

EU Responses to Migration in the Mediterranean Basin

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After a hiatus in the public attention paid in the EU to the phenomenon of irregular migration, due, successively, to sharply diminished cross-border travel of any kind during the Covid-19 pandemic (2020-2021) followed by the challenge of the overwhelmingly large reception of more than 4 million Ukrainian refugees fleeing Russia's aggression on their country and legally entering the EU, illegal¹ border crossings in the Mediterranean Basin are once again making headlines and feeding political debate. Following a similar pause, irregular migration has also re-introduced itself in the public arena in the United Kingdom and the United States. For the European Union, offering a durable response to this issue will probably require putting its relations with its Mediterranean neighbours on a different footing.

The Pact on Migration and Asylum

In the years following the 2015 migration crisis, the European Commission has sought to develop a comprehensive European approach to migration,² encompassing: the reduction of incentives for irregular migration; better border management; a strengthened common asylum policy; and a new policy on legal migration. Progress was made in several areas. Frontex was transformed into the European Bor-

der and Coast Guard Agency and entrusted with the responsibility (shared with national border authorities) for EU-integrated border management, including border management operations and search and rescue efforts. The Schengen Borders Code was amended, defining obligatory checks Member States must carry out on all persons crossing the EU's external borders. Legislative proposals were introduced to strengthen the EU's information systems for migration and law enforcement – including the Schengen information system (SIS), the visa information system (VIS), and a new entry/exit system (EES³).

An ambitious framework for further work was set out by the European Commission in its 2020 Pact on Migration and Asylum.⁴ Although the Pact does not attempt to set out what levels and kinds (refugee resettlement; low-skilled/high-skilled labour, permanent/circular migrants, etc.) of migration would be in adequation with the EU's demographic and economic needs, its humanitarian responsibilities or other sociopolitical considerations, it does provide a framework for a coherent set of migration-related policies and instruments. Specifically, it sets out an agenda to: (1) streamline procedures on asylum and returns, so that asylum claims with low chances of being accepted can be examined rapidly without requiring legal entry to the Member State's territory; (2) introduce mechanisms to ensure a solidary response of Member States in the reception and resettlement of refugees, including in situations of crisis; (3) reinforce the fight against migrant smuggling;

¹ In this paper, acts contrary to legislation are referred to as illegal, but the grammatical subjects to which the commission of such acts is attributed are referred to as "irregular" (irregular migrants, irregular migratory flows, etc.)

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52015DC0240>.

³ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32017R2226>.

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0609>.

(4) ensure an effective returns process; (5) develop pathways for legal migration to the EU.

Following its tabling by the European Commission in September 2020, progress on the pact has been uneven. The Pact's key legislative proposals, including a new *Asylum and Migration Management Regulation*, a new *Screening Regulation*, a new *Crisis and Force Majeure Regulation*, an amended proposal revising the *Asylum Procedures Regulation* and an amended proposal revising the *Eurodac Regulation* have yet to be adopted.

The lack of consensus as to what represents equitable burden sharing is the principal reason for the delays in the adoption of the proposals included in the Pact

At the heart of the EU's Migration and Asylum Pact is the notion that all states benefiting from the absence of internal EU borders should share the burden of managing its external borders and the responsibilities that this entails, including the reception of asylum applicants and resettlement of refugees. The lack of consensus as to what represents equitable burden sharing is the principal reason for the delays in the adoption of the proposals included in the Pact. This situation is analogous to the dynamics that were at play in other stages of European integration. During the creation of the single market and the introduction of the euro, the pooling of sovereignty at EU level, necessary to remove protectionist barriers and control state aids, was facilitated by compensatory mechanisms such as the EU cohesion policy. It is likely that the establishment of a truly common European migration and asylum policy, or indeed a common visa policy, will require putting in place analogous compensatory mechanisms.

In July 2022 an agreement was reached between the Council and the European Parliament to finish negotiating all the asylum and migration proposals currently on the table by February 2024, with the aim of having them enter into force by April 2024 at the latest.⁵

The delays in the adoption of these proposals have deleterious consequences not only for the "front-line" Member States, whose reception capacities are stretched, but also for other Member States, because the measures disincentivizing unauthorized movements of asylum seekers are not adopted. In parallel, illegal border crossings to the EU have been increasing at a rate of 60% per year⁶ and, while not yet at the level of the 2015 migration crisis, they now substantially exceed pre-pandemic levels. More than 900,000 Asylum applications were submitted in 2022⁷ and the President of the European Commission, Ursula von der Leyen, cautioned that "the majority of those who apply for asylum are not in need of protection."⁸ In the political arena, the widespread perception that migration is mismanaged continues to contribute to the steady rise of nationalist, Eurosceptic or far-right views and parties in Europe.

