

## BORDERS CONTROL AND SEARCH AND RESCUE OBLIGATIONS IN THE MEDITERRANEAN: BETWEEN HUMAN RIGHTS AND SECURITY

ARTICLE

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The European Union's (EU) policies on migration, asylum and integrated border management are intended to contribute to the effectiveness of the EU's Area of Freedom, Security and Justice. Their main goal is therefore to prevent illegal migration and effectively manage migration flows, rather than improving the international legal regime on migration from a human rights perspective. While all these policies have acquired a security bias over time, their application by the EU or its member states should not result in disregard of the protection of human rights (HR) standards, nor should it facilitate states neglecting this protection when enforcing their responsibility to control external borders.

As most controls usually do not take place at physical European borders, but rather at airports or consulates, and safe and legal ways of entry are generally scarce and lacking for forced migrants, the sea has become the main route for illegal entry into Europe. On 7 April 2026, for example, 83% of illegal arrivals used the Mediterranean route, despite it being the deadliest maritime route in the world (OIM, *Missing Migrants Project* and *Migration Flow to Europe*, Arrivals, April 2026).

For this reason, border management has increased in the seas in two ways. Firstly, EU agencies such as Frontex undertake migration management activities in these areas, which blurs or even transfers the responsibility of states to respect international law (HR; rights associated to international protection) to an actor who would hardly be responsible for breaches of HR. Secondly, states exercise their sovereign power to control their borders, often extending beyond their territorial limits and frequently failing to respect the HR protection standards to which they are clearly obliged when deploying their competences within their territories.

In both cases, the EU Charter of Fundamental Rights is the main limitation on the operational activities of EU agents and member states at sea, because Frontex and member states apply EU law when they undertake rescue operations conducted as part of "Frontex-led joint operations at sea" and in search and rescue (SAR) operations conducted as part of "EU integrated border management activities." This means that, in both cases, EU law is applied when Frontex and the states fulfil their obligations to preserve life at sea, as set out in

international maritime law. International maritime law establishes two key obligations aimed at saving lives: (a) the duty to render assistance to persons in distress, applicable to all actors present at sea; and (b) the SAR obligations of states over their SAR zones. They are regulated by international instruments classified under international maritime law, e.g. United Nations Convention on the Law of the Sea, (UNCLOS); International Convention for the Safety of Life at Sea (SOLAS); and International Convention on Maritime Search and Rescue (SAR).

Regarding Frontex-led operations at sea, it is possible to highlight two aspects that pose risks to the protection of human rights. On the one hand, there is an ongoing process of digitalization of data on migrants obtained by Frontex (Themis, Indalo, Poseidon) and other actors (EUnavForMed-Sofia and EUnavForMed-Irini are operations created in the Common Foreign and Security EU policy) in maritime operations. There is also an ongoing process of ensuring interoperability between the EU's large-scale IT systems in the areas of borders, visas, police, judicial cooperation, asylum and migration. Migrants and refugees are included in these strategies to contribute to increasing a high level of security without providing them with sufficient tools to preserve their rights or guarantee their right to apply for international protection. As previously mentioned, all of these activities contribute to the technosecuritisation of migrations, which "normalize the framing of mobility as a problem to be contained rather than a right to be managed" (Chiara Grazinai, "Technosecuritization: Digital Technologies and the Securitization of EU Migration Law", *European Journal of Migration and Law*, 28, 2026, p. 43).

On the other hand, Frontex has been reluctant to take responsibility for breaches of international norms. The Court of Justice of the EU (CJEU) has recently ruled, nevertheless, that "Frontex must assume non-contractual liability for any damage caused by its departments or by its staff in the performance of their duties, in accordance with the same principles as those governing the non-contractual liability of the European Union" and "has the obligation to verify that written and enforceable return decisions exist for all persons whom a Member State intends to include in such operations" to avoid liability (case *WS*, C-679/23 P, GC judgment, 18 December 2025).

Although SAR operations performed by member states are regulated by international law, they constitute EU law enforcement as they are one of the components of the *integrated border management* concept (Regulation EU 2018/1896 article 3). States must preserve the right to life, which is enshrined in several international instruments, including the Charter of Fundamental Rights of the EU. This right has shaped the interpretation of key concepts in international and EU law relating to the activities that states undertake at sea. Firstly, in the *Sea Watch* case, the CJEU ruled that the duty to render assistance to persons in distress meant "the conditions of *force majeure* leave no choice to the shipmaster but to render assistance and welcome persons in distress on board" and the rescued individuals "must not be counted when verifying whether the rules on safety at sea have been complied with" (Cases C-14/21 and C-15/21 *Sea Watch* judgment, 1 August 2022). Secondly, the Human Rights Committee concluded that the concept of *due diligence* requires "taking reasonable, positive measures that do not impose disproportionate burdens on States parties in response to reasonably foreseeable threats to life" and that Italy had failed to demonstrate that it has met its due diligence obligations to preserve life. This was due to its failure to respond promptly to a distress call before the Maltese

authorities took over its responsibility (see the Committee's Views of 4 November 2020 concerning Communication No. 3042/2017 submitted by *A.S., D.I., O.I. and G.D versus Italy*). Thirdly, in *Safi and others v. Greece* the European Court of Human Rights (ECHR) found that the state had failed to comply with its *positive obligations* because they “did not do everything that could reasonably be expected of them to offer” in relation to the requested level of protection to preserve life during a search and rescue operation involving the Greek coastguard, and resulting in the shipwreck of a fishing boat (judgment 7 July 2022).

Finally, in a case against Greece concerning the interception of boats in police operations fighting against human smuggling, the ECHR ruled that “the coastguard did not take the necessary steps to ensure, before firing on the launch’s engine with a view to immobilising it, that there were no other passengers on board.” Consequently “the interception operation at issue was not carried out in such a way as to minimise the use of lethal force and the possible risks to the life of the applicants’ relatives.” For these reasons, the Court ruled that “the use of force in the instant case was neither absolutely necessary nor strictly proportionate to the legitimate aims referred” (*Alkhatib et autres c. Grèce*, judgment of 16 January 2024).

The reinforcement of obligations at sea derived from international and EU law, combined with the consequences of applying the Common European Asylum System for states, has led to states withdrawing from SAR operations in the Mediterranean. States that fulfill their SAR obligations are ultimately responsible for disembarking rescued people and, if they apply for asylum, for receiving them, assessing their asylum procedures and enforcing return procedures if they are not allowed to stay. Private actors have occupied this space, substituting states in SAR activities, which has created tensions between the aim of protecting human rights of non-governmental organizations (NGOs) and the goal of avoiding the arrival of migrants who are treated from the security perspective.

Two main conclusions can be drawn from the research. Firstly, with regard to SAR operations: Frontex, the Commission and member states should adopt a procedure for recording all SAR operations, as well as a protocol for action and good practices when aerial surveillance identifies vessels in distress. The EU and its member states should also ensure that there are sufficient vessels at sea to support SAR operations and provide assistance to people in distress. Secondly, to avoid violence in the Mediterranean resulting from action or inaction, the EU and its member states should establish safe and legal entry routes for forced migrants (humanitarian visas, complementary pathways and resettlement), as well as for other individuals (EU talent partnerships, work and residence permits issued in the country of origin for specific job roles).