Maritime Migrations to Europe and the EU Asylum Policy – Building a Protection-Sensitive Entry System

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Abstract

More than 30,000 people lost their lives in the Mediterranean and the Atlantic on maritime migration routes to Europe since 2014. This is a humanitarian disaster at the EU's doorstep that demands decisive action. This study aims to analyse the evolution of the EU and its Member States' policies towards migrants and asylum seekers, including the coordination of search and rescue capabilities, in the context of growing migration pressure through maritime routes. Solidarity and coordination between EU Member States are important when dealing with migration inflows that involve maritime routes and extensive search and rescue operations. Ensuring legal pathways for migrants and facilitating their integration into EU society is key to preventing areas of socio-economic exclusion where social unrest, criminality, xenophobia, anti-EU sentiment and radicalisation tend to flourish. The number of people arriving irregularly in Europe is relatively small, when compared to the total number of regular migrants, so it is realistic to assume that EU Member States can jointly absorb these irregular migrants if a well-organised, protection-sensitive, entry system is set up. A balanced immigration policy must simultaneously ensure the legitimate security concerns of the EU Member States, and the rights of migrants and asylum seekers under international law. The new EU Pact on Migration and Asylum is a step in the right direction, although significant execution challenges lie ahead.

Keywords: EU Pact on Migration and Asylum; Maritime Migratory Routes; Search and Rescue; Illegal Migration; European Union; Mediterranean.

Resumo
Migrações marítimas para a Europa e a política de asilo da UE - construção de um sistema de entrada sensível à proteção

Mais de 30.000 pessoas perderam a vida no Mediterrâneo e no Atlântico, desde 2014, em migração através de rotas por via marítima para a Europa. Esta é uma catástrofe humanitária às portas da União Europeia (UE) que exige uma ação decisiva. O objetivo deste estudo é analisar a evolução das políticas da UE e dos seus Estados-membros relativas a migrantes e a requerentes de asilo, incluindo a coordenação das capacidades de busca e salvamento, no contexto de uma crescente pressão migratória através de rotas marítimas. A solidariedade e a coordenação entre os Estados-membros da UE são importantes, ao lidar com os fluxos migratórios que envolvem rotas marítimas e extensas operações de busca e salvamento. Garantir vias legais para os migrantes e facilitar a sua integração nas sociedades de acolhimento na UE é fundamental para prevenir áreas de exclusão socioeconómica nas quais tendem a prosperar a agitação social, a criminalidade, a xenofobia, o sentimento anti-UE e a radicalização. O número de pessoas que chegam ilegalmente à Europa é relativamente pequeno, quando comparado com o número total de migrantes legais, pelo que é realista assumir que os Estados-membros da UE podem absorver, conjuntamente, estes migrantes se for estabelecido um sistema de entrada bem organizado e sensível a padrões de proteção. Uma política de imigração equilibrada deve garantir, simultaneamente, as legítimas preocupações de segurança dos Estados-membros da UE e os direitos dos migrantes e requerentes de asilo ao abrigo do Direito Internacional. O novo Pacto da UE em matéria de Migração e Asilo é um passo na direção certa, embora se antecipem desafios em matéria de execução.

Palavras-chave: *Pacto de Migração e Asilo; Rotas Migratórias Marítimas; Busca e Salvamento; Migração Ilegal; União Europeia; Mediterrâneo.*

1. Introduction

On the night of 13 June 2023, a fishing vessel carrying up to 750 migrants sank in the Mediterranean Sea, about 45 miles (ca. 72 km) Southwest of Greece. Only 104 survivors were rescued, and some of these claimed that their boat sank due to the Greek Coast Guard's attempts to board the vessel to tow it away from Greek waters (Davey-Attlee et al., 2023; Beake e Kallergis, 2023). This tragic event was a sad reminder, among many recently, of how the European Union's (EU) approach to maritime surveillance, rescue at sea, external border controls, asylum procedures, as well as its neighbourhood policies, needed to undergo an urgent revision. According to the United Nations, over the last 10 years, more than 26.000 people have died trying to cross the Mediterranean Sea, making it one of the deadliest migration routes in the world (United Nations, 2023).

This study aims to analyse the evolution of the EU and its Member States' policies towards migrants and asylum seekers, including the coordination of search and rescue capabilities, in the context of growing migration pressure through maritime routes. The current international situation in the Middle East, the North of Africa and the Sahel, with its armed conflicts, political instability and economic crises, creates, year after year, record numbers of migrants trying to reach Europe by sea. The economic and social development gaps between Europe and its neighbouring regions, and the persistent violent conflicts in many regions of the world, are most likely to sustain these mass migrations in the coming decades. Demographic trends also differ considerably between Europe and its neighbouring regions, on variables like population size, fertility rates and the age structure of the populations. All these factors have known consequences on migratory flows and, therefore, an impact on both national and international security (Tragaki, 2007).

Moreover, we also need to keep in mind the expected impacts of climate change. Indeed, Africa and the Middle East will be increasingly exposed to water scarcity, drought, and food shortages caused by the effects of desertification on arable land. At sea, some major environmental changes are also afoot - ocean acidification and the consequent coral reef bleaching, overfishing and marine resource depletion have widespread effects at a global scale - which will fuel further humanitarian problems. While it is true that poorer countries in Africa and the Middle East are more vulnerable to climate change, the increasing frequency of natural disasters and extreme weather events in Europe, many linked to climate change, have also displaced thousands of people in these destination countries. For example, in 2020, the hottest year on record until that date, wildfires resulted in 23,000 new displacements in Greece, Spain, and France. Other weather events, such as Storm Dennis, were responsible for more than 1,000 displacements in the United Kingdom, and later that year, floods in France caused close to 5,000 displacements. (McAuliffe

e Triandafyllidou, 2021). More recently, catastrophic flash floods hit Spain, causing major economic losses, killing over 200 people and displacing tens of thousands (World Meteorological Organization, 2024). In fact, there is reliable evidence that environmental factors have significant correlations with social, political and economic drivers of human migrations (Black et al., 2011).

The EU has, since its early days, understood the need to have a common approach regarding mass migrations and asylum policies. Major historical events in and around Europe, such as the collapse of the Soviet Union, the wars in the Western Balkans, the Arab Spring, the civil war in Syria, the expansion of ISIS in the Middle East, and the Russian invasion of Ukraine, have generated sudden peaks in the number of migrants seeking refuge in the EU. These were all, and still are, challenging times for the EU, which has struggled to deal appropriately with each of these occurrences.