Perhaps surprisingly, this does not reflect a growing opposition to immigration *per se*. In December 2022, the German government agreed plans to reform its immigration law⁹ in order to open up the job market in Europe's biggest economy to much-needed workers from outside the European Union. Other Member States, while less vocal on this issue, are facing similar constraints related to labour market shortages and ageing populations, and do not exclude resorting to immigration to resolve them. The generous, EU-wide reception of Ukrainian refugees also demonstrates that Europeans are not opposed to welcoming refugees when the need for this is demonstrated.

The concerns regarding migration lie elsewhere: in the perception that a significant portion of migratory flows to the EU take place outside the rule of law, and that as a result they correspond to neither the

⁵ www.europarl.europa.eu/legislative-train/spotlight-JD21/file-jd-reform-of-the-asylum-procedures-directive.

⁶ https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-life/statistics-migration-europe_en.

⁷ This figure does not include the temporary protection given to Ukrainian refugees.

⁸ Speech by President von der Leyen at the European Parliament Plenary, 1 February 2023.

⁹ www.reuters.com/world/europe/germanys-scholz-says-strong-immigration-may-secure-population-boost-90-mln-2022-12-10/.

economic needs of the EU nor to its international obligations, and contribute to a poorly integrated migrant population. The progress achieved so far to address irregular migration, reform the Common European Asylum System and develop alternative legal pathways for migration to the EU has not placated these concerns. This is not only because European solidarity has been insufficient, and the proposals contained in the Pact on Migration and Asylum have yet to be adopted. In addition, (1) in some key policy areas the Pact does not go far enough, and (2) implementation of the pact will require the cooperation of countries of origin and transit, notably the non-EU countries of the Mediterranean Basin, and this has also proved elusive. These two challenges will be examined in turn.

Rethinking Asylum

An issue that the Pact does not address satisfactorily is the proportion of asylum seekers that are not refugees, as defined by the Asylum Convention,¹⁰ but rather are economic migrants. The reception of persons illegally crossing EU borders is cast in terms of the demands for the respect of the human rights of asylum applicants and the legal order of the receiving state. However, under present arrangements, under which anyone entering the EU – whether a *bona fide* asylum seeker or not – has a very high probability of remaining there, the simultaneous satisfaction of these exigencies is not achievable. The right of any third-country national present on EU territory to submit an asylum application, together with a rate of enforcement of return measures¹¹ of 22%, creates a patent incentive to irregular migration (whether by illegal border crossing or by visa overstay). Considering that illegal border crossings result in two to three thousand deaths each year,¹² it is also legitimate to question whether the current system really protects the rights of asylum seekers or whether, in reality, it constitutes a moral hazard.

Providing real alternatives, for example through the outsourcing of the initial processing of asylum applications to European diplomatic missions in safe third countries (STC) or through UNHCR-managed refugee resettlement programmes as foreseen in the Commission's proposal for a Union Resettlement and Humanitarian Admission Framework Regulation, while simultaneously ruling as *prima facie* inadmissible asylum applications submitted following an illegal crossing of EU borders, would drastically reduce the incentive for illegal crossings into the EU.

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Acting on similar considerations, the US Department of Homeland Security has introduced the requirement for would-be asylum applicants to seek an appointment with immigration officials by SMS, prior to attempting to cross the US border. Failure to do so is deemed to constitute “a rebuttable presumption of ineligibility for asylum.”¹³ More controversially, the government of the United Kingdom has introduced the Illegal Migration Bill¹⁴ (at the time of writing this has passed its third reading in the House of Commons), openly acknowledging that this may not be compatible with the European Convention on Human Rights. The Bill deprives irregular migrants arriving on its shores of the possibility to apply for asylum in the UK or to appeal decisions on their deportation to a safe third country. It further provides for a lifetime ban on the persons concerned re-entering the UK or obtaining UK citizenship. The fact that such measures are about to be enacted in a country that was historically a leading proponent of the Asylum Convention demonstrates how politically

¹⁰ www.unhcr.org/3b66c2aa10.

