

The EU Approach on Migration in the Mediterranean

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, examines the EU approach on migration in the Mediterranean, covering developments from the refugee crisis to the Covid-19 pandemic, assessing the effect these events have had on the design, implementation, and reform of EU policy on asylum, migration and external border control. The study includes a review of the state of play of relevant EU legislation and its implementation, an appraisal of the situation in the Mediterranean, and a thorough examination of the external dimension, focusing on cooperation with third countries (Turkey, Libya and Niger), incorporating human rights and refugee law considerations and an analysis of the implications of funding allocations under the Trust Fund for Africa and the Refugee Facility in Turkey. The main goal is to test the correct application of EU and international law, having regard to increased allegations of human rights violations, undue criminalisation, and complicity of the EU in atrocity crimes against migrants at sea, stranded in Libya, or contained in Niger and Turkey. The role of EU agencies (Frontex and EASO) is also assessed alongside the bilateral or multi-lateral initiatives adopted by MS, incorporating the principle of solidarity as a horizontal concern.

Chapter 2 analyses the state of play of EU legislation in migration, asylum and return, paying attention to implementation flaws and lessons so far. It concludes that truly common standards have yet to materialise, especially in the asylum field, where disparities persist regarding the processing of claims and material reception conditions across MS, while legal entry channels for asylum have not been harmonised. The EU legal migration framework also remains incomplete, with many categories of third-country national (TCN) workers falling outside the EU *acquis*. The New Pact on Migration and Asylum puts several controversial proposals on the agenda. In the legal migration arena, national schemes will continue to run parallel to EU ones, undermining uniformity and legal certainty, and EU-wide mobility for TCNs remains largely absent. Concerning asylum policy, the basic premises of the Dublin system are maintained, while the envisaged border procedure risks overburdening MS at the external borders of the EU and obstructing access to protection.

Chapter 3 provides the overall picture at the external borders of the EU, evaluating trends in border crossings and asylum applications through statistical and qualitative data. It assesses the evolving role of EU agencies, regarding joint implementation practices, coordination of MS cooperation, and the emergence of new monitoring functions, considering the impact of the principle of solidarity and the effect of Covid-19 in EU and MS responses. It concludes that despite asylum applications and arrivals significantly decreasing since 2015, crisis responses and crisis discourse persist. Solidarity continues to be emergency-driven and has not been structurally embedded in the EU common policies, while the Commission's approach in the New Pact does not seem capable of resolving current tensions. The expanding powers of Frontex and EASO have led to significant shifts in the implementation modes of the asylum and external border control measures, raising issues regarding independence, executive powers, accountability, and fundamental rights compliance, which have not been adequately addressed and that Covid-19 has exacerbated.

Chapter 4 examines Search and Rescue (SAR) capacities in the Mediterranean, including joint operations *Poseidon* and *Themis* and the EUNAVFORMED missions *Sophia* and *IRINI*. It defines SAR obligations under



international law and equivalent provisions of EU law and assesses the extent to which SAR can be characterised as a pull factor for irregular migration, concluding that there is no evidence of such an effect. It takes into consideration the duties to provide assistance and to ensure disembarkation at a 'place of safety', establishing that human rights obligations must be considered in this context. Allegations of human rights violations are examined as well, paying attention to the specific contribution of EU actors and determining the incompatibility of their actions with the relevant standards. Finally, the practicability of options for a disembarkation mechanism that fulfils the requirements of EU and international law is evaluated, carrying out a detailed analysis of proposals under the New Pact and revealing the shortcomings of the Commission's plan, which risks structuralising current malpractices, rather than entailing an EU-integrated SAR response.

Chapter 5 investigates the criminalisation of humanitarian assistance to irregular migrants, particularly 'boat migrants'. The chapter updates past studies on this issue, taking stock of developments, and considering the societal impact of criminalisation on rescuers, rescuees, and the broader public. It adopts a broad understanding, including instances of criminal punishment, as well as other restrictive measures, which limit the capacity of civil society organisations to perform rescue. The chapter shows this remains a salient political issue to which the Commission is unable or unwilling to put an end. The failings of the Commission Guidance on the Facilitation Directive are exposed alongside the difficulties encountered by SAR NGOs in their day-to-day activities, revealing a need for legislative reform and for an effective monitoring and redress mechanism that protects civil society organisations as human rights defenders.

Chapter 6 deals with the external dimension of migration and border policy, and specifically cooperation with third countries, which plays a crucial role in the New Pact. It assesses the overarching framework, mapping the EU's priorities and main strategies and their implications. The focus is on the human rights impact of existing and developing forms of cooperation, including financial support. The chapter concludes that informalised, soft-law tools, erode the enforceability of legal obligations, downgrade democratic accountability, and generally undermine the rule of law, particularly the rights to effective judicial protection and good administration, and the principle of institutional balance, undermining the competences of the European Parliament and its budgetary authority. Three case studies guide the analysis: The EU-Turkey Statement; cooperation with Libya; and the EU's engagement with Niger, which reveals an overwhelming focus on the fight against irregular migration. This pays insufficient attention to human rights (Articles 205 TFEU and 51 CFR) and the objectives of development policy (Article 208 TFEU) and humanitarian aid (Article 214 TFEU), which risks damaging foreign policy coherence and lead to mistrust by external partners, ultimately reducing the EU's ability to address the root causes of irregular migration.

Chapter 7 summarises findings and puts forward 45 recommendations on: (1) the status quo; (2) ongoing negotiations; (3) future initiatives; (4) litigation; and (5) budgetary control. The general recommendation is for the European Parliament to be vigilant on how EU asylum, migration and border law and policy is applied, implemented, and reformed to make sure primary law obligations (especially fundamental rights) are complied with, that institutional balance and the division of competences are respected, that sufficient monitoring and accountability mechanisms are introduced (reserving a specific role for the Parliament), and that neither Covid-19 nor cooperation with third countries serve to undo basic protections. In this light, New Pact proposals need revision for full alignment with fundamental rights and the principle of solidarity; independent monitoring of SAR/interdiction activities in the Mediterranean as well as their criminalisation should be established; permanent and sufficient EU/MS SAR capacities need to be deployed to complement private shipping and NGO-led efforts; humanitarian assistance requires to be fully and unambiguously de-criminalised; all EU external actions impacting migration, including funding, should be adopted following a 'comprehensive compliance system' that covers the entire formulation-implementation-revision cycle, comprising risk-assessment, monitoring, reporting, evaluation, and human rights suspension clauses, and excluding migration management conditionality; the Parliament should make full use of its budgetary and litigation powers to ensure compliance with the relevant standards.

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This document is available on the internet at: www.europarl.europa.eu/supporting-analyses

PE 694.413

Print ISBN 978-92-846-8287-4 | doi: 10.2861/391227 | QA-09-21-240-EN-C

PDF ISBN 978-92-846-8790-4 | doi: 10.2861/708509 | QA-09-21-240-FN-N