The lack of the EU capacity to deal with great inflows of migrants was especially relevant in 2015, resulting in stronger internal and external border controls and some major difficulties in managing thousands of migrants and refugees. The unpreparedness of the EU, and its Member States, to face these challenges was particularly evident through the mass detention of those new arrivals, the disorganisation and insufficient resources in refugee camps, the flourishing human trafficking networks, and the absence of solidarity and agreement regarding the relocation of the asylum seekers within the EU Member States.

Additionally, there has also been a lingering lack of coordination in search and rescue activities at sea, with disordered action by individual Member States and non-governmental organisations (NGOs). Furthermore, some EU Member States and agencies have also been accused of pushing migrant boats away from EU Member States' national waters, a serious breach of international law (Liboreiro, 2021).

Any reflection on the EU's migration and asylum policies should incorporate three decisive variables. The first two variables have to do with demography. Europe's population is ageing, and the EU needs immigrants to maintain its economy competitive and to maintain the financial sustainability of the social state. Therefore, policies that foster safe and legal migration are an important part of Europe's future prosperity. The second variable is the number of people seeking a new life in Europe, migrating from troubled areas in other continents, which will continue to increase in the coming years, and will have sporadic peaks that need to be absorbed. The third is that the EU approaches to migration and asylum policy have been inadequate for years and required a significant review to establish a protection-sensitive entry system (UNHCR, 2017) that safeguards basic human rights. Thousands of lives are being lost at sea every year, many migrants are poorly treated, the cooperation and solidarity between Member States has been insufficient, and some populist, anti-migrant, and anti-EU political narratives are on the rise in Europe. The new EU Pact

on Migration and Asylum, approved in April 2024, is a step in the right direction, trying to establish more humane conditions for asylum seekers and improved solidarity mechanisms between Member States, but its complexity may enclose considerable implementation challenges (González Enríquez, 2024).

The main questions addressed in the following sections are, first, the challenges the EU is currently facing, and will increasingly continue to face in the foreseeable future, regarding migrations via maritime routes. These challenges include objective dimensions, related to a rising number of migrants travelling on dangerous maritime routes to seek asylum in the EU, as well as perceived challenges by the EU Member States' public opinions, which affect their governments' decisions.

Secondly, this study tries to ascertain where EU migratory policies and practices have proven to be inadequate in the past and why. Some of the main joint initiatives of the EU on external borders' management and on search and rescue at sea are reviewed, as well as some threats posed by inadequate migration policies.

Finally, this analysis attempts to identify some key elements that must be present in any regulatory framework of the EU, so it can realistically face the challenges posed by the expected maritime migratory flows in the coming years. These elements should ensure, simultaneously, the EU and its Member States' national security and defence priorities, and safeguard European human rights values and the full compliance of the obligations set in international law.

2. The Scale of Mass Migrations to the EU Via Maritime Routes

In 2022, almost 330,000 irregular entries were detected at the external borders of the EU. This was the highest number since 2016, with the Western Balkan and Central Mediterranean routes alone accounting for 75% of these irregular border crossings (European Migration Network, 2023).

Figure 1
Number of asylum applications to the EU (1990-2022). Figures as of 2020 do not include applications made in the UK (following its withdrawal from the EU)
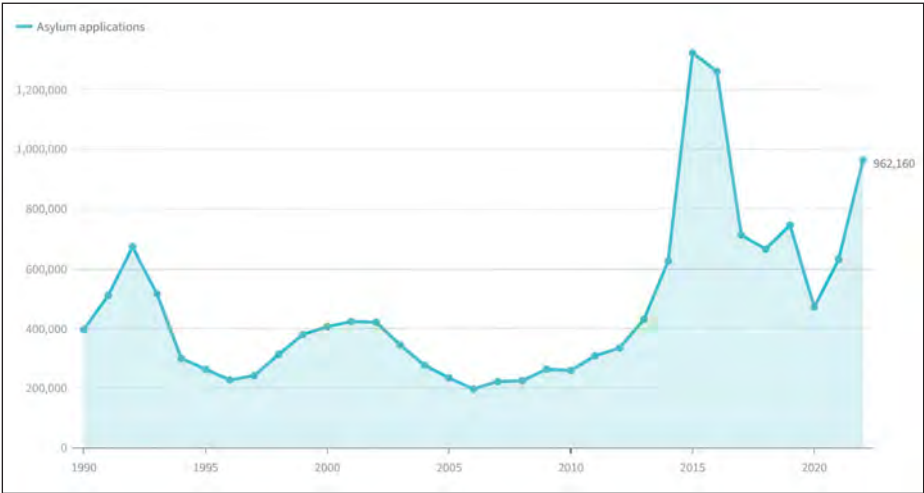
Source: Eurostat.

According to Eurostat, a total of 962,160 third country nationals applied for asylum in the EU in 2022. These numbers include both first-time asylum applicants and subsequent applications. The statistical trends show that asylum applications in the EU reached a peak in 2015 and 2016 and fell thereafter. However, more recently, between 2021 and 2022, there was an increase of 52% in asylum applications to the EU (Figure 1).

Syria, Afghanistan, Türkiye, and Venezuela are the third countries that most contributed to the higher number of applications for asylum (Figure 2). In 2022, these four countries alone accounted for almost 40% of all asylum requests. Since 2013, Syria has been the country with the largest number of asylum applicants in the EU; migrants from Syria filed 135 465 applications in 2022.

Figure 2
Countries of origin of asylum applicants to the EU in 2022

Source: Eurostat.

The Mediterranean migration routes have also been important for irregular immigration from Sub-Saharan Africa, especially from the Sahel and the Horn of Africa (Estevens, 2018). Considering only the number of first-time applications in that year, there is a concentration of asylum's requests in a restricted number of EU Member States. According to Eurostat, in 2022, Germany received a quarter (25%) of all the asylum applications in the EU, followed by France (16%), Spain (12%), Austria (11%) and Italy (9%). These five Member States together received almost three quarters of all first-time asylum applications in the EU. This concentration is likely to be due to a combination of factors that include geographical location, especially for the Mediterranean countries, the perception of economic development, and the social policies in place for the reception and inclusion of migrants in these Member States.

As for maritime migrations towards Europe, there is a convergence towards the Mediterranean Sea routes, although some Atlantic routes are also used, like the Western Africa and Morocco Atlantic Route to the Canary Islands (International Organization for Migration, 2023). There are three main migration routes across the Mediterranean Sea. The Central Mediterranean route connects the North of Africa to Italy and its islands and to Malta. The third country nationals using this route are usually trying to reach Italy and may leave from several countries in North Africa, although most migrants tend to leave from Libya, which is an important transit country in the region. Nevertheless, recently, there has been an increasing number

of departures from Tunisia, Egypt, and Algeria. Tunisia has seen a significant increase in the number of departures over the last few years, with Tunisian nationals accounting for more than 60% of the Central Mediterranean route crossings in 2020 (McAuliffe e Triandafyllidou, 2021).