¹¹ Third country nationals ordered to leave – annual data (Eurostat). Third country nationals returned to a third country – annual data (Eurostat).

¹² <https://dtm.iom.int/fr/europe/arrivals>.

¹³ <https://public-inspection.federalregister.gov/2023-03718.pdf>.

¹⁴ <https://bills.parliament.uk/bills/3429>.

explosive the issue of illegal border crossings has become, and the urgency of developing viable legal pathways for asylum seekers.

Improving Cooperation with Third Countries

Coming to grips with irregular migration will require developing more effective cooperation with third countries – whether they be countries of origin, transition, or both. In this regard, cooperation with countries of the Mediterranean Basin, through which most irregular migration routes pass, is of particular importance. Several European policies and instruments will need to be adapted because they impact on third countries and thereby also provide the requisite incentives and dissuasive measures upon which to build this cooperation.

Increasing the Enforcement of Return Orders

The low rate of enforcement of return orders stands out as the single greatest weakness of the European migration management architecture. It depends on many factors, many of them linked to the EU's legal order and internal arrangements. However, it also depends on effective cooperation with the countries of origin.

The case of Algeria is illustrative. With its youth dissatisfied with the growing political repression of civil liberties after the “Hirak Spring” of 2019 and a stagnant economy, Algeria has become an increasingly significant point of departure for illegal border crossings, despite the criminalization of clandestine migration since 2009.¹⁵ The rate of enforcement of return orders from EU Member States to Algeria stands at about 8%, among the lowest in the world. The authorities are uncooperative in many ways: the process of identification of Algerian nationals; the issuance of *laissez-passer's* of very short validity; the refusal of charter flights in the enforcement of return orders; and the refusal to participate in programmes of Assisted Voluntary Returns for Algerian nationals, or indeed virtually any migration-related EU-funded programmes.

At the EU level, cooperation in the return process takes the form of readmission agreements or more informal arrangements. So far, only 18 countries, mostly European, have signed readmission agreements with the EU.¹⁶ On the one hand, the benefit to the signatory country, a parallel agreement on visa facilitation, does not constitute sufficient incentive. On the other hand, the EU's insistence that readmission agreements include returns of third-country nationals who would have arrived in the EU via the signatory country is considered a leonine condition.

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To achieve effective cooperation in the return process, the measures, incentives or restrictions deployed by the EU and its Member States will have to draw on all the instruments at their disposal. Their impact will be reinforced by their solidary implementation.

In particular, such measures could condition the mobility of people. So far, Member States are reluctant to resort to restrictive measures, but the surging levels of irregular migration may alter this attitude. The prospect of visa restrictions has proven useful in achieving better cooperation on returns in the case of Bangladesh. France used it in 2021 with regard to the Maghreb countries, announcing that the number of visas issued to Algerian and Moroccan nationals would be reduced by 50% and to Tunisians by 30%. These measures were lifted a year later, possibly because, having been decided in a bilateral context, an increase in the number of visas issued by other Member States, in particular Spain and Italy, partly balanced the reduction in visas issued by France¹⁷ – which indicates the need for an EU approach to achieve maximum leverage.

¹⁵ www.mei.edu/publications/algerians-clandestine-exodus-complex-national-tragedy.

¹⁶ http://publications.europa.eu/resource/cellar/f24f13ba-7206-4816-86aa-6f27d2921f89.0004.03/DOC_1.

¹⁷ The rate of acceptances of visa applications introduced in Algeria in 2019 (pre-pandemic) was: 55% (FR), 64% (ES) and 61% (IT). In 2021, it was: 49% (FR), 80% (ES) and 82% (IT).

Still in the context of mobility, several EU Member States have concluded bilateral agreements with southern Mediterranean and African countries that establish legal preferential entry quotas for economic migrants¹⁸ in exchange for cooperation in the process of returns.

Beyond mobility, the cooperation of third countries in the process of returns could also condition economic measures, such as access to the European generalized system of trade preferences (GSP+),¹⁹ and development aid.

