/en/natolive/news_128833.htm?selectedLocale=en.

[287] 'NATO's Aegean patrols to continue', *Ekathimerini* (online), 16 February 2017, http://www.ekathimerini.com/216266/article/ekathimerini/news/natos-aegean-patrols-to-continue.

[288] Warsaw Summit Communiqué issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Warsaw 8-9 July 2016, 9 July 2016, https://www.nato.int/cps/en/natohq/official_texts_133169.htm?selectedLocale=en.

[289] For more information see Margriet Drent, 'Militarising migration? EU and NATO involvement at the European border', (2018) 72(4) *Clingendael Spectator* (online), https://spectator.clingendael.org/pub/2018/4/militarising-migration/.

[290] European Council (n 5), para (q).

[291] European Commission (n 6), 4.

[292] European Commission, *Commission Recommendation of 8.6.2015 on a European resettlement scheme*, C(2015) 3560 final, 8 June 2015. The Commission proposed that people be resettled in EU Member and Associated States on the basis of a distribution key taking into account each State's population size, GDP, average number of spontaneous asylum applications and existing resettlement commitments, and unemployment rate: see Annex 1 to the Commission's recommendation, available at, http://data.consilium.europa.eu/doc/document/ST-9376-2015-ADD-1/en/pdf.

[293] Conclusions of the Representatives of the Governments of the Member States meeting within the Council on resettling through multilateral and national schemes 20 000 persons in clear need of international protection, 11130/15, 22 July 2015.

[294] European Commission, *First report on relocation and resettlement*, COM(2016) 165 final, 16 March 2016, 16.

[295] ibid, 17.

[296] Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC [2014] OJ L 150/168, art 17.

[297] European Commission (n 294), 2, 17-18.

[298] ibid, 17-18.

[299] European Commission, *Fourteenth report on relocation and resettlement*, COM(2017) 405 final, 26 July 2017, 8.

[300] European Commission, *Progress report on the Implementation of the European Agenda on Migration (Annex 5: Resettlement – State of Play as of 7 March 2018)*, COM(2018) 250 final, 14 March 2018.

[301] Bulgaria, Cyprus, Greece, Poland, Slovakia and Slovenia had not resettled anyone under the scheme. Croatia, the Czech Republic, Denmark, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania and Spain were yet to complete resettlement: ibid.

[302] European Commission, First to Fifteenth Reports on Relocation and Resettlement (available at https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package_en); European Commission (n 300).

[303] European Commission, *Second report on relocation and resettlement*, COM(2016) 222 final, 12 April 2016, 7.

[304] European Commission (n 300)

[305] European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council, COM(2016) 468 final, 13 July 2017.

[306] ibid.

[307] Women and girls at risk; children and adolescents at risk, including unaccompanied children; survivors of violence and/or torture, including on the basis of gender; persons with medical needs or disabilities; persons with legal and/or physical protection needs; and persons with socioeconomic vulnerability.

[308] European Commission (n 305), 10-11, 24-26.

[309] ibid, 11-13, 29-30.

[310] For more information see Council of the European Union, *Note: Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council (First reading)*, 9596/18, 4 June 2018.

[311] European Commission, *Commission Recommendation of 3.10.2017 on enhancing legal pathways for persons in need of international protection,* C(2017) 6504 final, 3 October 2017. The original proposal was presented on 27 September 2017.

[312] Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovenia, Spain, Sweden and the United Kingdom had made pledges by March 2018: European Commission (n 77), 19-20.

[313] European Commission (n 300).

[314] Jane McAdam, 'Extraterritorial processing in Europe: Is regional protection the answer, and if not, what is?' (Policy Brief 1, Kaldor Centre for International Refugee Law), 1-6, https://www.kaldorcentre.unsw.edu.au/publication/policy-brief-1-extraterritorial-processing-europe-regional-protection-answer-and-if-not. See also Madeline Garlick, 'The Potential and Pitfalls of Extraterritorial Processing of Asylum Claims', *Migration Policy Institute,* March 2015, https://www.migrationpolicy.org/news/potential-and-pitfalls-extraterritorial-processing-asylum-claims.

[315] See eg Frank McNamara, 'The external processing of asylum seekers - Member states' migration talking shop', *European Policy Centre,* 25 January 2018, http://www.epc.eu/pub_details.php?pub_id=8227&cat_id=4.

[316] Florian Eder, 'Austrian proposal for an Australian migration solution', *Politico* (online), 14 December 2016, https://www.politico.eu/article/austrian-proposal-for-an-australian-migration-solution/; Nikolaj Nielsen, 'Austria proposes to offshore EU asylum', *EU Observer* (online), 6 January 2017, https://euobserver.com/migration/136462. See also 'Austrian proposal requires asylum seekers to apply outside EU: Profil', *Reuters* (online), 7 July 2018, https://www.reuters.com/article/us-europe-migrants-austria/austrian-proposal-requires-asylum-seekers-to-apply-outside-eu-profil-idUSKBN1JX0HO.

[317] Jamie Dettmer, 'French Officials Backtrack on Macron's Migrant Plans', *VOA News* (online), 28 July 2017 https://www.voanews.com/a/france-macron-migrants/3962926.html; Alcyone Wemaëre, '"Hotspots" in Libya: French President Macron's troubling announcement', *France 24* (online), 28 July 2017, http://www.france24.com/en/20170728-hotspots-libya-french-president-macron-announcement-migrant-crisis-refugees.

[318] Oxfam, 'Macron's hotspot plan for Libya won't protect people', 27 July 2017, https://www.oxfam.org/en/pressroom/reactions/macrons-hotspot-plan-libya-wont-protect-people; 'No improvisation on hotspots - Alfano', *ANSA* (online), 27 July 2017, http://www.ansa.it/english/news/politics/2017/07/27/no-improvisation-on-hotspots-alfano-2_a53f42c9-a2ff-4a40-a0eb-2d3edf9ee3fb.html; Wemaëre (n 317).

[319] Alcyone Wemaëre (n 317).

[320] Ahmed Elumami, 'Italy proposes African migrant centers to halt immigrant tide', *Reuters* (online), 25 June 2018, https://www.reuters.com/article/us-europe-migrants-libya-italy/italy-proposes-african-migrant-centers-to-halt-immigrant-tide-idUSKBN1JL1JA.

[321] Patrick Wintour, 'Libya rejects EU plan for refugee and migrant centres', *The Guardian* (online), 21 July 2018, https://www.theguardian.com/world/2018/jul/20/libya-rejects-eu-plan-for-migrant-centres.

[322] Amira Sayed Ahmed, 'Egypt rejects EU plan to force refugees into camps', *Al-Monitor* (online), 10 July 2018, https://www.al-monitor.com/pulse/originals/2018/07/egypt-syrian-refugees-eu-plan-migrant-centers.html.