The Eastern Mediterranean route includes mainly departures from Türkiye to Greece, but also to some entry points in Cyprus and Bulgaria. This was the main maritime route used for irregular migration to Europe in 2015, when close to one million migrants attempted to cross the Mediterranean (Black, 2021). This maritime route is primarily used by people from the Middle East and South Asia, trying to escape from armed conflicts and instability in countries like Syria, Iraq, and Afghanistan, but the number of people using this route dropped sharply after the implementation of the EU–Türkiye Agreement in March 2016.

As for the Western Mediterranean route, it has been a crossing point between North Africa and the Iberian Peninsula since time immemorial. This migration route crosses the Strait of Gibraltar and the Alborán Sea, linking Morocco and Algeria to Spain, including the land route to the Spanish cities of Ceuta and Melilla, in North Africa. The third country nationals that use this route depart mainly from Morocco, although in the last decade, there has also been an increase in the number of departures from the western coast of Algeria. Moroccan nationals constitute most of the migrants arriving in Spain via these Western Mediterranean routes (Black, 2021).

In this context, it may be said that the Mediterranean basin has become a critical area in the transnational circulation of people, being at the crossroads of different routes starting from Sub-Saharan Africa, the Middle East, and Southwest Asia. Unfortunately, these maritime routes are extremely dangerous, with the Central Mediterranean route being considered the deadliest migration route in the world (McAuliffe e Triandafyllidou, 2021). The International Organization for Migration's Missing Migrants Project recorded a total of 2,740 deaths and disappearances globally in the first half of 2023, with drowning being the leading cause of death, with 2,200 recorded incidents (International Organization for Migration, 2023). On the maritime routes to Europe, 2,002 migrant deaths were recorded (Figure 3), but these statistics of fatal incidents probably represent an undercount. The actual number of victims is likely to be higher, as documenting migrant deaths on these routes is a difficult task due to insufficient public and reliable sources of information.
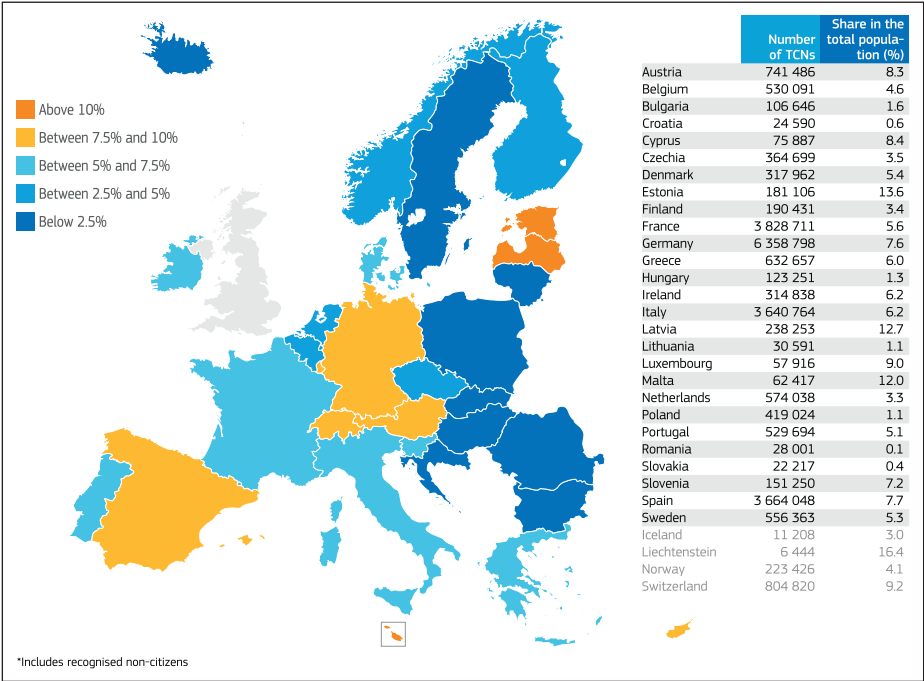
Figure 3
Migrant deaths on maritime routes to Europe
in the first halves of 2021, 2022 and 2023
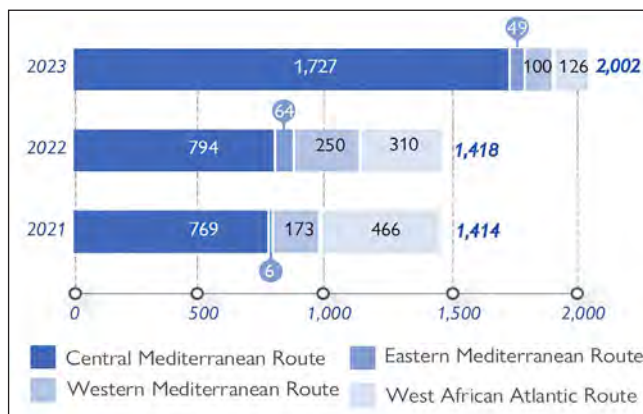
Source: IOM, Missing Migrants
Project – Mid-year Regional Overview – MENA, January – June 2023.

It is important to notice that there are virtually no records of deaths at sea on these maritime migration routes before the 1990s, and that now they have become a very frequent occurrence. In fact, irregular maritime migrations to Europe, contrary to popular belief and some populist narratives, are less an issue of migrant arrivals and rather a challenge of humanitarian dimensions. With more than 27,000 lives lost in the Mediterranean, and more than 3,100 in the Atlantic, since 2014, the deaths on maritime migration routes to Europe are an appalling humanitarian disaster at the EU's doorstep. Decisive action must be taken or, unchecked, this tragedy can erode European values to the core, compromising basic human rights enshrined in the Charter of Fundamental Rights of the European Union (European Union, 2012) and the Universal Declaration of Human Rights (UN General Assembly Resolution 217 A (III) of 10 December 1948), like the right to life and the right to asylum.

Figure 4
Share of third country nationals in the total population, 1 January 2022

	Number of TCNs	Share in the total population (%)
Austria	741 486	8.3
Belgium	530 091	4.6
Bulgaria	106 646	1.6
Croatia	24 590	0.6
Cyprus	75 887	8.4
Czechia	364 699	3.5
Denmark	317 962	5.4
Estonia	181 106	13.6
Finland	190 431	3.4
France	3 828 711	5.6
Germany	6 358 798	7.6
Greece	632 657	6.0
Hungary	123 251	1.3
Ireland	314 838	6.2
Italy	3 640 764	6.2
Latvia	238 253	12.7
Lithuania	30 591	1.1
Luxembourg	57 916	9.0
Malta	62 417	12.0
Netherlands	574 038	3.3
Poland	419 024	1.1
Portugal	529 694	5.1
Romania	28 001	0.1
Slovakia	22 217	0.4
Slovenia	151 250	7.2
Spain	3 664 048	7.7
Sweden	556 363	5.3
Iceland	11 208	3.0
Liechtenstein	6 444	16.4
Norway	223 426	4.1
Switzerland	804 820	9.2

Legend:
- Above 10%
- Between 7.5% and 10%
- Between 5% and 7.5%
- Between 2.5% and 5%
- Below 2.5%

*Includes recognised non-citizens

Source: Eurostat (migr_pop1ctz), extracted 8 May,
in EMN Annual Report on Migration and Asylum 2022.