Dismantling Smuggling Networks

The absence of a functioning state in Libya made the country a viable transit country for smuggling networks bringing migrants to the EU, making the central Mediterranean one of the main routes for illegal crossings to Europe. European and bilateral Italian involvement, including the training and equipping of the Libyan coast guard to prevent migrants from leaving Libyan territorial waters and – more contentiously – coopting Libyan militias in dismantling smuggling networks operating in Libya achieved a drastic reduction in the flows in the central Mediterranean in the years before the Covid-19 pandemic. However, this has also had some appalling consequences regarding the treatment of migrants who sometimes found themselves in situations of enslavement in detention centres operated by Libyan militias.²⁰

The instrumentalization of migratory flows to exert pressure on the EU represents a hybrid threat and, as with other hybrid threats, dissuasion is likely to be more effective than yielding to blackmail

Dismantling the smuggler networks, while ensuring the close monitoring of partner organizations in transit countries in order to guarantee respect for migrants' human rights, remains a priority for curbing illegal crossings.

Countering the Instrumentalization of Migration

In the wake of the 2015 migrant crisis, the EU negotiated Turkey's cooperation on stemming illegal crossings of the Aegean Sea to Greece with sizeable funding (initially €3 billion, with subsequent increases) to support Turkey's hosting of Syrian refugees on its territory.²¹ Even if the circumstances were exceptional, the precedent set by the case of Turkey has been disastrous. It has emboldened other countries to pursue similar tactics, notably Belarus and Morocco. A firm and agile response was given to Lukashenko's manipulation of Syrian refugees,²² and the matter was rapidly ended. However, the response to similar tactics by Morocco, periodically opening migratory flows to Spain to signal its dissatisfaction with rulings by the European Court of Justice concerning its sovereignty over Western Sahara – or to change the position of Member States on this issue²³ – has been feeble. The fallout following the corruption scandal in the European Parliament, in which Morocco may have played a part,²⁴ may lead to a hardening of positions regarding cooperation on migration.²⁵

Other countries are drawing the lesson. In the wake of tensions with Spain regarding its perceived sympathy for the Moroccan position on Western Sahara, and perhaps taking a leaf out of Morocco's book, cooperation on the identification and repatriation of Algerian nationals arriving as *haragas* on the Spanish coast was suspended.

The instrumentalization of migratory flows to exert pressure on the EU or some of its Member States represents, in effect, a hybrid threat and, as with oth-

¹⁸ [www.europarl.europa.eu/RegData/etudes/etudes/join/2010/425632/IPOL-LIBE_ET\(2010\)425632_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/425632/IPOL-LIBE_ET(2010)425632_EN.pdf).

¹⁹ <https://trade.ec.europa.eu/access-to-markets/fr/content/systeme-de-preferences-generalisees-plus-spg>.

²⁰ https://globalinitiative.net/wp-content/uploads/2018/01/Libya_ISS_Smuggling.pdf.

²¹ https://ec.europa.eu/commission/presscorner/detail/de/MEMO_15_5860.

²² [www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2022\)739204](http://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)739204).

²³ www.infomigrants.net/en/post/40376/spain-and-morocco-resolve-to-discourage-irregular-migration.

²⁴ www.lemonde.fr/en/le-monde-africa/article/2023/01/21/in-the-european-parliament-suspected-moroccan-corruption-sparks-backlash_6012509_124.html; www.politico.eu/article/mohamed-belahrech-morocco-spy-qatargate-european-union-scandal-corruption/.

²⁵ www.belgianewsagency.eu/belgium-faces-blowback-over-qatargate.

er hybrid threats, dissuasion (imposition of restrictive measures) is likely to be more effective than yielding to blackmail.

Addressing the Root Causes of Migration

Political instability dwarfs all other factors determining migratory flows to the EU. The one million persons (mostly from Syria, Afghanistan and Iraq) that crossed into the EU through the eastern Mediterranean route in 2015 and the more than four million Ukrainians that came in the wake of the Russian invasion in 2022 are ample evidence of this. It is a moot point how many more migrants Saudi Arabia's war on Yemen or the political instability in the Democratic Republic of Congo would have brought to the shores of Europe if the populations of these countries were not too indigent and too far away to undertake the journey.

In this sense, the mantra that is often repeated in Brussels that the "root causes" of migration must be addressed is correct, and Europe is acting out of self-interest in promoting the peaceful resolution of conflicts throughout the world. A far less convincing aspect of the root causes mantra is the claim that economic development assistance to under-developed countries can also stem migratory flows from those countries. In fact, the opposite seems to be the case:²⁶ statistically, for countries with the lowest income levels, migration increases with GDP per capita. Although the causal relation is not demonstrated, the conjecture is that while increasing income levels constitutes both an incentive to migrate (because more people can afford to undertake the journey) and an incentive to remain (because higher incomes improve people's lives), at low-income levels the incentive to migrate increases more rapidly with higher incomes than the incentive to remain.