In the past ten years, migrations have become a prominent item on both the EU and the national political agendas, in a period when Member States have been struggling to recover their economies from a sequence of shocks (a sovereign debt crisis, a pandemic, and a war). Nevertheless, the fact is that the number of people arriving irregularly in Europe is minimal when compared to the total number of regular migrants from North and West Africa (Black, 2021). It is realistic to assume that the EU's Member States can jointly absorb these irregular migrant flows if a well-organised entry system is put in place. Since 2019, the average percentage of third-country nationals in the total population of European countries has been around the 5% mark (European Migration Network, 2023). In rough numbers, we are dealing with an estimated 25 million immigrants, representing a population of close to 500 million EU citizens (Figure 4).

3. Solidarity and Cooperation between EU Member States

Even though the current number of immigrants in Europe does not seem to constitute a demographic, economic, or social challenge to the EU (D'Albis et al., 2018; European Migration Network, 2023), the increased number of arrivals via maritime routes in the past ten years has often raised tensions between EU Member States, exposing the fact that the regulatory frameworks were becoming inadequate to address the challenge at hand (Black, 2021; Kokkinidis, 2022).

Until 2024, the EU had a package of regulations on asylum, international protection, and reception conditions, known as the Common European Asylum System (CEAS), which aimed at ensuring a harmonized approach to asylum across all Member States. One of the main objectives of the CEAS was to ensure that individuals seeking international protection received fair and consistent treatment regardless of the EU country they arrived in. A key component of the CEAS was the Dublin Regulation, which established common standards for asylum applications (EU Regulation 604/2013 of the European Parliament and of the Council of 26 June). This regulation defined that only one EU Member State was responsible for processing an asylum request – the country where the applicant was first registered in. However, in the 2015 crisis, some Member States suspended the application of this rule to Syrian refugees in an attempt to deal with the growing number of asylum seekers (Ferreira, 2016). This decision temporarily helped to alleviate pressures on first entry countries, such as Italy and Greece, since migrants were not being returned there for processing. At that time, the EU launched an emergency relocation programme to reduce the burden on Italy and Greece. According to the European Commission, under this emergency programme 34,700 people were relocated from Italy and Greece to other European countries (including Norway and Switzerland) with the support of EU agencies and EU funding, between 2015 and 2017.

Relocations were a solid example of solidarity between EU Member States regarding migration management and aimed at safeguarding core priorities of the EU's migration and asylum policy, like protecting vulnerable people and promoting their well-being. Through relocations, asylum applicants can be transferred from their first country of entry into the EU to another European country, removing some pressure on the local reception and asylum systems of the Member States who manage the Union's external borders.

Responding to the need to provide Member States with support in the application of the EU regulations on asylum, international protection, and reception conditions, the European Asylum Support Office was created in 2010. This office was transformed into a full-blown EU agency – the European Union Agency for Asylum (EUAA), based in Malta, in 2021 (EU Regulation 2021/2303 of the European Parliament and

of the Council of 15 December). In 2024, the EUAA's capacity to provide operational and technical assistance to Member States was significantly expanded by the new EU Pact on Migration and Asylum. The agency will now play a more active role in supporting Member States throughout the asylum process, from initial screening to decision-making and potential returns. Additionally, the EUAA will have an increased responsibility in ensuring convergence in the examination of applications for international protection, including developing common standards for assessing asylum claims, training national asylum officers, and offering guidance on country of origin information, crisis response, and data management.

The EU has also set up an Asylum, Migration and Integration Fund (AMIF) to develop national capacities and improve procedures for migration management, as well as to enhance solidarity and responsibility sharing between Member States, particularly through emergency assistance and the relocation mechanism. Its budget was increased from 3.137 billion euros for 2014-2020, to 9.9 billion euros for 2021-2027 (EU Regulation 2021/1147 of the European Parliament and of the Council of 7 July). AMIF also aims to support legal migration and contribute to the integration of third country nationals in EU Member States, countering irregular migration, and ensuring effective returns and readmissions in third countries.

Solidarity between EU Member States is particularly relevant in migration inflows that involve maritime routes and extensive search and rescue operations, as will be discussed in the following section. In 2018, after the first EU emergency programme ended, some Member States started making pledges for voluntary relocation of migrants rescued at sea in the Central Mediterranean. This effort was coordinated by the European Commission, following requests made by Italy and Malta. In the context of search and rescue operations in the Central Mediterranean, in 2019, a temporary relocation mechanism for these voluntary relocations was included in the so-called Malta Declaration (endorsed by Italy, Germany, France, and Malta). In 2020, following a request from Greece, the European Commission proposed an Action Plan to set up a voluntary relocation scheme for unaccompanied minors, vulnerable asylum seekers, and other beneficiaries of international protection from Greece to other European countries. Since the inception of this plan, 16 countries (13 EU Member States plus Switzerland, Norway, and Iceland) have participated in the relocation scheme from Greece by receiving the abovementioned groups. The scheme has been managed by the Greek authorities in cooperation with the EUAA and the UN (IOM, UNHCR, and UNICEF).

In June 2022, 21 European countries (18 EU Member States plus Switzerland, Norway, and Liechtenstein) signed the Declaration on Solidarity, which established a Voluntary Solidarity Mechanism (VSM) that aimed to address the difficulties of the Mediterranean Member States facing increased maritime migration flows, through relocation of asylum seekers and refugees, and through financial support

(European Union, 2022). The EUAA played an important role in the relocation process by providing additional operational support to competent authorities of European countries.

In November 2022, Italy, Greece, Malta, and Cyprus issued a joint statement contesting the notion that countries of first entry are the only possible European landing spots for illegal immigrants and claiming that the number of migrants taken in by other EU Member States under the VSM only represented a minimal fraction of the actual number of irregular arrivals (Kokkinidis, 2022). These four Member States, as first entry points into Europe for the migrants using the Central and Eastern Mediterranean routes, have been bearing the heaviest burden of the management of migratory flows in the Mediterranean, in compliance with the obligations imposed by international law and EU regulations. This joint statement also condemned the rescue operations conducted by NGOs' vessels in the Mediterranean, stating that these were not articulated with the competent authorities from the EU coastal states. The following sections of this study discuss the challenges of managing high migration inflows via maritime routes related to search and rescue operations, and how these challenges should also be considered when implementing the new EU Pact on Migration and Asylum.

As far as solidarity mechanisms between Member States are concerned, the experience with the VSM revealed the limitations of voluntary systems, indicating that only a mandatory scheme would be effective. However, the VSM was a gradual step towards the current EU Pact on Migration and Asylum, which integrates the Asylum Migration Management Regulation (Regulation EU 2024/1351 of the European Parliament and of the Council of 14 May) aiming at a more balanced distribution of asylum seekers between the EU Member States when compared to its predecessor, the Dublin Regulation.

The Asylum Migration Management Regulation introduces a mandatory but flexible solidarity mechanism, where EU Member States are required to contribute but have flexibility on how to comply. Member States can choose between accepting the relocation of asylum seekers, providing financial contributions, or offering other solidarity measures (e.g., operational support, staff, or in-kind support). The EU Council establishes an annual solidarity pool based on a European Commission proposal and following an annual report assessing the asylum, reception, and migratory situation. The European Commission sets a minimum target of at least 30,000 migrants to be relocated annually.

There is solid evidence that the public opinions in the EU are sensitive to the fairness of the responsibility-sharing mechanisms in place, rather than only the consequences of the asylum policies (Bansak et al., 2017). Hence, EU Member States' governments have a strong incentive to negotiate solutions that are perceived to be balanced and fair.

4. Complying with International Maritime and Refugee Law

Solidarity between EU Member States is very significant in the management of large migration flows that involve maritime routes and extensive search and rescue operations. However, the EU has no competence in search and rescue at sea, as this is a competence of the Member States in the framework of international maritime law.

Two conventions have enshrined in international law the longstanding maritime tradition of any ship having the obligation of rendering assistance to anyone distressed at sea regardless of their nationality, status, or the circumstances in which they are found: the 1974 International Convention for the Safety of Life at Sea (International Maritime Organization, SOLAS Convention), and the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

The SOLAS Convention requires States to ensure that necessary arrangements are made for distress communication and coordination in their area of responsibility and the rescue of individuals distressed at sea around its coasts. These arrangements include the establishment, operation, and maintenance of such search and rescue facilities as are deemed practicable and necessary (SOLAS regulation V/7).

UNCLOS imposes an obligation for States party to the convention to promote the establishment, operation, and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements with neighbouring States for this purpose (UNCLOS Article 98(2)).

EU Member States are also bound by the 1979 International Convention on Maritime Search and Rescue (International Maritime Organization, SAR Convention) which obliges its parties to ensure assistance to any person distressed at sea regardless of the nationality or status of such a person or the circumstances in which that person is found (Chapter 2.1.10) and to provide for their initial medical or other needs and deliver them to a place of safety (Chapter 1.3.2). A State which has taken responsibility for a particular search and rescue region (SRR) does not have to intervene always with its assets in a distress incident arising within its SRR. However, it should establish and operate, individually or in cooperation with other States, maritime rescue coordination centres (MRCCs) to receive distress alerts originating in its SRR, make arrangements for communications with individuals in distress and other MRCCs, identify vessels and other facilities able to participate in search and rescue operations, and coordinate rescue responses as appropriate without undue delay. In practice, search and rescue operations must rely on effective international cooperation, where the Coastal States, flag States, other States, commercial shipping, NGOs, and civil society as a whole have a role to play. Besides these three conventions, governments must also abide by international human rights law. If migrants rescued at sea claim to be refugees or asylum seekers

or claim in any way that they fear persecution or ill-treatment if disembarked at a particular place, they should not be returned to that location. In other words, arrangements for disembarkation following rescue at sea must not result in direct or indirect refoulement. The 1951 Refugee Convention prohibits refugees and asylum seekers from being expelled or returned in any manner whatsoever to the frontiers of territories where their life or freedom would be threatened due to their race, religion, nationality, membership of a particular social group, or political opinion (Article 33(1)). In addition to ensuring protection against direct or indirect refoulement, disembarkation arrangements must not frustrate rescued persons' exercise of the right to seek asylum or of the freedom to leave any country, particularly when escaping from armed conflict, persecution, or serious human rights violations.

International maritime law requires coordination among States to ensure a speedy and safe disembarkation following rescue at sea. Still, it is not specific as to which State must accept disembarkation on its territory. Rescued people need to be disembarked as soon as possible in a place of safety, defined as a place where the survivors' safety of life is no longer threatened and where their basic human needs (such as food, shelter, and medical needs) can be met and from which transportation arrangements can be made for the survivors' next or final destination. The SAR Convention, as amended in 2004, obliges all States parties to coordinate and cooperate to ensure that ships that have embarked individuals in distress at sea are released with minimum deviation from their intended voyage, and determines that the State responsible for the SRR where the rescue took place has primary responsibility for ensuring such coordination and cooperation occurs, so that those rescued are disembarked and delivered to a place of safety. All States concerned are to arrange for such disembarkation to take place as soon as reasonably practicable. The International Maritime Organization (IMO) has also issued non-binding Rescue Guidelines indicating that the responsibility to provide a place of safety, or to ensure that one is provided, falls on the government responsible for the SRR where the rescue was conducted. Furthermore, these IMO guidelines consider that an assisting ship should not be recognised as a place of safety, based solely on the fact that the survivors are no longer in immediate danger once aboard the ship, and state it may serve as a temporary place of safety but should be relieved as soon as possible.

Considering the framework of international law referred to above, we realise that it is insufficiently detailed to allow efficient management of rescue at sea operations and migrations via maritime routes to Europe. For example, migrants on the Central Mediterranean route have been rescued in a part of the Mediterranean Sea where no State had formally assumed responsibility for the coordination of search and rescue (Fink et al., 2018). Libya, the nearest State, had informed the IMO of the establishment of a MRCC, but it had not effectively assumed responsibility for a Libyan SRR. Italy was filling this gap by coordinating search and rescue events

in the Libyan SRR and therefore was often the first MRCC to respond to distress alerts in that area. In these situations, because Italy was the first responder, it was expected to arrange assistance until another MRCC willing and better able to respond could be identified (IMO 2016 International Aeronautical and Maritime Search and Rescue Manual, Section 3.6).

In this context, it seems clear that EU legislation is needed to address the current and future migratory flows via maritime routes and to cover existing gaps in international law. Proper implementation of the new EU Pact on Migration and Asylum and its mandatory solidarity mechanism, referred to in the previous section, will be of great importance. Nevertheless, a legal framework is only a first step, as operational resources need to exist and be coordinated in search and rescue operations to minimise the loss of human life on these routes. The next section describes how the EU and its Member States have been cooperating and coordinating their action in this domain.