A more targeted approach to the sedentarization of potential candidates for irregular migration is needed. One avenue is the Assisted Voluntary Returns (AVR) programme, managed by the IOM. Under this programme, irregular migrants agreeing to return to their country of origin are offered financial

assistance to help them resettle. Linking such programmes with biometric databases could ensure that persons resettled in this manner would not be eligible for AVR should they attempt irregular migration again.

Revising Visa Policy

Once the Entry/Exit System is fully operational²⁷ it will enable the unambiguous identification of overstayers. Beyond using this information to disqualify any subsequent visa applications by the persons concerned, the EES will also permit the identification of the countries whose visitors contribute most significantly to visa overstays. This should then lead to the imposition of stricter criteria for the delivery of visas to nationals of the countries concerned.

There is some evidence that the number of people undertaking illegal border crossings into the EU is negatively correlated with the possibility of travel to the EU on short-term tourist visas. When air and ferry connections between Algeria and the EU were strongly curtailed and the issuance of Schengen visas to Algerian nationals was suspended during the Covid-19 pandemic, some 13,000 illegal border crossings (per year) were registered in 2020 and 2021; when travel restrictions were rescinded and the issuance of Schengen visas resumed in 2022, the number of illegal crossings by Algerians fell to ca. 8,000 (even as the overall volume of illegal crossings into the EU *increased* by 60%). The evolution of illegal border crossings by Moroccans during this period reveals a similar pattern.

It is therefore likely that some of the persons attempting to migrate irregularly to the EU in 2020 and 2021 by undertaking an illegal border crossing would have travelled by regular means (and subsequently overstayed their Schengen visa) had this opportunity been available. This conclusion suggests that countries with high irregular migration flows to the EU, and particularly those with low rates of enforcement of return orders, should see the delivery of visas to the EU restricted in the same manner as countries with high rates of visa overstayers.

²⁶ <https://documents1.worldbank.org/curated/en/786201611170919983/pdf/A-Reappraisal-of-the-Migration-Development-Nexus-Testing-the-Robustness-of-the-Migration-Transition-Hypothesis.pdf>.

²⁷ This goal has proved to be elusive. Officially it is scheduled for May 2023 but the services of the European Commission indicate that "end of 2023" would be more realistic.

Providing Viable Alternatives for Regular Migration

In 2021, some 1.33 million work-related, first-time residence permits,²⁸ representing legal economic migration, were issued in the EU. Although there is not a one-to-one correspondence between first-time residence permits and immigrants, this number compares favourably with the number of illegal border crossings registered in the same period (0.2 million). But it would be wrong to conclude that viable alternatives of legal economic migration exist for the persons undertaking illegal border crossings. Nationals of the 10 countries generating 73% of illegal border crossings represent only 5.4% of legal work-related migration. This is because most work-related, first-time residence permits are issued to high-skilled migrants, for example on the basis of the EU Blue Card directive²⁹ or in the frame of intra-corporate transfers, and do not correspond to the profiles of irregular migrants.

Ultimately, taking the wind out of the sails of irregular migration will require providing legal migration alternatives on a similar scale, not only to refugees, through Resettlement and Humanitarian Admission measures, and not only to high-skilled migrants, but to economic migrants more generally.

Circular migration options stand to benefit both the individuals seeking to migrate and the countries of origin. The reticence of EU Member States to put such schemes in place in cooperation with partner countries is probably due to the expected risk of overstays and the low enforcement rates of return orders. The establishment of a system of incentives rewarding returning migrants together with a more

effective returns process should be able to allay these concerns.

Conclusion

The phenomenon of irregular migration is once again becoming a political issue, in the EU and elsewhere. A durable response would require the EU to reform its asylum system to better target the needs and welfare of refugees, and foster a better level of cooperation with third countries, notably its Mediterranean neighbours, to achieve more effective returns, dismantle smuggling networks and discourage the instrumentalization of migration. This will require a more transactional approach, with the concerted deployment of both incentives and dissuasive measures, drawing on all relevant instruments, including those related to visa, trade and development policies.

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Perhaps most importantly, while redoubling efforts to repress irregular migration, the EU needs to expand the legal pathways for immigration.

²⁸ This figure excludes first-time residence permits issued for reasons of asylum, education or family reunification, etc.

²⁹ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32021L1883>.