5. Saving Lives at Sea: Coordination of Search and Rescue Operations

Irregular maritime migrations create particular challenges to the safeguarding of human life at sea. When facilitated by organised networks of human smugglers, these maritime crossings become extremely dangerous, as the vessels used are often overcrowded, unseaworthy, and unequipped with minimal technical equipment or a professional crew. Consequently, distress situations at sea are a regular occurrence, resulting in the high fatality numbers referred to in section 2.

The previous section describes the current gaps and shortcomings in international law and how search and rescue and disembarkation activities of EU Member States are not covered by a common EU legal framework. Search and rescue at sea is a competence of the Member States, which they exercise in the framework of international conventions, but it is addressed in the new EU Pact on Migration and Asylum in several of its instruments (Vella de Fremeaux e Attard, 2024). These include situations caused by regular disembarkations following search and rescue operations and situations of crisis and *force majeure*.

An exception to the Member States' exclusive competence are the operations that arise during border surveillance activities at sea that are coordinated by the EU agency Frontex. Created in 2004, as the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, Frontex was re-established in 2019 as a European Border and Coast Guard (EU Regulation 2019/1896 of the European Parliament and of the Council of 13 November). Working together with the EU Member States and the Schengen Associated Countries, its mission is to ensure integrated border

management at the external borders. The empowerment of Frontex, from a support and coordination role to an operational role, was an important step to improve efficiency in managing those external borders and involved a considerable increase in resources, such as a standing corps of 10,000 operational staff by 2027 and an average budget of 900 million euros per year. Part of Frontex's mission is also to contribute to the detection, prevention, and fighting of cross-border crime at the external borders. Whenever an EU Member State requests assistance at the external borders, the agency's officers, supported by vessels, aeroplanes, drones, and border surveillance equipment, are activated. These standing corps officers work together with national authorities to carry out essential border control operations and other security-related tasks, as well as search and rescue operations. Frontex's presence is not just limited to European sea and land borders but also extends to international airports, since both commercial and private flights and remotely piloted aircraft systems are used for illegal activities related to immigration. The agency also works as a pool of resources and expertise for border control activities, sharing intelligence and knowledge with all EU Member States and neighbouring countries affected by irregular migration and cross-border crime.

Frontex will have an important role in the implementation of the new EU Pact on Migration and Asylum. Its action will focus on screening and border procedures for asylum seekers, as well as efficient and fair returns, which should expedite return procedures (Frontex, 2024). The agency will act through the deployment of trained border guards to support Member States in the new screening procedures, which include a preliminary vulnerability check, a verification of identity, the collection and transmission of biometric data, a security check, and the filling of a screening form. Frontex will also play a key role in the training of the border and coast guard communities.

In its mission, Frontex relies on EUROSUR, a communication network used for all secured information exchanges within the agency and with Member States' national authorities. In fact, EUROSUR is essential to provide a framework for information exchange and operational cooperation between Member States' authorities to improve their situational awareness and to increase the joint reaction capability at the external borders. This has proven to be of great importance for detecting, preventing, and combating illegal immigration and cross-border crime and, therefore, saving the lives of many migrants on maritime routes.

For the proper functioning of EUROSUR all national authorities with responsibility for external border surveillance under national law must cooperate via national coordination centres. One of the roles of these centres is to coordinate and exchange information among all authorities with responsibility for external border control at the national level. The quality and timeliness of the information exchanged between the Member States and Frontex are essential for the proper functioning of European

integrated border management. This involves standardisation and automation of the information exchange across networks and systems, the interoperability of systems, and information assurance and control of the quality of the data and information transmitted. Search and rescue are specific objectives of the operational plan of every Frontex joint maritime operation; therefore, the vessels deployed by the agency to an operational area are also always ready to provide national authorities with support in these types of operations. It is important to recall that search and rescue operations are always coordinated by the national MRCC, who may order vessels close to the incident to assist in the rescue. These may include national commercial or military vessels, vessels deployed by Frontex, private boats, vessels operated by NGOs, and others.

Lately, a significant proportion of migrants and asylum seekers distressed in the Mediterranean have been rescued by EU countries' naval operations, EU agencies, and NGOs. Frontex has had three active operations in the Mediterranean: operation Themis (formerly Triton), covering the Central Mediterranean; operation Poseidon, covering the Eastern Mediterranean; and operation Indalo, covering the Western Mediterranean. Overall, since 2015, more than 629,000 lives have been saved.

Nevertheless, the EU, some of its Member States, and Frontex have come under criticism as the death toll in the Mediterranean continued to increase. Lack of coordination in search and rescue activities, lack of solitary expressed by individual EU governments, and the criminalisation of NGOs active in search and rescue operations in the Mediterranean led to, on some occasions, migrants being forced to stay for several days or weeks on boats. A few EU Member States (notably, Italy, Greece, and Malta) and Frontex have also been accused of pushbacks of migrants to the high seas and towards Libya and Türkiye (Liboreiro, 2021). Libya is considered an unsafe destination, and Türkiye is often accused of not adhering to the non-refoulement principle. A media scandal erupted in October 2020, when a group of European journalists released a report that accused Greek authorities of pushing back EU-bound migrants coming from Türkiye and claimed that Frontex staff assisted the Greek officials in carrying out these pushbacks, which are illegal under international law (Liboreiro, 2021).

In June 2021, the European Court of Auditors (ECA) issued a special report entitled "Frontex's support to external border management: not sufficiently effective to date." In this audit, the ECA assessed whether Frontex was carrying out four out of its six primary activities effectively. The report also examined Frontex's preparedness to fulfill its expanded mandate (EU Regulation 2019/1896 of the European Parliament and of the Council of 13 November). The ECA concluded that Frontex's support for Member States and Schengen-associated countries in fighting illegal immigration and cross-border crime was not sufficiently effective. Since then, Frontex has undergone significant restructuring, adopting measures to

integrate human rights into its operations, including the creation of a Fundamental Rights Officer post and the adoption of a fundamental rights action plan.

The revised EU policy on migration, border controls, and asylum has built on these lessons learned. The new pact implementation must ensure that Frontex is fully operational and able to fulfill its important mission. Efficient coordination between all players active in search and rescue operations is key to saving lives at sea. Moreover, ensuring full compliance with international law is also of critical importance to the EU's international credibility.

6. Conclusions

This study reviewed the successes and failures of the EU's procedures and regulatory frameworks that culminated in the approval of a new Pact on Migration and Asylum in April 2024. The scope of this analysis covered both asylum procedures and the safeguarding of human life at sea on maritime migration routes to Europe. One of the most complex elements in dealing with the arrival of thousands of people seeking asylum is discerning who is indeed in need of international protection and who is not. Economic migrants are needed in the EU, but they should be dealt with through different procedures. The EU must build a protection-sensitive entry system (UNHCR, 2017), ensuring harmonization between Member States so that control measures and entry procedures comply with international protection standards and allow asylum seekers and other groups with specific protection needs to be identified quickly and granted access.

According to the United Nations High Commissioner for Refugees (UNHCR), protection-sensitive entry systems should ensure that legitimate measures by host countries to control entry are not applied arbitrarily and that they allow asylum seekers and other groups with specific protection needs to be identified and granted access to a territory where their needs can be properly addressed (UNHCR, 2017). To implement a protection-sensitive entry system, training should be provided to entry officials to ensure compliance with the relevant human rights and refugee laws, cooperation with third-country authorities and humanitarian actors should be established, and independent monitoring mechanisms should be put in place.

As mass migrations are here to stay, the EU will continue to be a desirable destination for many thousands of desperate people looking for a future that is impossible to ensure in their homelands. Against this backdrop, temporary solutions are not an answer, and inadequate immigration policies have proven to have multiple negative consequences, including social unrest, criminality, and the rise of populism and xenophobia in host countries (Estevens, 2018). These social and political phenomena can also be associated with nationalistic, extreme-right,

and anti-European movements whose expansion poses a direct threat to the EU's project and values.

Admittedly, the solutions for massive irregular migrations cannot be found only within the EU, and the Union and its Member States should play a greater role in addressing the causes of these migrations in the countries of origin (Klug, 2014). As referred to in section 2, a few countries of origin account for a particularly large number of asylum applicants, with Syria and Afghanistan at the top in 2022. In fact, Syria has consistently been the country with the largest number of asylum applicants in the EU since 2013. Political instability, armed conflicts, and extreme poverty in the Sahel and the Horn of Africa have also been driving significant irregular migration and refugee flows to Europe. To address the issues of maritime migration and security in the Euro-Mediterranean region, engaging multilateral agencies and the main transit countries, especially those holding large numbers of refugees, is particularly important. Libya has been the main transit country, but Tunisia, Egypt, Algeria, and Morocco are also increasingly relevant departure points for migrants on inbound routes to the EU via the Mediterranean.

Efforts must be made to further develop constructive relations with these origin and transit countries, with greater cooperation to ensure peace, political stability, security, and economic development. These endeavours should also entail investing in capacity building and institutional collaboration so that these countries can manage their borders more effectively and fight against organised immigration crime. Likewise, cooperation with the relevant authorities in origin and transit countries is important to allow the swift return and readmission of those immigrants who cannot stay legally in the EU. This is a key feature of a protection-sensitive entry system (UNHCR, 2017). Finally, working with institutions in the countries of origin and transit to simplify the implementation of legal migration procedures should, in time, reduce the incentives for irregular migration.

Stabilising countries of origin is a priority to help to reduce the forced displacement of thousands of people to Europe. However, the underlying interests in these regions are such that frequently the EU alone cannot address all the causes of irregular migration. This is why stronger international cooperation with third parties is required, and the EU asylum and immigration policies must be articulated with other common policies, like the Union's Common Foreign and Security Policy, including the Common Security and Defence Policy and the European Neighbourhood Policy, as well as the Integrated Maritime Policy in its integrated maritime surveillance dimension. In particular, the EU should reinforce and be more consistent in its relations with Southern Mediterranean states, which are essential partners in ensuring security in the Euro-Mediterranean area.

It is important to restate that migration inflows bring economic benefits to Europe, such as increased productivity, labour market flexibility, and sustainability to its

social welfare systems. Furthermore, it should be mentioned that inflows of asylum seekers do not deteriorate host countries' economic performance or fiscal balance (D'Albis et al., 2018). These inflows are significant not only to the economy of the EU, but also to the economies of the origin countries, which benefit from remittances from its migrants. These remittances are often a relevant contribution to stabilising these countries' frail economies. In parallel, the presence of national diasporas in Europe helps to build bridges between societies with different cultures and fosters further development cooperation and new economic links.

The principle of solidarity and fair sharing of responsibility between Member States, including its financial implications, was reinforced in the new EU regulations on asylum and migration management that establish a common framework for the actions of the EU, its agencies, and its Member States, each within their respective competencies. The evidence discussed in this study indicates that peripheral Member States have taken a disproportional share of the burden of managing refugee crises until now. For years, taking responsibility for migrants' disembarkations after search and rescue missions meant taking the responsibility to process their asylum applications or returns. This problem fuelled distrust, bickering, and a lack of solidarity between Member States and has strengthened anti-migrant political narratives in some host countries. Hopes are high for the new flexibility mechanisms integrated into the EU Pact on Migration and Asylum, but some voices argue that the new regulations may still be insufficient to mitigate the disproportionate burden faced by Member States at the EU's external borders (González Enríquez, 2024). The effectiveness of these mechanisms will depend to a large extent on their implementation and the political will of Member States to engage fully in the new system.

The new system implementation must be flexible enough to respond appropriately to crisis situations with procedural rules and prompt solidarity mechanisms to respond to crises, such as the 2015 refugee crisis, the COVID-19 pandemic, or the war in Ukraine. Flexibility mechanisms in the new EU Pact on Migration and Asylum were designed to accommodate crisis situations, with response rules that should provide a more coordinated and flexible approach to managing migration pressures during exceptional circumstances while maintaining solidarity among EU Member States.

One other issue that must be addressed is the evidence that asylum seekers have not been treated uniformly across the EU, and the proportion of positive asylum decisions in different countries has varied considerably (European Union Agency for Asylum, 2023). Consequently, asylum seekers have had an incentive to travel around Europe and apply for asylum in countries where they believe the probability of receiving international protection is higher. The EU Pact on Migration and Asylum has now harmonized criteria for evaluating asylum applications to

ensure minimum standards and greater uniformity in how member states assess applications, including a common basis for considering applications inadmissible, such as transit through a "safe third country", and allowing Member States to designate certain regions of other countries as safe. The new system should eliminate pull factors, fight abuse, and provide more effective support to the most affected Member States.

The EU agencies, particularly the European Union Agency for Asylum (EUAA) and the European Border and Coast Guard Agency (Frontex), will have a fundamental role in coordinating and supporting the Member States' efforts. A network of competent Member State authorities, supported by the relevant EU agencies, must foster practical cooperation and information sharing on matters related to the application of the new procedures, including the development of practical tools and guidance.

Since January 2022, the EUAA has provided enhanced operational and technical assistance to Member States, bringing more consistency to the assessment of applications for international protection. The new EU Pact on Migration and Asylum implementation should ensure the EUAA has adequate resources to fulfill its mission and reinforce its capacity to support cooperation between EU Member States and third countries.

Frontex is another key agency whose mission must be facilitated and safeguarded. In section 5 there are references to the recommendations made by the European Court of Auditors (ECA) in its 2021 special report. The fundamental shift of Frontex's activity from a support and coordination role to an operational role brought some problems in internal communication between its units, but since then, Frontex has undergone significant restructuring. From an operational perspective, it is important to improve Frontex's response. Section 5 describes the challenges this agency faced in the past and currently faces in its three current operations in the Mediterranean: operation Themis (Central Mediterranean), operation Poseidon (Eastern Mediterranean), and operation Indalo (Western Mediterranean). Frontex should carry out regular exercises for rapid interventions with the most relevant Member States to ensure that, in case of need, all the parties involved are well-prepared. Additionally, Frontex should develop methodologies to evaluate the results of its operational activities, particularly for its joint operations. Border control missions in the Mediterranean Sea should be organised, as much as possible, in cooperation with transit countries' authorities. The new EU regulations have expanded Frontex's role but may be insufficient to harness and integrate the resources of NGOs with vessels involved in search and rescue operations. These operations should follow specific guidelines and protocols and be conducted in coordination with the relevant EU and national authorities, in full compliance with EU and international maritime law.

In the past, the EU and its Member States have reduced search and rescue capabilities in the Mediterranean, and some EU countries have criminalised NGOs who have organised their own search and rescue activities. The argument put forward was that search and rescue operations were becoming a pull factor for migrants to the EU, but this view was widely criticised by experts and many stakeholders, and it may have contributed to the increasing number of deaths in the maritime migration routes to Europe (Cusumano e Villa, 2019). In fact, evidence suggests that improved search and rescue capacities are needed on all migration maritime routes to Europe. This will be one of the key implementation challenges of the new EU Pact on Migration and Asylum.

On data management, priority will be given to improving the existing EUROSUR framework, referred to in section 5, with Frontex regularly assessing the quality of the data used to produce the European situational picture. This effort involves monitoring and supporting Member States in the correct implementation of EUROSUR by establishing jointly agreed procedures to address known limitations. Another important database for the smooth implementation of the EU Pact on Migration and Asylum is Eurodac, the European Asylum Dactyloscopy Database (Regulation EU 2024/1358 of the European Parliament and of the Council of 14 May). Eurodac stores and processes the digitalised fingerprints of asylum applicants and irregular migrants registered in EU Member States and associated countries (Norway, Iceland, Liechtenstein, and Switzerland). This database helps verify whether an applicant or a person staying illegally in a Member State has previously claimed asylum in another Member State or has been apprehended when entering European territory irregularly. The reform of the Eurodac regulation will improve this database's capabilities by collecting more data and expanding its focus and range of potential users. Access to Eurodac should be simplified for law enforcement authorities to assist with control and detection of unauthorised movements within the EU, and to help fight organised crime and terrorist activities.

A balanced immigration policy must ensure simultaneously the legitimate security concerns of the EU Member States, and the rights of migrants and asylum seekers under international law. Succeeding in this balancing act is of prime importance for the future of the EU. Disorganised open-door immigration policies generate known social problems in host countries, and excessive securitization raises a plethora of human rights issues. Both ends of this spectrum create a series of threats, which include social instability, crime, terrorism, xenophobia, populism, and anti-EU sentiment in host countries. The growth of populism and xenophobia in the EU also brings very specific threats to EU values, to the EU political project. These political narratives often translate into the adoption of increasingly more restrictive measures by the Member States. The analysis of the vicious circle linking

increased anti-migrant sentiment and the politics of fear to excessive securitization of migration policies goes beyond the scope of this study, but a significant body of literature exists pointing out its negative security effects (Bello, 2017; Bigo, 2002; Bourbeau, 2011; Völkel, 2017).

If doubts existed on how damning populism and anti-migrant narratives can be to the EU, these were dissipated on 23 June 2016, with the Brexit referendum results. In the wake of the 2015 refugee crisis, the winning vote to leave the EU was the result of widespread anti-immigration sentiment in the United Kingdom (UK), stirred up by an extremely successful campaign on social media (Bulman, 2020). History will judge if Brexit was positive or negative for the EU and the UK, but its immediate result for the EU was the loss of one of its largest economies, one of its most populous nations, one of its oldest democracies, and one of its Member States with the strongest defence capabilities. Furthermore, the EU now has an undesirable precedent of a Member State leaving the Union.

Anti-migrant populist political messages have also found fertile ground in other large peripheral EU Member States, like Italy and Poland. In September 2022, Georgia Meloni was elected Prime Minister of Italy, after a campaign with a strong nationalistic, anti-immigrant, and anti-EU rhetoric from her "Brothers of Italy" party (Kirby, 2022). In Poland, Prime-Minister Mateusz Morawiecki announced a referendum for the same date of the 2023 general elections, seeking to use migration in his conservative "Law and Justice" party's election campaign, a tactic that helped him win in 2015. Mateusz Morawiecki proposed the following question to be included in this referendum: "Do you support the admission of thousands of illegal immigrants from the Middle East and Africa under the forced relocation mechanism imposed by the European bureaucracy?" (Volpicelli, 2023).

Populist narratives related to migrations are not an exclusive phenomenon of European democracies. They contributed to the spectacular victory of Donald Trump in the 2024 United States' presidential election. The winning candidate ran a successful campaign where immigration was one of the most contentious and defining issues (Dale, 2024).

Evidence suggests that restrictive policies do not stop irregular migration flows to the EU and do not increase internal security in host countries (Völkel, 2017), having the likely side effect of driving changes in migratory routes, which are expected to become increasingly perilous. Furthermore, ensuring legal pathways for migrants and facilitating their integration into EU society is of utmost importance. If the economic and social security of migrants is not assured, areas of socio-economic exclusion may emerge where social unrest, labour marginalisation, criminality, and radicalisation tend to flourish (Melossi, 2015). Again, these considerations are relevant but go beyond our focus on asylum policies and the challenges of maritime migrations to the EU.

Finally, it is evident from this study that a long-term approach is required and that, in the coming years, a successful implementation of the new EU Pact on Migration and Asylum is crucial. This will contribute to saving lives, to protecting the EU's external borders, and to reducing incentives for irregular migration. Stronger and more centralised leadership and coordination at EU level, including the European agencies, is important, as it is clear from the past that procedures relying on Member States' temporary mindsets and voluntary cooperation are not robust enough to face mass migration situations. Harmonised migration and asylum procedures applied consistently in all Member States are essential to building a protection-sensitive entry system in the EU and to ending a humanitarian crisis involving thousands of deaths at sea every year.

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